

A Coastal User's Guide to the Louisiana Coastal Resources Program



A publication of the Louisiana Department of Natural Resources
pursuant to National Oceanic and Atmospheric Administration
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PURPOSE OF THIS MANUAL

PURPOSE

The purpose of this manual is to provide an updated document which reflects the changes in legislation and regulations, and to provide essential information needed by the public concerning the Louisiana Coastal Resources Program. This manual does not replace the original Louisiana Coastal Resources Program Final Environmental Impact Statement (FEIS) which is the official program document for Federal approval pursuant to the Coastal Zone Management Act.

This manual provides concise and up-to-date information on how to apply for a coastal use permit and for projects on federally excluded lands and in the OCS, consistency authorization. There is also information included concerning local (parish) programs. The first ten sections of the manual are descriptive in nature. They are followed in the Appendices by the complete regulations and requirements of the Louisiana State and Local Coastal Resources Management Act of 1978, as amended, as well as various forms needed in the application process.

As the designated lead agency for the Coastal Resources Program, the Louisiana Department of Natural Resources has compiled this information for public use and understanding of the program it is responsible for administering. As the program develops or as legislation changes, amendments to this document will be made by the Office of Coastal Management.

If there are any questions regarding the information contained in this manual they may be addressed in writing to the Office of Coastal Management, Department of Natural Resources, P.O. Box 44487, Baton Rouge, LA 70804-4487 or by calling 1-800-267-4019. Additional information can be found on the Office of Coastal Management's web address at <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=85&ngid=5>.



INTRODUCTION



STATE OF LOUISIANA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF COASTAL MANAGEMENT

Governor Bobby Jindal

Secretary Stephen Chustz

Assistant Secretary Keith Lovell

Administrator Karl L. Morgan, Permits, Mitigation & Support

Acting Administrator Don Haydel, Interagency Affairs and Field Services

INTRODUCTION

Louisiana has 15,000 miles of winding shoreline that extends from the Pearl River westward to the Sabine River.

The delicate coastal zone habitats, located in nineteen southern parishes, are an intricate inter-weaving of ecological systems. Renewable coastal resources include numerous species of wildlife, waterfowl, and wetlands that support highly productive fisheries and fur industries. Non-renewable resources are abundant, with crude oil, natural gas, sulphur, and salt being most common.

Covering 8.5 million acres, the Louisiana Coastal Zone includes large open bays and lakes, barrier islands, cheniers, and natural levee forests. The marshes, swamps, and bottomland hardwoods that sprawl inland from the Gulf of Mexico comprise 41 percent of the continental U.S. coastal wetlands.

Almost one-third of Louisiana's people live in the coastal area. For ecological, economic, and recreational reasons, this vast ecosystem is priceless. If lost, it cannot be replaced.

THE COASTAL ZONE

Because the Coastal Zone is ecologically and economically among the world's richest estuarine regions, it is of vital public interest. The magnitude of the value of the coastal zone and the significance of sound public policies and management are underscored by the following facts:

- Louisiana has 5,000 miles of navigable waterways and a 19,000-mile inland waterway system, most of which is in the coastal zone.
- Louisiana ranks second in the nation in energy production.
- Shrimp and oysters are more plentiful in Louisiana waters than in any other coastal area.
- Freshwater fisheries production in Louisiana is the nation's number one catch in value and poundage.
- More than a million pelts, including nutria, muskrat, beaver, mink, and otter, are usually taken each season in the coastal zone.
- Louisiana coastal marshes are North America's largest wintering ground for migratory waterfowl.
- Coastal crops of rice, sugarcane, and soybeans annually are valued in the hundreds of millions of dollars.

Louisiana's oil and natural gas industries are important to the state's economy, providing taxes and jobs. Proven reserves of both resources are ranked among the nation's largest. Most oil and gas production activity occurs in south Louisiana and offshore in state and federal waters of the Gulf of Mexico. Louisiana's coastal zone holds abundant reserves of crude oil and natural gas and is a region of major exploration, production and refining activity.

Louisiana citizens benefit greatly from coastal resources. Benefits begin with the natural cycles of the wetlands, which renew wildlife habitats, nourish the food chain that supports fisheries and fur industries, build new wetlands and barrier islands to protect the coast from storms, and provide lakes, bays, and bayous for sport fishing, boating, and waterborne transportation.

Land Loss

Louisiana's wetlands are being lost at a rate of approximately 25-35 square miles a year. Nationwide, more than 100 million acres, one-half of all wetlands, have been converted to open water or other habitats since colonial times.

In Louisiana, wetlands are lost naturally through compaction and sinking, saltwater intrusion that kills vegetation, hurricane and storm damage, wind and wave erosion, lack of sedimentation, and other processes.

Man-induced losses occur from dredging and spoil disposal, draining and filling of lands, levee building, canal digging, mineral extraction, agricultural practices, and industrial and urban expansion.

Louisiana Coastal Resources Program

The Office of Coastal Management (OCM) of the Louisiana Department of Natural Resources is charged with implementing the Louisiana Coastal Resources Program (LCRP) under authority of the Louisiana State and Local Coastal Resources Management Act of 1978, as amended (Act 361, La. R.S. 49:214.21 et seq).

This law seeks to protect, develop, and, where feasible, restore or enhance the resources of the state's coastal zone. Its broad intent is to encourage multiple uses of resources and adequate economic growth while minimizing adverse effects of one resource use upon another without imposing undue restrictions on any user. Besides striving to balance conservation and resources, the policies of the LCRP also help to resolve user conflicts, encourage coastal zone recreational values, and determine the future course of coastal development and conservation.

The OCM regulates development activities and manages the resources of the Coastal Zone. A Coastal Use Permit (CUP) Program has been established by the Act to help ensure the management and reasonable use of the state's coastal wetlands.

There are two divisions in the Office of Coastal Management that regulate development activities and manage the resources of the Coastal Zone. These Divisions are "Permits & Mitigation" and "Interagency Affairs / Compliance". The text that follows describes the functions of the Permits & Mitigation Division. This division also houses a support section for the entire office that includes the GIS systems and other computer support, public outreach, and budget and funding functions.

I. PERMITS/MITIGATION DIVISION

A. Permit Section

A Coastal Use Permit (CUP) Program has been established by the Act to help ensure the management and reasonable use of the state's coastal resources and is administered under the Permits, Mitigation & Support Division. The Coastal Use Permit is the basic regulatory tool of the office and is required for certain projects in the Coastal Zone, including but not limited to dredge and fill work, bulkhead construction, shoreline modification, and other development projects such as marinas, subdivisions, drainage facilities and energy infrastructure. The CUP Program requires persons planning public, private, or commercial projects within the coastal zone to apply for authorization prior to construction of any project that is not exempt from

regulation. A prime concern of the CUP Program is to regulate activities that may increase the loss of wetlands and aquatic resources, as well as to reduce conflicts between coastal resource user groups. The rules and regulations governing Coastal Use Permits is found in the Louisiana Administrative code under Title 43, Part 1, Chapter 7 §723.

The Permit Section is responsible for evaluating all applications for coastal use permits submitted by corporations and private individuals (ranging between approximately 1,500 and 2,000 applications per year) for compliance with the Coastal Use Guidelines. One permit staff member is designated to act as an ombudsman for applicants needing assistance with incomplete applications or subsequent requests for additional information primarily to help individuals not familiar with the permitting process. Additionally, the Joint Public Notice (JPN) Coordinator and their assistant, both contract employees, are housed in this Section. The JPN Coordinator is responsible for receiving and initial processing of all applications received by OCM. A key component of this position is the day-to-day coordination of application information between OCM, the Corps of Engineers and the Louisiana Department of Environmental Quality.

B. Mitigation Section

During the CUP review process, OCM permit staff works with the applicant to ensure that impacts to coastal habitats are avoided and/or minimized. However, activities performed in the coastal zone often cause unavoidable impacts, such as wetland alteration. In such cases, the LCRP's goal of no net loss of wetlands due to permitted activities cannot be accomplished without habitat compensation. The Mitigation Section is responsible for analyzing project impacts and reviewing and approving appropriate compensation. This means that the ecological value of wetlands that are unavoidably lost due to a permitted activity, must be replaced by the creation of an equal amount of ecological value. Compensatory mitigation can be accomplished by wetland creation, enhancement, restoration, protection, or the purchase of credits from an approved mitigation bank or area. The staff in the Mitigation Section also serves as the interagency liaison for all mitigation bank and mitigation area proposals and represents the Department on the Mitigation Bank Interagency Review Team. Attached to this section is one additional employer responsible for coordinating the implementation of the Louisiana Coastal Wetlands Conservation Plan.

Coastal Wetlands Conservation

Louisiana Coastal Wetlands Conservation Plan (LCWCP) program was enacted under the federal Coastal Wetlands Planning, Protection, and Restoration Act (Public Law 101-646, Title III – CWPPRA) by agreement with the Federal resource agencies. The goal and requirement of the Plan is to achieve no net loss of wetland value in the coastal areas of Louisiana as a result of developmental activities. Successful implementation enables Louisiana to reduce its match to federal restoration funds from 25% to 15%.

Mapping and Support Services

The Support Services Section staff is responsive to both the Permits/Mitigation function of the office and to the Consistency/Interagency Affairs Division. This section provides technical services, which includes design and support for the databases and GIS data for both Divisions;

public information/education outreach activities and handling of funds, budgeting and accounting.

OCM has a fully functional GIS that has been described as one of the leaders in the country. OCM has developed GIS applications for use by the permit analysts to produce maps and reports of pertinent data sets and critical information within a designated distance of each permit application using over 30 datasets from various government agencies. This is critical in reducing permit review times by highlighting issues of concern and reducing unneeded research.

The OCM database and GIS systems were designed to capture as much information about permit applications as possible. Support Services staff maintains the system and enter the GIS and tabular data. Tracking impacted acreage and habitat unit loss and gain for the Coastal Wetlands Conservation Plan is one of the functions for which the system was designed. The system tracks acres impacted and habitat units lost for each different habitat type for each permit issued by OCM. It also tracks the habitat units gained through mitigation activities. This allows Louisiana to measure net loss/gain of wetland habitat due to development activities. Additionally, with some 800 permits per year issued with conditions which require follow-up and/or monitoring, the database is essential to maintain records of those permits and tracks the next scheduled review or inspection. The Louisiana State Legislature requires agencies to prepare quarterly performance reports and the performance indicators for OCM are based on permit and mitigation statistics. Support Services also provides statistics on impacted acres and habitats to the Corps of Engineers for the Programmatic General Permit. These reports are compiled from information in the database.

Most of the databases are available to the public via the internet as is general information about the program and instructions for applying for a Coastal Use Permit. Use of the computer mapping systems and databases with the digital aerial photography and satellite imagery provide powerful tools to aide in the effective management of a dynamic coastal ecosystem.

OCM developed and maintains a database of pipelines in the Coastal Zone and platforms in offshore state waters. This is the only comprehensive data set of pipelines maintained by state government. Other GIS datasets created and maintained by OCM include mitigation projects, mitigation area, and marsh management areas.

Support Services personnel are responsible for invoicing and tracking of fee payments and coordination with the accounting section. Support Services also performs maintenance and acquisition of the vehicle fleet, boats, motors, and other marine equipment and office computers and peripherals.

B. Public Information and Education Section

OCM's Public Information and Education Section is designed to inform and educate the general public, business, and industry about the Division's programs, policies, and functions. A series of brochures, a regular newsletter, and other printed materials are available free to the public. Among the literature available are brochures on the Coastal Use Permit Program and other OCM functions, including information on how coastal residents can help management programs succeed. Also available are materials developed to assist teachers in their classrooms. These materials contain valuable information as well as activities for the students. Staff members are available to give presentations to classes and other groups, and program managers are available on request to meet with persons wanting more information on OCM efforts.

II. INTERAGENCY AFFAIRS DIVISION

A. Local Programs Section

The State and Local Coastal Resources Management Act (SLCRMA, La. R.S.49: 214.21 to 214.54) affords Louisiana coastal parishes the opportunity to develop Parish Local Coastal Management Programs to regulate coastal resource uses of local concern. The SLCRMA at La. R.S. 49:214.25 - Types of Uses delineates uses into two types: uses of state concern and uses of local concern. The establishment of a Local Coastal Management program asserts a parish an increased level of local control over activities and uses that would typically be regarded as uses of local concern but that would fall to state oversight in the absence of a local coastal management program. Examples of these uses include: camps, private docks, bulkheads, cattle walks, land fills, subdivisions, maintenance of most private canals, etc. Local Coastal Management Programs utilize their parish government authority to issue permits for projects of local concern in the Louisiana coastal zone. Local Coastal Use Permit applications can be reviewed and processed locally in a direct and timely manner. Local Coastal Management Programs also serve as centralized information hubs helping coordinate local implementation of the resource management programs of the many state and federal agencies that have input into the resource utilization process.

Parishes wishing to develop Local Coastal Management Programs first send a letter of intent to the Secretary of LDNR stating this objective. The next step is to produce a programmatic document which outlines the parish program's administrative and regulatory procedures, as well as general parish resources, habitat and socioeconomic data. The programmatic document is first reviewed and approved by the state LDNR and then by our federal oversight agency NOAA before it may be approved and incorporated in the state and federally approved Louisiana Coastal Resources Program.

The management and implementation oversight of these local programs by OCM includes duties such as providing technical assistance to the parishes regarding permit applications, reviewing new program regulations and ordinances, discussing with parish personnel projects of local and state concern, ensuring that comments transmitted to OCM on state concern projects are properly evaluated, coordinating local concern permit activity with state coastal restoration and monitoring projects, and keeping parish personnel informed of ongoing coastal activities that are proposed by any state or federal agency and which might impact the parishes. The state OCM personnel also work with the parish programs to provide research, data, impact studies, technical assistance and other general information.

To date, 10 Louisiana coastal parishes have approved Local Coastal Management Programs. They are: Calcasieu, Cameron, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. James, St. Tammany and Terrebonne. In addition, two additional parishes, St. John the Baptist and St. Charles, have worked towards developing Local Coastal Management Programs. For more information on Parish Local Coastal Management Programs please go to: <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=111>. For questions and specific contact information on any of the 20 Louisiana coastal parishes please contact the Interagency Affairs Scientist Manager at the Louisiana Department of Natural Resources' Office of Coastal Management at 800-267-4019.

B. Coastal Nonpoint Section

Since rainfall and activities on land adjacent to coastal waters may cause direct impacts to those waters, nonpoint source pollution is also a coastal problem. The combined effects of many smaller sources of nonpoint pollution can force the closure of beaches and commercial fisheries such as oyster beds. Nonpoint pollution also destroys fish and wildlife habitat. Ultimately, these coastal problems limit opportunities to use and enjoy coastal waters and can result in a loss of jobs for coastal towns.

In coastal areas, nonpoint pollution is generated by several major types of activities:

- (1) Agriculture - crops and livestock;
- (2) Forestry - timber harvesting and other silviculture activities;
- (3) Urban - new and existing development, on-site disposal systems, and roads, highways, and bridges;
- (4) Marinas - siting and design activities and boat operation/maintenance; and
- (5) Hydromodification - stream bank and shoreline erosion, dams, and channelization and channel modification.

The types of pollutants that come from these activities include sediment (soil particles), chemicals, pesticides, oil, salts, metals, nutrients, and pathogens.

Since nonpoint pollution is generated by many types of activities, all of us contribute to this problem in some way. The chemicals we use on our lawns, gardens, and crops; fluids leaking on roadways from our cars; waste from pets and farm animals; and erosion from farm fields and construction sites, all contribute to nonpoint pollution. Harvesting forests without proper planning and management and loss of natural filters, such as wetlands, also contribute to the problem.

To help solve this pollution problem, Congress expanded the Coastal Zone Management Act of 1990 by creating a new section called Protecting Coastal Waters (Section 6217, for short). Section 6217 requires states with approved coastal zone management programs, such as Louisiana, to also develop a Coastal Nonpoint Pollution Control Program. The aim of this program is to build on existing coastal management and nonpoint pollution programs in order to reduce and prevent coastal water quality problems. Section 310 of the Coastal Zone Management Act offers technical assistance for this program.

Louisiana's state program provides for the implementation of management measures to protect coastal waters, generally, and to accomplish the following specific goals:

- (1) Identify land uses which may cause or contribute to degradation of coastal waters;
- (2) Identify critical coastal areas adjacent to affected coastal waters;
- (3) Provide for implementation of additional management measures to achieve and maintain water quality standards and designated uses;
- (4) Provide technical assistance to the public and local governments to implement management measures;
- (5) Provide for public participation in all aspects of the program;
- (6) Establish mechanisms to improve coordination among federal, state, and local agencies responsible for land use programs, permitting programs, water quality programs, enforcement authorities, habitat protection, and public health and safety;
- (7) Designate/delineate an inland boundary in order to more effectively manage land and water uses to protect coastal waters.

C. Coastal and Estuarine Land Conservation Section

The National Oceanic and Atmospheric Administration (NOAA) established the Coastal and Estuarine Land Conservation Program (CELCP) in 2002 to protect coastal and estuarine lands considered important for their ecological, conservation, recreational, historical or aesthetic values. The program provides state and local governments with matching funds to purchase significant coastal and estuarine lands, or conservation easements on such lands, from willing sellers. Lands or conservation easements acquired with CELCP funds are protected in perpetuity so that they may be enjoyed by future generations.

The Louisiana Department of Natural Resources (LDNR) Office of Coastal Management (OCM) is the state lead coastal management agency. As required by the federal Department of Commerce, Justice, and State Appropriations Act of 2002 (Public Law 107-77), the state CELCP plan's purpose is "the protection of important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses, and will give priority to lands which can be effectively managed, protected, and that have significant ecological value."

D. Consistency Section

The Consistency Section determines whether activities of governmental agencies are consistent with the LCRP. The section reviews activities for compliance with the policies, goals, and objectives of the LCRP, giving particular attention to environmental, economic, and cultural concerns. Authority is exercised over some state and all federal agencies and federally funded projects, including offshore drilling outside state waters, and over private activities on federally controlled property such as National Wildlife Refuges. Federal projects include navigation, flood control, hurricane protection, and freshwater diversion.

1. Consistency Determinations and Certifications

Federal agencies must submit to OCM a review of any project they undertake that may affect coastal resources, and must include their determination as to whether the project is consistent with the LCRP, and supporting information to allow OCM to agree or disagree. In the event of a disagreement, Consistency staff work with the agency to identify modifications that will allow the project to proceed in a manner that is consistent with the LCRP.

Private activities on federal properties must certify to OCM that their project will be conducted in a manner consistent with the LCRP. The information requirements and project review are very similar to Coastal Use Permits.

2. Consistency Fees

The Department of Natural Resources' Office of Coastal Management has instituted a fee schedule for the processing and evaluation of Consistency Determinations under the authority of the State and Local Coastal Resources Management Act of 1978, as amended. A processing fee of \$300.00 is collected for all Consistency Determinations, with certain exemptions for maintenance or removal of outer continental shelf mineral facilities, matters concerning the Oil

Spill Prevention and Response Act, and management of parks, wildlife management areas, and refuges.

E. Enforcement and Monitoring Section

The Enforcement and Monitoring Section ensures that any unauthorized projects in the coastal zone are investigated and action is taken to bring them into compliance with the Louisiana Coastal Resources Program. Enforcement authority includes issuing cease and desist orders, assessing administrative fines, requiring restoration and/or mitigation for unauthorized activities, and filing administrative or legal procedures through the civil court system. The section monitors activities permitted by the CUP Program for compliance with permit conditions including mitigation requirements. All permitted activities that require mitigation or other obligations are tracked to ensure compliance by the permit holder. Activities for which the impacts are possibly temporary in nature are also tracked to ensure any required future mitigation is assessed.

OCM maintains field offices in Houma, Lafayette, Lake Charles, and New Orleans. Six field biologist staff those four offices and a field biologist is also based in the Baton Rouge office. OCM Field Biologists regularly monitor their respective areas for unauthorized activities and noncompliance with permit conditions. They monitor and document land cover and land use changes. They assist permit analysts by providing reports, data and documentation of the existing habitats of proposed project sites, probable impacts of permit applications on those existing habitats; and recommend alternative and/or mitigative measures. OCM field biologists regularly fly over their respective areas in performing their reporting and monitoring duties.



PROGRAM BOUNDARY

PROGRAM BOUNDARY

A) INTRODUCTION

The boundaries of the coastal zone are divided into four elements: the inland boundary, the seaward boundary, areas excluded from the coastal zone and interstate boundaries.

The Federal regulations require that the inland boundary include seven geographical or management elements:

- those areas the management of which is necessary to control uses which have a direct and significant impact on coastal waters;
- designated special management areas identified pursuant to the federal coastal zone management program approval regulations;
- all transitional and intertidal areas which are subject to coastal storm surge;
- beaches affected by wave action directly from the sea;
- islands;
- salt marshes and wetlands; and
- waters under saline influence.

The regulations also require that the inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether a property or an activity is located within the management area and that seaward boundaries are established as the three mile outer limit of the United States territorial sea. (See Coastal Zone Map following this section).

B) LOUISIANA COASTAL ZONE BOUNDARIES

Inland Boundary

The inland boundary for the State of Louisiana contains all or part of twenty parishes: In general, this boundary begins at the state line of Texas and Louisiana in the west and proceeds easterly through the parishes of Calcasieu and Cameron then south through Vermilion, Iberia, St. Mary, St. Martin, Assumption, Terrebonne and Lafourche. The boundary then turns to the north to include the parishes of St. Charles, St. John the Baptist, St. James and then east again through Ascension, Livingston, Tangipahoa and St. Tammany parishes to the Mississippi state line. The only parishes whose boundaries are completely within the coastal zone are the parishes of Orleans, Jefferson, St. Bernard, Plaquemines, St. John the Baptist, St. James and St. Charles.

A complete legal description of the Coastal Zone boundaries can be found in Appendix B, pages 2 - 4.

Interstate Boundaries

The eastern lateral boundary of the coastal zone for purposes of this program is the Louisiana-Mississippi State Line. The boundary is as defined by the U. S. Supreme Court decision rendered in the case of the State of Louisiana vs. the State of Mississippi, 201 US 1 (1906).

The western lateral boundary of the coastal area for purposes of this program is the Louisiana-Texas State Line as defined by the U. S. Supreme Court decision rendered in the case of the State of Texas vs. the State of Louisiana, 431, US 161 (1977).

Seaward Boundary

The seaward boundary of the coastal area for purposes of this program is the outer limit of the United States territorial sea. The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the state's management program may be authorized and financed. These limits are irrespective of any other claims Louisiana may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the operation of Fisheries Conservation and Management Act of 1976.

C) EXCLUDED FEDERAL LANDS

In accordance with Section 304(a) of the Coastal Zone Management Act of 1972, all federal lands, owned, leased, held in trust or whose use is otherwise subject solely to the discretion of the federal government are excluded from the Louisiana coastal zone. However, any activities or projects which are conducted within these excluded lands that may have an effect on land use, water use, or the natural resources of Louisiana's coastal zone, are subject to the consistency provisions of the CZMA.



PROGRAM GUIDELINES

PROGRAM GUIDELINES

The Louisiana State and Local Resources Management Act (SLCRMA) of 1978 required decision making criteria that will protect, develop, and where feasible, restore the natural resources of the state while providing for adequate economic growth and development. In order to accomplish these sometimes conflicting goals, the guidelines are organized as a set of performance standards to evaluate the impacts of a proposed action on coastal resources.

The purpose of this section is to explain how to use these guidelines. The guidelines themselves can be found in Appendix B, pages 5 - 8. When reviewing a proposed coastal use for compliance with the LCRP, the guidelines must be read in their entirety. In making a decision as to whether or not a particular proposed use complies with the guidelines, all applicable guidelines must be considered and complied with.

§701B requires that a proposed use must conform with all applicable laws, standards, and regulations.

§701F is an informational guideline; it provides a list of those factors which will be considered in evaluating applications for permits. The guideline requires that full consideration be given to all relevant factors. It is the responsibility of the applicant to comply with the agency's requests for information.

§701G provides a general listing of impacts which the LCRP has identified as being appropriate to avoid or minimize.

In some 44 of the 94 guidelines, the term "maximum extent practicable" (often referred to as "MEP") is used. An understanding of this term and how it is utilized is an essential element of the coastal use permit decision making process. The term "MEP" is an integral part of the decision making process set forth in §701H. The purpose of this guideline is to delineate the manner in which the benefits and impacts of the proposed use, as well as available alternatives, are reviewed and balanced. This process establishes the basis upon which discretion can be exercised to achieve an appropriate balance between the need for conservation of Louisiana wetland resources and the need for continued economic growth and development. This process also establishes the mechanism by which the impacts of permitted uses may be minimized.

Nevertheless, §701H is only applicable when triggered by other guidelines in which the term "MEP" appears. It is not applicable to any other guidelines and does not stand as a general process to be used in every case.

The use will be in compliance with the guidelines and may be permitted if, "after a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use as set forth in §701F, and a balancing of their relative significance," the decision maker finds that the proposed use meets all of the three following tests:

- (1) "The benefits resulting from the use would clearly outweigh the adverse impacts that would result from compliance with the modified standard," and
- (2) There are no feasible and practical alternative locations, methods, or practices for the use that are in compliance with the modified standard," and

(3) “The use meets one of the following three criteria:

- (a) Significant public benefits will result from the use, or;
- (b) The use would serve important regional, state, or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or;
- (c) The use is coastal water dependent.”

If, but only if, the proposed use meets all three of the above criteria, may it then be permitted. If the agency determines that the use should be permitted, then permit conditions must be developed in order that adverse impacts resulting from the use are minimized.

The three tests provided for in §701H are to be carried out as follows:

The first test resembles a cost benefit analysis. However, this is not a conventional cost benefit analysis because environmental harms generally cannot be quantified in monetary terms. Therefore, the process is more in the nature of a subjective test which places heavy emphasis on the value of the natural resources and the value to the public from the proposed use.

The second test assumes that if another location or design for a proposed use is available which would allow the use to be successfully carried out, it must be utilized. This consideration of alternatives should be similar to the process provided for under Section 102 of the National Environmental Policy Act. In considering what alternatives are feasible and practical, the decision maker must consider the alternatives legally and economically available to the particular person applying for the permit. However, the decision maker is not held to the options economically available to the applicant. The test is what alternatives would be available to a reasonable person in a normal situation. An undercapitalized applicant should not be permitted to damage or destroy important public resources when a well financed one is prevented from doing so.

The third test is made up of three criteria, only one of which must be met. The first is whether significant public benefits will result from the use. These public benefits must go to the public as a whole, not to just a few individuals in the locality, and must be measurably substantial.

The second criteria is whether the use will serve important interests of greater than local concern. This assures that those projects which are important to the region, to the state, or to the nation, are assured full consideration.

The third criterion is whether the use is coastal water dependent. This criterion recognizes that there are sometimes only limited range of location alternatives for water dependent uses.



APPLYING FOR A COASTAL USE PERMIT

APPLYING FOR A COASTAL USE PERMIT (CUP)

The Coastal Use Permit (CUP) process is part of the Louisiana Coastal Resources Program (LCRP), which is an effort among Louisiana citizens, as well as state, federal, and local advisory and regulatory agencies, to preserve, restore, and enhance Louisiana's valuable coastal resources. The purpose of the Coastal Use Permit process is to make certain that any activity affecting the Coastal Zone, such as a project that involves either dredging or filling, is performed in accordance with guidelines established in the LCRP. The guidelines are designed so that development in the Coastal Zone can be accomplished with the greatest benefit and the least amount of damage. We are, therefore, providing the following information concerning the steps involved in applying for a CUP. Submitting an application for a CUP does not imply that a CUP will be required; application is simply one step in following the Rules and Procedures for CUPs so that the Coastal Zone will be protected.

Applying for a Coastal Use Permit, and doing it correctly, is not difficult, but it does require attention to detail. Be as thorough as possible and submit all the required information with the original application. If the information and/or drawings provided are inadequate, the permitting process will be delayed. The importance of properly submitted applications cannot be overemphasized. We have provided a checklist for your use in determining whether the required information has been included in the application package you will be sending.

Listed below are the steps necessary to ensure that your application is completed correctly:

The Application Form: The Department of Natural Resources, Office of Coastal Management has migrated to an electronic application processing system. If you have internet access, you can submit your application electronically at http://workflow.dnr.state.la.us/sundown/cart_prod/pkg_dnr_wf.initiate. Otherwise, obtain a Joint Permit Application Form (the permit application form used by both the Corps of Engineers and the Office of Coastal Management [OCM] for work within the Louisiana Coastal Zone) and fill it out completely. If a copy of the Joint Permit Application Form is not attached, you can obtain one by contacting the Office of Coastal Management at 1-800-267-4019. You can also write to us at P. O. Box 44487, Baton Rouge, LA 70804-4487 for this information, or download it from the web address above. Continue on additional sheets of paper if the form does not contain enough space for complete answers.

Step 1: Applicant Information

Enter the name of the responsible party or parties. If the responsible party is an agency, company, corporation or other organization, indicate the responsible officer and title. Please provide the full mailing address and email address of the party or parties responsible for the application. Please provide the number where you can usually be reached during normal business hours. If more than one party is associated with the application or if more space is needed, please attach an extra sheet of paper with the necessary information marked **Step 1**.

Step 2: Authorized Agent Information (to be completed if you choose to have an agent)

Enter the name of the individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. Please provide the complete mailing address of the agent, along with the telephone number where he/she can be reached during normal business hours. *Note: An agent is **not** required.*

Step 3: Type of Permit/Action Requested

Indicate the type of permit or action that you would like to request. *Note: You may need the approval of other federal, state or local agencies for your project.*

Step 4: Pre-Application/Geological Review Meeting/Wetland Determination Information

Enter any information about Pre-Application and/or Geological Review Meetings. Also, indicate if an official wetland determination from the COE has been obtained and if this application is a mitigation plan for another Coastal Use Permit.

Step 5: Permits/Certifications Previously Requested

Indicate if this application is a change to an existing permit and if you have previously applied for a permit or emergency authorization for all or any part of the proposed project.

Step 6: Proposed Project Location

Enter the parish, city, and street address (if known) of the proposed project location. Enter the Latitude and Longitude where the proposed project is located. If available, enter the Section, Township and Range of the proposed project. If known, enter the Lot #, Parcel #, Tract #, and Subdivision Name. Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site.

Step 7: Adjacent Landowners

List complete names and full mailing addresses of the adjacent property owners (public and private) lessees, etc., whose property adjoins the proposed project site. Additional names and addresses may be included in the area provided on page 12 of the application form. Also, extra sheets may be required if there are more than eight adjacent landowners. *Note: Adjacent landowner information is usually available through the office of the tax assessor in the parish where the project is to be developed.*

Step 8: Proposed Project Purpose

Please provide a name identifying the proposed project (i.e., Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center). Indicate if the project is non-residential or residential. Identify what will be done for the proposed project. Describe the need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project.

Step 9: Status of Proposed Project

Indicate the start/end dates and the current status of the proposed project. *Note: Show and identify planned, in progress, completed work and dimensions for excavations and fill on the Plan View and Cross Section Drawings.*

Step 10: Proposed Project Descriptions

Describe excavation area(s) and volume(s), fill area(s) and volume(s), type(s) of fill material and volume(s) and type(s) of equipment to be used during construction of the proposed activity. Step 10a should include all excavated volumes, steps 10b and c should include all excavated volumes (including that jetted or propwashed) not physically hauled

off site AND any additional fill materials brought in from an external source. *Note: Information provided in the step must be consistent with Maps and Drawings. For any equipment used, show the access route and construction right of way on the Maps and Drawings.*

Step 11: Proposed Project Impacts

List alternative locations, methods and access routes that were considered to avoid impacts to wetlands and/or waterbottoms and any efforts made to minimize the impacts.

Step 12: Landowner/Oyster Lease Holder Notification

If you are applying for a Coastal Use Permit and you are not the sole owner of the property on which the proposed activity is to occur, please list the complete names and addresses of all affected landowners. Act 970 of the 1993 Regular Session of the Louisiana Legislature requires applicants for Coastal Use Permits to notify the owner of the property where the proposed activity is to occur, of the proposal. This requirement is met by mailing them a copy of the application and plats at the time of application. You must also check the box attesting that you have done so. *Note: If a property has multiple owners with undivided interest in the property, each person owning an interest is considered to be a landowner and must be notified. Additional sheets may be required if there are more than two landowners.*

If the proposed activity is located on or near a private oyster lease, you are required to notify all affected lease holders at the time of application and provide to our office copies of all notification letters.

Please visit <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=96> for more information.

Also, if the proposed activity presents potential impacts to vegetated wetlands, it may expedite processing if you submit the Landowner Compensatory Mitigation Request/Waiver. A copy of the waiver form should be included with the application form. To obtain additional copies, visit the OCM website or call 1-800-267-4019 or 225-342-7591.

Step 13: Maps and Drawings

NOTE: Since your maps and drawings must be reproduced for inclusion in Public Notices, they must be on letter-size paper (8.5" x 11") and must be in black and white. **Drawings on larger sized paper or that use colors to show different features are not acceptable.**

Vicinity Map: It is necessary to include a vicinity map showing the location of your project relative to the surrounding area. A copy of a part of a United States Geological Survey quadrangle map with your project location clearly delineated is best, but any other map of a reasonable scale (e.g., 1:24,000) clearly depicting the project site is acceptable.

Plan View and Cross Section Drawings: A drawing depicting the overall plan (an overhead view) and a drawing showing a cross-section (side view) of the proposed project are both required. It is absolutely necessary to include **both types** of drawings in order to obtain a Coastal Use Permit.

Good maps and drawings are **absolutely** necessary to process your application. Your drawings are used to publish a Public Notice and are one of the primary tools used by the OCM in evaluating your proposed activity. Sample plats are available online at: <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=94>. **Inadequate or poor drawings are the primary cause of delays in acquiring a permit.** It is very important that you take the time to prepare, or get someone to prepare for you, a good set of drawings. These drawings need to be accurate, reproducible, and should be drawn to scale. If you cannot provide drawings to scale, you can submit drawings that are not to scale with the dimensions of the proposed and existing features of the work area shown. These drawings show the minimum information needed to process a permit application. Please be sure that you include a north arrow and all dimensions for any proposed activities, as well as for those features that presently exist (**clearly differentiated, but without using different colors**). You need to also include mean low and mean high-water shorelines referenced to mean sea level or mean gulf datums. The elevation of mean high and low water can usually be obtained from land surveyors, local engineers, or the Corp of Engineers. You may also estimate mean high and low water using your knowledge of how high and low the water usually gets in relation to the project site.

Step 14: Signature of Applicant and/or Agent

The application must be signed by the applicant. This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.). If an agent is being used, he must sign the application.

Step 15: Fees and Methods of Payment Available

Fees (\$20.00 for a residential use or \$100.00 for all other uses) may be paid by check, money order, credit card, or by electronic transfer of funds. OCM will later bill you for an additional fee for processing the application, on the basis of \$0.04 per cubic yard for residential uses and \$0.05 per cubic yard for all other uses, if your activity will involve dredging or filling. If your proposed project is determined to be a use of local concern, your application fee will be returned, and your application will be forwarded to the appropriate local coastal program administrator.

Please note that new application and processing fees are required for all revisions, amendments, and modifications to a permit that has already been granted.

Step 16: Submitting the permit application

To submit your application to the state, you can **1) use the online application** feature on our website at http://workflow.dnr.state.la.us/sundown/cart_prod/pkg_dnr_wf.initiate , **2) mail one (1) copy** of your completed application to the Office of Coastal Management, P.O. Box 44487, Baton Rouge, LA 70804-4487, or **3) fax one (1) copy** of your completed application to 225-342-6760. If you fax the application, please be certain that all maps and drawings are of the **highest possible quality**. If the materials you fax cannot be legibly reproduced, we will require the submission of hard copies.

If your activity is located in a parish without an approved local program, you must send your application to the state for processing. If your activity is located in a parish with an

approved local Coastal Management Program you can send your application to either the parish coastal zone management administrator or to the state. The state will determine whether a proposed project is a use of state or local concern.

To submit your application to the parish local coastal program administrator in a parish with an approved Coastal Management Program, please check with your parish CZM Coordinator for instructions. A list of those parishes with approved local coastal programs and the contact person(s) is enclosed.

In either case, copies of your CUP or SOV application will be forwarded to the U. S. Army Corps of Engineers and other agencies. RFD's will not be forwarded to any agency outside of OCM.

Before submitting the application: Time and effort may be saved by first determining if the proposed project is in the Louisiana Coastal Zone. Projects which are not in the Coastal Zone generally do not require a Coastal Use Permit. Maps delineating the Coastal Zone are available from the Office of Coastal Management at P. O. Box 44487, Baton Rouge, LA 70804-4487, or call 1-800-267-4019. If you have any questions about whether or not your project is within the Coastal Zone, you should apply to the above address for an official determination.

OCM staff are available to discuss proposed projects. Should you have any questions or need assistance, please contact the OCM Permit Section at 1-800-267-4019 or 225-342-7591 to discuss your project. If you desire, a pre-application conference to discuss your proposed project, possible alternatives, information required, application completeness, drawing adequacy, etc. can be scheduled. **OCM staff are not allowed to fill out or alter any portion of your application or your plats.**

COASTAL USE PERMIT FEES

The Department of Natural Resources, Office of Coastal Management (OCM) has instituted a fee schedule for the processing and evaluation of Coastal Use Permits (CUP's) and for the processing of mitigation activities under the authority of the State and Local Coastal Resources Management Act of 1978. All such fee revenue is used for the purpose of supporting the operations of OCM. A fee is collected for all CUP applications and Requests for Determination (RFD's). The fee is in two parts. Each CUP application and RFD is charged a non-refundable application fee which must accompany the application. If appropriate, a processing fee based on the total volume of material disturbed (i.e. dredge and or fill activity) may also be charged. The processing fee is based on a sliding scale of cubic yards disturbed because, as a general rule, the time devoted to processing an application increases directly with the volume of material disturbed. Therefore, the schedule is designed to collect fees proportional to the processing cost of each application. Mitigation fees are not applicable to all activities which receive CUPs, but the mitigation of unavoidable impacts to wetlands by activities permitted by CUPs is required by the LCRP.

Application Fee: A non-refundable application fee (\$20.00 for residential uses, \$100.00 for all other uses) shall accompany each CUP application or request for determination submitted to the Office of Coastal Management (OCM). The non-refundable fee will be charged for all users of the Coastal Zone, including private citizens, commercial entities, nonprofit organizations, state and local agencies, and municipalities. If you wish to revise an activity for which you have

already received a Coastal Use Permit, you must submit a new application along with the appropriate application fee.

Permit Processing Fee: In addition to the non-refundable application fee, a permit processing fee will be assessed according to the total volume of material dredged or used for fill. This fee will be based on a rate of \$0.04 per cubic yard of dredge and/or fill material for residential uses, and \$0.05 per cubic yard of dredge and/or fill material for all other uses. Processing fees for residential uses where the volume of dredge/fill material is less than 125 cubic yards will not be charged and the maximum fee will be \$2,000.00 for any volume in excess of 50,000 cubic yards. Processing fees for all other uses will be charged a minimum of \$25.00 for any dredge/fill volume less than 500 cubic yards, and the maximum fee will be \$5,000.00 for any volume in excess of 100,000 cubic yards.

Examples of dredge and/or fill activities which require a fee include, but are not limited to:

- (1) private and commercial construction of boat slips;
- (2) dredge or fill associated with the construction of commercial or private bulkheads, piers, wharves, etc.;
- (3) canal construction;
- (4) trenching of pipelines;
- (5) prop-washing;
- (6) mitigation activities such as construction of levees, water control structures, plugs, etc.;
- (7) maintenance dredging;
- (8) dredging of water bottoms in bays and lakes for shell; and
- (9) any other dredge/fill activity requiring a Coastal Use Permit.

Mitigation Fees: Mitigation fees are required, as appropriate, for processing individual mitigation proposals, mitigation banking projects, advanced mitigation projects, and compensatory mitigation variance requests. The mitigation fees for the above categories are found in the text of the Rules and Procedures for Mitigation (§724 in Appendix A).



RULES AND PROCEDURES FOR COASTAL USE PERMIT

RULES AND PROCEDURES FOR COASTAL USE PERMITS

The coastal use permit regulations provide requirements and procedures for the issuance, denial, renewal, modification, and revocation of coastal use permits and mitigation of impacts. A complete copy of these rules and procedures is included in Appendix A - Title 43, pages 12 - 51.

Permit Activities

A coastal use permit is required for various activities in the coastal zone including but not limited to such uses as dredging or filling or discharges of dredged or fill material; levee siting, construction, operation and maintenance; hurricane and flood protection facilities; urban developments; energy development activities; mining activities; shoreline modification; recreational developments; and industrial developments. (See complete list in Appendix B) Some activities typically do not require coastal use permits. These include but are not limited to such activities as agricultural, forestry, and aquaculture activities in areas that have consistently had these activities in the past; maintenance and repair of existing structures; construction of a residence or camp; and construction and modification of navigation aids. Activities occurring on lands five feet or more above sea level or in fastlands are generally exempted from the regulations with exceptions as clarified in Title 43.

Permit Applications

The coastal use permit regulations contain the procedures for permit application, their issuance or denial. Appropriate fees will be assessed for each application by the administering agency, either the Office of Coastal Management of the Louisiana Department of Natural Resources or the administrator of a local (parish) program. The permit application is processed by the administering agency with a possible public hearing held. With all information gathered, the administering agency will determine the acceptability of the proposed coastal use permit.

Modification, Suspension or Revocation of Permits

There is provision in the regulations for modification, suspension or revocation of permits. Modifications allow for changes in the permitted use, in the plans and specifications for that use, in the methods by which the use is being implemented, or to assure that the permitted use will be in conformity with the coastal management program. Suspension of a permit may occur if the permittee fails to comply with the conditions stipulated in the permit or submits false or incomplete information to obtain the permit. A permit may be revoked by the administering agency if warranted after compliance with suspension procedures stipulated in the Act. If the permittee fails to comply with a cease and desist order or the suspension or revocation of a permit, the permitting body shall seek appropriate civil and criminal relief as provided by Sec. 214.36 of the SLCRMA.

General Permits

General Permits may be issued by the administering agency for the area. These permits are for clearly described categories of uses requiring coastal use permits. After a General Permit has been issued, individual uses falling within those categories will not require full individual permit processing unless the administrator determines, on a case-by-case basis, that the public interest requires full review. General Permits may be issued only for those uses that are substantially similar in nature, that cause only minimal adverse impacts when performed

separately, that will have only minimal adverse cumulative impacts and that otherwise do not impair the fulfillment of the objectives and policies of the coastal management program.

Local Coastal Permits

An application for a permit may be filed with a local government with an approved local coastal program. The local government shall make the initial determination as to whether the use is one of state concern or local concern on all applications filed with the local government. The determination and a brief explanation of the rationale behind the determination shall be forwarded to the Secretary of the LDNR within two (2) working days of receipt of the apparently complete application. The Secretary shall review the decision and rationale and shall let it stand or reverse it. If the Secretary reverses the local decision, notice, including a brief explanation of the rationale for the reversal, shall be sent to the local government within two (2) working days of receipt of the application from the local government. The appropriate permitting body for the use, as determined by the Secretary, shall thereafter be responsible for the permit review process.

Any person who proposes to conduct an activity may submit a request, in writing, to the Secretary for a formal finding as to whether the proposed activity is a use of state or local concern within the coastal zone, subject to the coastal use permitting program. The person making the request shall submit with the request a complete application for a coastal use permit and shall provide such additional information requested by the Secretary as may be appropriate.

Permit Determinations

Only the Secretary may determine that a coastal use permit is not required. A permit shall not be required if the proposed use or activity will not occur within the boundary of the coastal zone, does not have a direct and significant impact on coastal waters, or is exempt from permitting. When the determination is that a coastal use permit is required, processing of the application may be commenced or continued. When the determination is that a coastal use permit is not required, the requestor or the applicant may proceed to carry out the activity, provided that the Secretary shall not be stopped from subsequently requiring a permit or issuing cease and desist orders if it is found that the activity as implemented, is significantly different from that shown on the request or application, or does in fact have a direct or significant impact on coastal waters, or otherwise requires a coastal use permit. Other civil or criminal sanctions shall not be available in the absence of fraud, ill practices, deliberate misrepresentation or failure to comply with any cease and desist or other lawful order of the Secretary.

Permit Extensions

There are provisions for obtaining permit extensions in the Rules and Procedures for Coastal Use Permits (§723.D.5). Extension of permit terms will be considered on a case-by-case basis. There is a fee of \$80.00 on permit extensions.

Mitigation Rules

The Coastal Management Regulations also contain provisions for mitigation and mitigation fees. Please refer to §724 of the Coastal Management Regulations for further information.



LOCAL COASTAL PROGRAMS

LOCAL COASTAL PROGRAMS

The national Coastal Zone Management Act provides that states may delegate coastal zone management authority to local governments, and the Louisiana State and Local Coastal Resources Management Act (SLCRMA) has provisions which allow parish governments to assume authority over certain types of coastal uses. However, in order to obtain this authority, parishes need to develop a local coastal management plan which must be approved by the state and federal coastal management agencies. (Please refer to Appendix A, pages 52 - 57 for local program approval regulations.) Once a parish program has been approved, it officially becomes part of the Louisiana Coastal Resources Program, and it then regulates “uses of local concern” as defined in SLCRMA (see Appendix B pages 7 - 8).

Parishes with approved coastal management plans have their own permitting authority and fee schedules. The fee schedule of any of the participating parishes can be obtained through the contact person listed below. An application for an activity in a parish with an approved program may be submitted to either the parish or to the Office of Coastal Management in Baton Rouge. Applications submitted to the parishes are forwarded, within 2 days, to the Baton Rouge office for confirmation of state/local jurisdiction. If the activity is determined to be a local concern, the application will be returned to the parish for permitting. It should be noted that the state retains jurisdiction over all coastal uses in parishes which do not have approved local programs.

There are twenty parishes which are either fully or partially within the Louisiana Coastal Zone boundary. Ten of these parishes have approved coastal management programs. Lists of those parishes are as follows:

Parishes all or partially within the Coastal Zone

**Ascension
Assumption
Calcasieu
Cameron
Iberia
Jefferson
Lafourche
Livingston
Orleans
Plaquemines
St. Bernard
St. Charles
St. James
St. John the Baptist
St. Martin
St. Mary
St. Tammany
Tangipahoa
Terrebonne
Vermilion**

Parishes with Local Programs

**Calcasieu
Cameron
Jefferson
Lafourche
Orleans
Plaquemines
St. Bernard
St. James
St. Tammany
Terrebonne**



FEDERAL COASTAL ZONE MANAGEMENT

CONSISTENCY APPEAL PROCEDURES

FEDERAL COASTAL ZONE MANAGEMENT CONSISTENCY APPEAL PROCEDURES

The National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce has promulgated federal consistency regulations which provide for a right of appeal, under certain circumstances, to the Secretary of the United States Department of Commerce (15 CFR, Chapter IX, §930.120 - §930.134). The objective of these regulations is to provide procedures under which the Secretary may find that a federal license or permit activity, which is inconsistent with a state management program, may be federally approved because the activity is determined to be consistent with the objectives or purposes of the federal Coastal Zone Management Act (16 USC §1451 et seq.), or is necessary in the interest of national security (§930.120). This appeal procedure is initiated by the filing of a notice of appeal with the Secretary within 30 days of the receipt of the state agency objection.⁰¹ (§930.125). The term “consistent with the objectives or purposes of the Act” describes a federal license or permit activity, or a federal assistance activity which, although inconsistent with a state’s management program, is found by the Secretary to be permissible because it satisfies four criteria:

- (a) the activity furthers one or more of the competing national objectives or purposes contained in section 302 or 303 of the Act,
- (b) when performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,
- (c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and
- (d) there is no reasonable alternative available (e.g., location, design, etc.) which would permit the activity to be conducted in a manner consistent with the management program. The regulation further provides that the Secretary’s decision shall constitute final agency action for purposes of the federal Administrative Procedures Act (§930.130).

⁰¹ It should be noted that a state agency objection can be a permit denial or a “forced” withdrawal of a permit application. In the event that the Secretary of the Department of Commerce overrules the state’s federal consistency determination, the proposed use can then be approved by federal permitting agencies, but the state permit decision still remains in effect.



SPECIAL AREAS

SPECIAL AREAS

Two special management areas are included in the LCRP. They are those areas subject to the jurisdiction of the Offshore Terminal Authority and the Marsh Island Wildlife Refuge.

Offshore Terminal Authority

The Louisiana Offshore Oil Port (LOOP or Superport) was nominated as a “special area” because of the unique needs and problems associated with deepwater marine terminals. The superport area requires management guidelines that are specific to the superport and the area affected by it.

The Superport Special Management Area is the corridor of the pipeline within the jurisdiction of the Louisiana Offshore Terminal Authority between the LOOP Offshore Terminal and the St. James Terminal on the Mississippi River. For purposes of the federal Act, only the area of the corridor within the boundary of the coastal zone will be considered a special management area. All aspects of operations between the LOOP and the St. James Terminal are subject to the Superport Environmental Protection Plan (Louisiana Offshore Terminal Authority, 1977). The area in which the regulatory jurisdiction of the Louisiana Offshore Terminal Authority applies is the right-of-way secured by the operators of the main pipeline within the pipeline alignments specified in the application submitted to the Offshore Terminal Authority. The exact boundaries of the special management area may be changed by order of the Authority upon application by the licensee. Facilities other than those operated in connection with LOOP which tie into the LOOP pipelines will only be subject to the Superport Environmental Protection Plan at the point of their connection with the main pipeline.

Marsh Island Wildlife Refuge and Game Preserve

The island, located in the southern part of Iberia Parish, covers approximately 73,000 acres of land. Marsh Island is an important natural area for birds and wildlife. Wading birds such as heron, egrets, ibises and anhingas use this protected area as a rookery. The wildlife refuge is also a habitat for the American alligator and for large concentrations of ducks and geese.

Public use of Marsh Island is not permitted. It is a trespass and a criminal offense for any member of the public to go upon the refuge without the State’s consent. A one mile buffer zone, designed to prevent trespassing from nearby recreation areas into the wildlife refuge, exists around Marsh Island.

For more information on special areas see Appendix A, pages 58 and 59 and Appendix B, pages 8 and 9.



PUBLIC HEARINGS

PUBLIC HEARINGS

A public hearing process is included in the Coastal Management Regulations (see Appendix A, pages 56 and 57).

This process provides an opportunity to the public to participate in the review of Coastal Use Permit applications. If it is determined that a public hearing will be held on a pending permit application, notice will be given at least thirty (30) days in advance of the hearing. The notice will contain the time and place for the hearing, and the location of materials that are available for public examination.

Any person may appear at a public hearing. Oral or written statements may be submitted concerning the subject matter of the hearing. These statements may be submitted for up to ten days following the public hearing.

All public hearings are recorded and transcribed verbatim. The transcript of these hearings will be made available to the public for inspection or purchase.

All information received through the public hearing process will be used to evaluate the proposed coastal zone permit application.



APPENDICES

APPENDICES

Included in this section are the following:

- A. CHAPTER 7, TITLE 43 – COASTAL MANAGEMENT
REGULATIONS
- B. R.S. 49:214.21 SUBPART C – LOUISIANA COASTAL
RESOURCES PROGRAM LEGISLATION
- C. SAMPLE FORMS

Note: The Louisiana Administrative Code Chapter 7, Title 43 was compiled in February, 2010. This is the document in Appendix A. This document is updated and amended through the procedure for promulgation of rules and regulations completed by publication in the State Register.

Appendix A and B provide the most recent legislation, rules, regulations and procedures regarding the State and Local Coastal Resources Management Program with amendments to date.

Appendix C includes the Joint Permit Application Form, Sample Drawings, Incomplete Application Checklist, Landowner Letter of Intent Regarding Mitigation and Transfer Form.



APPENDIX A

TITLE 43 – NATURAL RESOURCES

**LOUISIANA
ADMINISTRATIVE CODE**

**Title 43
NATURAL RESOURCES**

Part I. Office of the Secretary

Chapter 7. Office of Coastal Management

Office of the State Register

*Edited and compiled February 2010
(Last amended February 2010)*

Bobby Jindal
Governor

Angele Davis
Commissioner of Administration

Title 43
Natural Resources
Part I. Office of the Secretary
Subpart 1. General

Chapter 7. Coastal Management
Subchapter A. Definitions

§700. Definitions

Administrator—the administrator of the Coastal Management Division of the Department of Natural Resources.

Advanced Mitigation Project—a project implemented to create, restore, protect, and/or enhance wetlands for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (advanced mitigation credits). Such projects must be approved by the secretary prior to implementation, and the advanced mitigation credits shall have limited utility for the purpose of compensating for the ecological values lost due to a permitted activity.

Affected Landowner—the owner of the land on which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

Affected Parish—the parish in which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

After-the-Fact Permit—a coastal use permit which is issued after the commencement of a use. Such a permit may only be issued after all legal issues resulting from the commencement of a use without a coastal use permit have been resolved.

Alterations of Waters Draining in Coastal Waters—those uses or activities that would alter, change, or introduce polluting substances into runoff and thereby modify the quality of coastal waters. Examples include water control impoundments, upland and water management programs, and drainage projects from urban, agricultural and industrial developments.

Approved Local Program—a local coastal management program which has been and continues to be approved by the secretary pursuant to 214.28 of the State and Local Coastal Resources Management Act (SLCRMA).

Average Annual Habitat Unit—a unit of measure of ecological value; average annual habitat units are calculated by the formula: (sum of cumulative habitat units for a given project scenario) / (project years).

Beneficial Use of Dredged Material—use of dredged material excavated and not replaced pursuant to a proposed activity for which a coastal use permit is required, so as to protect, create, or enhance wetlands; use of material dredged pursuant to an alternative dredging activity to protect, create, or enhance wetlands, so as to offset failure to use the dredged material from the proposed activity to protect, create, or enhance wetlands; or contribution to the Coastal Resources Trust Fund to replace, substitute, enhance, or protect ecological values, so as to offset failure to use the dredged material from the proposed activity to protect, create, or enhance wetlands.

Beneficial Use of Dredged Material Plan—(BUDM Plan) a document submitted to the secretary for approval as part of an application, specifying the beneficial use of dredged material proposed by the applicant.

Best Practical Techniques—those methods or techniques which would result in the greatest possible minimization of the adverse impacts listed in §701.G and in specific guidelines applicable to the proposed use. Those methods or techniques shall be the best methods or techniques which are in use in the industry or trade or among practitioners of the use, and which are feasible and practical for utilization.

Coastal Use Permit—a permit required by 214.30 of the SLCRMA. The term does not mean or refer to, and is in addition to, any other permit or approval required or established pursuant to any other constitutional provision or statute.

Coastal Water Dependent Uses—those which must be carried out on, in or adjacent to coastal water areas or wetlands because the use requires access to the water body or wetland or requires the consumption, harvesting or other direct use of coastal resources, or requires the use of coastal water in the manufacturing or transportation of goods. Examples include surface and subsurface mineral extraction, fishing, ports and necessary supporting commercial and industrial facilities, facilities for the construction, repair and maintenance of vessels, navigation projects, and fishery processing plants.

Coastal Waters—those bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).

Coastal Zone—the term coastal zone shall have the same definition as provided in 214.24 of the SLCRMA.

Compensatory Mitigation—replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of ecological values caused by a permitted activity.

Conservation Servitude—as defined at R.S. 9:1272(1), means a nonpossessory interest of a holder in immovable property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of immovable property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

Contaminant—an element causing pollution of the environment that would have detrimental effects on air or water quality or on native floral or faunal species.

Corps—the U.S. Army Corps of Engineers.

Cumulative Habitat Unit—a unit of measure of ecological value; for each time interval within the project years, cumulative habitat units are calculated by the formula: $CHUs = (T_2 - T_1) \times \{[(A_1 \times HSI_1 + A_2 \times HSI_2) / 3] + [(A_2 \times HSI_1 + A_1 \times HSI_2) / 6]\}$, where T_1 = first year of time interval, T_2 = last year of time interval, A_1 = acres of habitat at beginning of time interval, A_2 = acres of habitat at end of time interval, HSI_1 = habitat suitability index at beginning of time interval, and HSI_2 = habitat suitability index at end of time interval; the source of this formula is the U.S. Fish and Wildlife Service's Ecological Services Manual 102, Habitat Evaluation Procedures.

Cumulative Impacts—impacts increasing in significance due to the collective effects of a number of activities.

Department—the Department of Natural Resources.

Development Levees—those levees and associated water control structures whose purpose is to allow control of water levels within the area enclosed by the levees to facilitate drainage or development within the leveed areas. Such levee systems also commonly serve for hurricane or flood protection, but are not so defined for purposes of these guidelines.

Direct and Significant Impact—a direct and significant modification or alteration in the physical or biological characteristics of coastal waters which results from an action or series of actions caused by man.

Dredge or Dredging—(verb) the removal by excavation or any other means of native material, including soil, sand, mud, clay, and semisolid sediment, regardless of whether the material supports or is supporting vegetation, from any lands or water bottoms in the coastal zone of Louisiana.

Dredged Material—soil, mud, and/or other sediment that will be dredged pursuant to a proposed activity for which a coastal use permit or other authorization is required.

Ecological Value—the ability of an area to support vegetation and fish and wildlife populations.

Endangered Species—as defined in the Endangered Species Act, as amended, any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary of the U.S. Department of Interior to constitute a pest whose protection under the provisions of the Endangered Species Act, as amended, would present an overwhelming and overriding risk to man.

Expectable Adverse Conditions—natural or man-made hazardous conditions which can be expected or predicted to occur at regular intervals. Included are such events as 125 mile per hour hurricanes and associated tides, 100 year floods and reasonably probable accidents.

Fastlands—lands surrounded by publicly-owned, maintained, or otherwise validly existing levees or natural formations as of January 1, 1979, or as may be lawfully constructed in the future, which levees or natural formations would normally prevent activities, not to include the pumping of water for drainage purposes, within the surrounded area from having direct and significant impacts on coastal waters.

Feasible and Practical—those locations, methods and/or practices which are of established usefulness and efficiency and allow the use or activity to be carried out successfully.

Federal Advisory Agencies—include, but are not limited to, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, the U.S. Environmental Protection Agency, and the U.S. Natural Resources Conservation Service.

Force Majeure—an act of God, war, blockade, lightning, fire, storm, flood, and any other cause which is not within the control of the party claiming force majeure.

Future with Project Scenario—portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would be implemented.

Future without Project Scenario—portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would not be implemented.

Geologic Review Procedure—a process by which alternative methods, including alternative locations, for oil and gas exploration are evaluated on their environmental, technical, and economic merits on an individual basis; alternative methods, including alternative locations, of oil and gas production and transmission activities which are specifically associated with the proposed exploration activity shall also be evaluated in this process. These alternative methods, including alternative locations, are presented and evaluated at a meeting by a group of representatives of the involved parties. A geologic review group is composed, at a minimum, of representatives of the applicant, a petroleum geologist and a petroleum engineer representing the Coastal Management Division and/or the New Orleans District Corps of Engineers, and a representative of the Coastal Management Division Permit Section, and may include, but is not limited to, representatives of the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Environmental Quality, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, and the U.S. Environmental Protection Agency.

Governmental Body—any public department, agency, bureau, authority, or subdivision of the government of the United States or the state of Louisiana and shall include parishes and municipalities and subdivisions thereof and those governmental agencies constitutionally established.

Guidelines—those rules and regulations adopted pursuant to 214.27 of the SLCRMA.

Habitat—the natural environment where a plant or animal population lives.

Habitat Types—the general wetland vegetative communities which exist in the Louisiana Coastal Zone, including fresh marsh, intermediate marsh, brackish marsh, saline marsh, fresh swamp, and bottomland hardwoods.

Holder—as defined at R.S. 9:1272(2), means:

1. a governmental body empowered to hold an interest in immovable property under the laws of this state or the United States; or
2. a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of immovable property, assuring the availability of immovable property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

Hurricane or Flood Protection Levees—those levees and associated water control structures whose primary purpose is to prevent occasional surges of flood or storm generated high water. Such levee systems do not include those built to permit drainage or development of enclosed wetland areas.

Hydrologic and Sediment Transport Modifications—those uses and activities intended to change water circulation, direction of flow, velocity, level, or quality or quantity of transported sediment. Examples include locks, water gates, impoundments, jetties, groins, fixed and variable weirs, dams, diversion pipes, siphons, canals, and surface and groundwater withdrawals.

Hydrologic Basin—one of the nine general drainage areas within the Louisiana Coastal Zone as delineated on pages A-2 and A-3 of the Louisiana Coastal Wetlands Conservation and Restoration Plan, April 1990.

Impoundment Levees—those levees and associated water control structures whose primary purpose is to contain water within the levee system either for the prevention of the release of pollutants, to create fresh water reservoirs, or for management of fish or wildlife resources.

Infrastructure—those systems which provide needed support for human social institutions and developments, including transportation systems, public utilities, water and sewerage systems, communications, educational facilities, health services, law enforcement and emergency preparedness.

In-Lieu Permit—those permits issued in-lieu of coastal use permits pursuant to 214.31 of the SLCRMA.

Levees—any use or activity which creates an embankment to control or prevent water movement, to retain water or other material, or to raise a road or other lineal use above normal or flood water levels. Examples include levees, dikes and embankments of any sort.

Linear Facilities—those uses and activities which result in creation of structures or works which are primarily linear in nature. Examples include pipelines, roads, canals, channels, and powerlines.

Local Government—a governmental body having general jurisdiction and operating at the parish level.

Local Program—same as approved local program.

Marsh—wetlands subject to frequent inundation in which the dominant vegetation consists of reeds, sedges, grasses, cattails, and other low growth.

Master Plan—Integrated Ecosystem Restoration and Hurricane Protection: Louisiana's Comprehensive Master Plan for a Sustainable Coast, promulgated by the Coastal Protection and Restoration Authority pursuant to R.S. 49:213.1, et seq., as in effect on the date of submission of a complete application.

Minerals—oil, gas, sulfur, geothermal, geopressured, salt, or other naturally occurring energy or chemical resources which are produced from below the surface in the coastal zone. Not included are such surface resources as clam or oyster shells, dirt, sand, or gravel.

Mitigation—all actions taken by a permittee to avoid, minimize, restore, and compensate for ecological values lost due to a permitted activity.

Mitigation Bank—an area identified, with specific measures implemented to create, restore, protect, and/or enhance wetlands, for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (mitigation credits). Those credits may be donated, sold, traded, or otherwise used for the purpose of compensating for the ecological values lost due to a permitted activity.

Off-Site—not within or adjoining the area directly modified by the permitted activity and not directly related to implementation of the permitted activity.

Oil, Gas and Other Mineral Activities—those uses and activities which are directly involved in the exploration, production, and refining of oil, gas, and other minerals. Examples include geophysical surveying, establishment of drill sites and access to them, drilling, on site storage of supplies, products and waste materials, production, refining, and spill cleanup.

On-Site—within or adjoining the area directly modified by the permitted activity or directly related to implementation of the permitted activity.

Overriding Public Interest—the public interest benefits of a given activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, as in the case of certain mineral extraction, production, and transportation activities or construction of flood protection facilities critical for protection of existing infrastructure.

Particular Areas—areas within the coastal zone of a parish with an approved local program which have unique and valuable characteristics requiring special management procedures. Such areas shall be identified, designated, and managed by the local government following procedures consistent with those for special areas.

Permit—a coastal use permit, or an in-lieu permit.

Permitting Body—either the Department of Natural Resources or a local government with an approved local program with authority to issue, or that has issued, a coastal use permit authorized by the SLCRMA.

Person—any natural individual, partnership, association, trust, corporation, public agency or authority, governmental body, or any other legal or juridical person created by law.

Project Years—the anticipated number of years that the proposed activity would have a negative or positive impact on the ecological value of the site. Project years shall be 20 years for marsh habitats and 50 years for forested habitats, unless it is clearly demonstrated by the applicant and accepted by the secretary to be shorter in duration.

Public Hearing—a hearing announced to the public at least 30 days in advance, at which all interested persons shall be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing. At the time of the announcement of the public hearing all materials pertinent to the hearing, including documents, studies, and other data, in the possession of the party calling the hearing, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the party which conducted the hearing.

Radioactive Wastes—wastes containing source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

Residential Coastal Use—any coastal use associated with the construction or modification of one single-family, duplex, or triplex residence or camp. It shall also include the construction or modification to any outbuilding, bulkhead, pier, or appurtenance on a lot on which there exists a single-family, duplex, or triplex residence or camp or on a water body which is immediately adjacent to such lot.

Secondary Impact—an impact which would:

- 1. result from the proposed activity;*
- 2. cause significant modifications or alterations to the physical characteristics of acreage beyond the limit of the area depicted as being altered in the accepted permit application drawings; and*
- 3. be identified and quantified by the secretary based on an evaluation of similar and previously implemented activities.*

Secretary—the Secretary of the Department of Natural Resources, or his designee.

Sediment Deposition Systems—controlled diversions of sediment-laden water in order to initiate land building or sediment nourishment or to minimize undesirable deposition of sediment in navigation channels or habitat areas. Typical activities include diversion channels, jetties, groins, or sediment pumps.

Shoreline Modifications—those uses and activities planned or constructed with the intention of directly or indirectly changing or preventing change of a shoreline. Examples include bulkheading, piers, docks, wharves, slips, and short canals, and jetties.

SLCRMA—the State and Local Coastal Resources Management Act of 1978, Act 361 of 1978 as amended, R.S. 49:214.21-49:214.42.

Spoil Deposition—the deposition of any excavated or dredged material.

State Advisory Agencies—include, but are not limited to, the Louisiana Department of Wildlife and Fisheries and the Louisiana Department of Environmental Quality.

Surface Alterations—those uses and activities which change the surface or usability of a land area or water bottom. Examples include fill deposition, land reclamation, beach nourishment, dredging (primarily areal), clearing, draining, surface mining, construction and operation of transportation, mineral, energy and industrial facilities, and industrial, commercial, and urban developments.

Third Party Right of Enforcement—as defined at R.S. 9:1272.(3), means a right provided in a conservation servitude to enforce any of the terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

Toxic Substances—those substances which, by their chemical, biological or radioactive properties, have the potential to endanger human health or other living organisms or ecosystems, by means of acute or chronic adverse effects, including poisoning, mutagenic, teratogenic, or carcinogenic effect.

Unavoidable Net Loss of Ecological Values—the net loss of ecological value that is anticipated to occur as the result of a permitted/authorized activity, despite all efforts, required by the guidelines, to avoid, minimize, and restore the permitted/authorized impacts.

Uplands—lands 5 feet or more above sea level, fastlands, or all lands outside the coastal zone.

Use—any use or activity within the coastal zone which has a direct and significant impact on coastal waters.

Waste—any material for which no use or reuse is intended and which is to be discarded.

Waste Disposal—those uses and activities which involve the collections, storage and discarding or disposing of any solid or liquid material. Examples include littering; landfill; open dumping; incineration; industrial waste treatment facilities; sewerage treatment; storage in pits, ponds, or lagoons; ocean dumping and subsurface disposal.

Water or Marsh Management Plan—a systematic development and control plan to improve and increase biological productivity, or to minimize land loss, saltwater intrusion, erosion or other such environmental problems, or to enhance recreation.

Wetlands—

1. for the purposes of this Chapter except for §724, open water areas or areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions;

2. for the purposes of §724 (as defined in R.S. 49:214.41), an open water area or an area that is inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, but specifically excluding fastlands and lands more than 5 feet above sea level which occur in the designated coastal zone of the state. Wetlands generally include swamps, marshes, bogs, and similar areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended by the Department of Natural Resources, Office of the Secretary, LR 35:2183 (October 2009).

Subchapter B. Coastal Use Guidelines

Coastal use guidelines as approved by the House Natural Resources Committee on July 9, 1980, the Senate Natural Resources Committee on July 11, 1980, and the governor on July 24, 1980.

§701. Guidelines Applicable to All Uses

A. The guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with.

B. Conformance with applicable water and air quality laws, standards and regulations, and with those other laws, standards and regulations which have been incorporated into the coastal resources program shall be deemed in conformance with the program except to the extent that these guidelines would impose additional requirements.

C. The guidelines include both general provisions applicable to all uses and specific provisions applicable only to certain types of uses. The general guidelines apply in all situations. The specific guidelines apply only to the situations they address. Specific and general guidelines should be interpreted to be consistent with each other. In the event there is an inconsistency, the specific should prevail.

D. These guidelines are not intended to nor shall they be interpreted so as to result in an involuntary acquisition or taking of property.

E. No use or activity shall be carried out or conducted in such a manner as to constitute a violation of the terms of a grant or donation of any lands or waterbottoms to the state or any subdivision thereof. Revocations of such grants and donations shall be avoided.

F. Information regarding the following general factors shall be utilized by the permitting authority in evaluating whether the proposed use is in compliance with the guidelines:

1. type, nature, and location of use;
2. elevation, soil, and water conditions and flood and storm hazard characteristics of site;
3. techniques and materials used in construction, operation, and maintenance of use;
4. existing drainage patterns and water regimes of surrounding area including flow, circulation, quality, quantity, and salinity; and impacts on them;
5. availability of feasible alternative sites or methods of implementing the use;
6. designation of the area for certain uses as part of a local program;
7. economic need for use and extent of impacts of use on economy of locality;
8. extent of resulting public and private benefits;
9. extent of coastal water dependency of the use;
10. existence of necessary infrastructure to support the use and public costs resulting from use;
11. extent of impacts on existing and traditional uses of the area and on future uses for which the area is suited;
12. proximity to and extent of impacts on important natural features such as beaches, barrier islands, tidal passes, wildlife and aquatic habitats, and forest lands;
13. the extent to which regional, state, and national interests are served including the national interest in resources and the siting of facilities in the coastal zone as identified in the coastal resources program;
14. proximity to, and extent of impacts on, special areas, particular areas, or other areas of particular concern of the state program or local programs;
15. likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts;
16. proximity to and extent of impacts on public lands or works, or historic, recreational, or cultural resources;
17. extent of impacts on navigation, fishing, public access, and recreational opportunities;
18. extent of compatibility with natural and cultural setting;
19. extent of long term benefits or adverse impacts.

G. It is the policy of the coastal resources program to avoid the following adverse impacts. To this end, all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable significant:

1. reductions in the natural supply of sediment and nutrients to the coastal system by alterations of freshwater flow;
2. adverse economic impacts on the locality of the use and affected governmental bodies;
3. detrimental discharges of inorganic nutrient compounds into coastal waters;
4. alterations in the natural concentration of oxygen in coastal waters;
5. destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;

6. adverse disruption of existing social patterns;
7. alterations of the natural temperature regime of coastal waters;
8. detrimental changes in existing salinity regimes;
9. detrimental changes in littoral and sediment transport processes;
10. adverse effects of cumulative impacts;
11. detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;
12. reductions or blockage of water flow or natural circulation patterns within or into an estuarine system or a wetland forest;
13. discharges of pathogens or toxic substances into coastal waters;
14. adverse alteration or destruction of archaeological, historical, or other cultural resources;
15. fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;
16. adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;
17. adverse alteration or destruction of public parks, shoreline access points, public works, designated recreation areas, scenic rivers, or other areas of public use and concern;
18. adverse disruptions of coastal wildlife and fishery migratory patterns;
19. land loss, erosion, and subsidence;
20. increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards;
21. reduction in the long term biological productivity of the coastal ecosystem.

H.1. In those guidelines in which the modifier "maximum extent practicable" is used, the proposed use is in compliance with the guideline if the standard modified by the term is complied with. If the modified standard is not complied with, the use will be in compliance with the guideline if the permitting authority finds, after a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use as set forth in Subsection F above, and a balancing of their relative significance, that the benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the modified standard and there are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the modified standard and:

- a. significant public benefits will result from the use; or
- b. the use would serve important regional, state, or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or;
- c. the use is coastal water dependent.

2. The systematic consideration process shall also result in a determination of those conditions necessary for the use to be in compliance with the guideline. Those conditions shall assure that the use is carried out utilizing those locations, methods, and practices which maximize conformance to the modified standard; are technically, economically, environmentally, socially, and legally feasible and practical; and minimize or offset those adverse impacts listed in §701.G and in the Subsection at issue.

I. Uses shall to the maximum extent practicable be designed and carried out to permit multiple concurrent uses which are appropriate for the location and to avoid unnecessary conflicts with other uses of the vicinity.

J. These guidelines are not intended to be, nor shall they be, interpreted to allow expansion of governmental authority beyond that established by R.S. 49:214.21-49:214.42, as amended; nor shall these guidelines be interpreted so as to require permits for specific uses legally commenced or established prior to the effective date of the coastal use permit program nor to normal maintenance or repair of such uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§703. Guidelines for Levees

- A. The leveeing of unmodified or biologically productive wetlands shall be avoided to the maximum extent practicable.
- B. Levees shall be planned and sited to avoid segmentation of wetland areas and systems to the maximum extent practicable.
- C. Levees constructed for the purpose of developing or otherwise changing the use of a wetland area shall be avoided to the maximum extent practicable.
- D. Hurricane and flood protection levees shall be located at the nonwetland/wetland interface or landward to the maximum extent practicable.

E. Impoundment levees shall only be constructed in wetland areas as part of approved water or marsh management projects or to prevent release of pollutants.

F. Hurricane or flood protection levee systems shall be designed, built and thereafter operated and maintained utilizing best practical techniques to minimize disruptions of existing hydrologic patterns, and the interchange of water, beneficial nutrients, and aquatic organisms between enclosed wetlands and those outside the levee system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§705. Guidelines for Linear Facilities

A. Linear use alignments shall be planned to avoid adverse impacts on areas of high biological productivity or irreplaceable resource areas.

B. Linear facilities involving the use of dredging or filling shall be avoided in wetland and estuarine areas to the maximum extent practicable.

C. Linear facilities involving dredging shall be of the minimum practical size and length.

D. To the maximum extent practicable, pipelines shall be installed through the "push ditch" method and the ditch backfilled.

E. Existing corridors, rights-of-way, canals, and streams shall be utilized to the maximum extent practicable for linear facilities.

F. Linear facilities and alignments shall be, to the maximum extent practicable, designed and constructed to permit multiple uses consistent with the nature of the facility.

G. Linear facilities involving dredging shall not traverse or adversely affect any barrier island.

H. Linear facilities involving dredging shall not traverse beaches, tidal passes, protective reefs, or other natural gulf shoreline unless no other alternative exists. If a beach, tidal pass, reef, or other natural gulf shoreline must be traversed for a non-navigation canal, they shall be restored at least to their natural condition immediately upon completion of construction. Tidal passes shall not be permanently widened or deepened except when necessary to conduct the use. The best available restoration techniques which improve the traversed area's ability to serve as a shoreline shall be used.

I. Linear facilities shall be planned, designed, located, and built using the best practical techniques to minimize disruption of natural hydrologic and sediment transport patterns, sheet flow, and water quality and to minimize adverse impacts on wetlands.

J. Linear facilities shall be planned, designed, and built using the best practical techniques to prevent bank slumping and erosion, and saltwater intrusion, and to minimize the potential for inland movement of storm-generated surges. Consideration shall be given to the use of locks in navigation canals and channels which connect more saline areas with fresher areas.

K. All nonnavigation canals, channels, and ditches which connect more saline areas with fresher areas shall be plugged at all waterway crossings and at intervals between crossings in order to compartmentalize them. The plugs shall be properly maintained.

L. The multiple use of existing canals, directional drilling, and other practical techniques shall be utilized to the maximum extent practicable to minimize the number and size of access canals, to minimize changes of natural systems, and to minimize adverse impacts on natural areas and wildlife and fisheries habitat.

M. All pipelines shall be constructed in accordance with Parts 191, 192, and 195 of Title 49 of the Code of Federal Regulations, as amended, and in conformance with the Commissioner of Conservation's Pipeline Safety Rules and Regulations and those safety requirements established by R.S. 45:408, whichever would require higher standards.

N. Areas dredged for linear facilities shall be backfilled or otherwise restored to the pre-existing conditions upon cessation of use for navigation purposes to the maximum extent practicable.

O. The best practical techniques for site restoration and revegetation shall be utilized for all linear facilities.

P. Confined and dead end canals shall be avoided to the maximum extent practicable. Approved canals must be designed and constructed using the best practical techniques to avoid water stagnation and eutrophication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§707. Guidelines for Dredged Spoil Deposition

A. Spoil shall be deposited utilizing the best practical techniques to avoid disruption of water movement, flow, circulation, and quality.

B. Spoil shall be used beneficially to the maximum extent practicable to improve productivity or create new habitat, reduce or compensate for environmental damage done by dredging activities, or prevent environmental damage. Otherwise, existing spoil disposal areas or upland disposal shall be utilized to the maximum extent practicable rather than creating new disposal areas.

C. Spoil shall not be disposed of in a manner which could result in the impounding or draining of wetlands or the creation of development sites unless the spoil deposition is part of an approved levee or land surface alteration project.

D. Spoil shall not be disposed of on marsh, known oyster or clam reefs, or in areas of submersed vegetation to the maximum extent practicable.

E. Spoil shall not be disposed of in such a manner as to create a hindrance to navigation or fishing, or hinder timber growth.

F. Spoil disposal areas shall be designed and constructed and maintained using the best practical techniques to retain the spoil at the site, reduce turbidity, and reduce shoreline erosion when appropriate.

G. The alienation of state-owned property shall not result from spoil deposition activities without the consent of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§709. Guidelines for Shoreline Modification

A. Nonstructural methods of shoreline protection shall be utilized to the maximum extent practicable.

B. Shoreline modification structures shall be designed and built using best practical techniques to minimize adverse environmental impacts.

C. Shoreline modification structures shall be lighted or marked in accordance with U.S. Coast Guard regulations, not interfere with navigation, and should foster fishing, other recreational opportunities, and public access.

D. Shoreline modification structures shall be built using best practical materials and techniques to avoid the introduction of pollutants and toxic substances into coastal waters.

E. Piers and docks and other harbor structures shall be designed and built using best practical techniques to avoid obstruction of water circulation.

F. Marinas and similar commercial and recreational developments shall to the maximum extent practicable not be located so as to result in adverse impacts on open productive oyster beds, or submersed grass beds.

G. Neglected or abandoned shoreline modification structures, piers, docks, and mooring and other harbor structures shall be removed at the owner's expense, when appropriate.

H. Shoreline stabilization structures shall not be built for the purpose of creating fill areas for development unless part of an approved surface alteration use.

I. Jetties, groins, breakwaters, and similar structures shall be planned, designed, and constructed so as to avoid to the maximum extent practicable downstream land loss and erosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§711. Guidelines for Surface Alterations

A. Industrial, commercial, urban, residential, and recreational uses are necessary to provide adequate economic growth and development. To this end, such uses will be encouraged in those areas of the coastal zone that are suitable for development. Those uses shall be consistent with the other guidelines and shall, to the maximum extent practicable, take place only:

1. on lands 5 feet or more above sea level or within fast lands; or
2. on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered, and:
 - a. the land is already in high intensity of development use; or
 - b. there is adequate supporting infrastructure; or
 - c. the vicinity has a tradition of use for similar habitation or development.

B. Public and private works projects such as levees, drainage improvements, roads, airports, ports, and public utilities are necessary to protect and support needed development and shall be encouraged. Such projects shall, to the maximum extent practicable, take place only when:

1. they protect or serve those areas suitable for development pursuant to §711.A; and
2. they are consistent with the other guidelines; and
3. they are consistent with all relevant adopted state, local, and regional plans.

C. Reserved.

D. To the maximum extent practicable wetland areas shall not be drained or filled. Any approved drain or fill project shall be designed and constructed using best practical techniques to minimize present and future property damage and adverse environmental impacts.

E. Coastal water dependent uses shall be given special consideration in permitting because of their reduced choice of alternatives.

F. Areas modified by surface alteration activities shall, to the maximum extent practicable, be revegetated, refilled, cleaned, and restored to their predevelopment condition upon termination of the use.

G. Site clearing shall to the maximum extent practicable be limited to those areas immediately required for physical development.

H. Surface alterations shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Alterations in wildlife preserves and management areas shall be conducted in strict accord with the requirements of the wildlife management body.

I. Surface alterations which have high adverse impacts on natural functions shall not occur, to the maximum extent practicable, on barrier islands and beaches, isolated cheniers, isolated natural ridges or levees, or in wildlife and aquatic species breeding or spawning areas, or in important migratory routes.

J. The creation of low dissolved oxygen conditions in the water or traps for heavy metals shall be avoided to the maximum extent practicable.

K. Surface mining and shell dredging shall be carried out utilizing the best practical techniques to minimize adverse environmental impacts.

L. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

M. Surface alteration sites and facilities shall be designed, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment and minimize other adverse impacts.

N. To the maximum extent practicable only material that is free of contaminants and compatible with the environmental setting shall be used as fill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§713. Guidelines for Hydrologic and Sediment Transport Modifications

A. The controlled diversion of sediment-laden waters to initiate new cycles of marsh building and sediment nourishment shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

B. Sediment deposition systems may be used to offset land loss, to create or restore wetland areas or enhance building characteristics of a development site. Such systems shall only be utilized as part of an approved plan. Sediment from these systems shall only be discharged in the area where the proposed use is to be accomplished.

C. Undesirable deposition of sediments in sensitive habitat or navigation areas shall be avoided through the use of the best preventive techniques.

D. The diversion of freshwater through siphons and controlled conduits and channels, and overland flow to offset saltwater intrusion and to introduce nutrients into wetlands shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

E. Water or marsh management plans shall result in an overall benefit to the productivity of the area.

F. Water control structures shall be assessed separately based on their individual merits and impacts and in relation to their overall water or marsh management plan of which they are a part.

G. Weirs and similar water control structures shall be designed and built using the best practical techniques to prevent "cut arounds," permit tidal exchange in tidal areas, and minimize obstruction of the migration of aquatic organisms.

H. Impoundments which prevent normal tidal exchange and/or the migration of aquatic organisms shall not be constructed in brackish and saline areas to the maximum extent practicable.

I. Withdrawal of surface and ground water shall not result in saltwater intrusion or land subsidence to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§715. Guidelines for Disposal of Wastes

A. The location and operation of waste storage, treatment, and disposal facilities shall be avoided in wetlands to the maximum extent practicable, and best practical techniques shall be used to minimize adverse impacts which may result from such use.

B. The generation, transportation, treatment, storage, and disposal of hazardous wastes shall be pursuant to the substantive requirements of the Department of Environmental Quality adopted pursuant to the provisions of R.S. 30:217, et seq.; as amended and approved pursuant to the Resource Conservation and Recovery Act of 1976 P.L. 94-580, as amended, and of the Office of Conservation for injection below surface.

C. Waste facilities located in wetlands shall be designed and built to withstand all expectable adverse conditions without releasing pollutants.

D. Waste facilities shall be designed and constructed using best practical techniques to prevent leaching, control leachate production, and prevent the movement of leachate away from the facility.

E. The use of overland flow systems for nontoxic, biodegradable wastes, and the use of sump lagoons and reservoirs utilizing aquatic vegetation to remove pollutants and nutrients shall be encouraged.

F. All waste disposal sites shall be marked and, to the maximum extent practicable, all components of waste shall be identified.

G. Waste facilities in wetlands with identifiable pollution problems that are not feasible and practical to correct shall be closed and either removed or sealed, and shall be properly revegetated using the best practical techniques.

H. Waste shall be disposed of only at approved disposal sites.

I. Radioactive wastes shall not be temporarily or permanently disposed of in the coastal zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§717. Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters

A. Upland and upstream water management programs which affect coastal waters and wetlands shall be designed and constructed to preserve or enhance existing water quality, volume, and rate of flow to the maximum extent practicable.

B. Runoff from developed areas shall to the maximum extent practicable be managed to simulate natural water patterns, quantity, quality, and rate of flow.

C. Runoff and erosion from agricultural lands shall be minimized through the best practical techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§719. Guidelines for Oil, Gas, and Other Mineral Activities

A. Geophysical surveying shall utilize the best practical techniques to minimize disturbance or damage to wetlands, fish and wildlife, and other coastal resources.

B. To the maximum extent practicable, the number of mineral exploration and production sites in wetland areas requiring floatation access shall be held to the minimum number, consistent with good recovery and conservation practices and the need for energy development, by directional drilling, multiple use of existing access canals, and other practical techniques.

C. Exploration, production, and refining activities shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Mineral operations in wildlife preserves and management areas shall be conducted in strict accordance with the requirements of the wildlife management body.

D. Mineral exploration and production facilities shall be to the maximum extent practicable designed, constructed, and maintained in such a manner to maintain natural water flow regimes, avoid blocking surface drainage, and avoid erosion.

- E. Access routes to mineral exploration, production, and refining sites shall be designed and aligned so as to avoid adverse impacts on critical wildlife and vegetation areas to the maximum extent practicable.
- F. Drilling and production sites shall be prepared, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment.
- G. All drilling activities, supplies, and equipment shall be kept on barges, on drilling rigs, within ring levees, or on the well site.
- H. Drilling ring levees shall to the maximum extent practicable be replaced with small production levees or removed entirely.
- I. All drilling and production equipment, structures, and storage facilities shall be designed and constructed utilizing best practical techniques to withstand all expectable adverse conditions without releasing pollutants.
- J. Mineral exploration, production, and refining facilities shall be designed and constructed using best practical techniques to minimize adverse environmental impacts.
- K. Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.
- L. The use of dispersants, emulsifiers, and other similar chemical agents on oil spills is prohibited without the prior approval of the Coast Guard or Environmental Protection Agency on-scene coordinator, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan.
- M. Mineral exploration and production sites shall be cleared, revegetated, detoxified, and otherwise restored as near as practicable to their original condition upon termination of operations to the maximum extent practicable.
- N. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Subchapter C. Coastal Use Permits and Mitigation

§723. Rules and Procedures for Coastal Use Permits

A. General

1. Coastal Use Permits. This regulation provides the requirements and procedures for the issuance, denial, renewal, modification, suspension, and revocation of coastal use permits and general coastal use permits.
2. Permit Requirement. No use of state or local concern shall be commenced or carried out in the coastal zone without a valid coastal use permit or in-lieu permit unless the activity is exempted from permitting by the provisions of the SLCRMA or by Subsection B of this Section. The following shall be considered as uses of state or local concern subject to the requirement of this Paragraph:
 - a. dredging or filling and discharges of dredged or fill material;
 - b. levee siting, construction, operation, and maintenance;
 - c. hurricane and flood protection facilities, including the siting, construction, operation, and maintenance of such facilities;
 - d. urban developments, including the siting, construction or operation of residential, commercial, industrial, and governmental structures and transportation facilities;
 - e. energy development activities, including any siting, construction, or operation of generating, processing and transmission facilities, pipeline facilities, and exploration for and production of oil, natural gas, and geothermal energy;
 - f. mining activities, including surface, subsurface, and underground mining, sand or gravel mining, and shell dredging;
 - g. wastewater discharge, including point and nonpoint sources;
 - h. surface water control or consumption, including marsh management projects;
 - i. shoreline modification projects and harbor structures;
 - j. waste disposal activities;
 - k. recreational developments, including siting, construction and operation of public and private recreational facilities and marinas;
 - l. industrial development, including siting, construction, or operation of such facilities;

m. any other activities or projects that would require a permit or other form of consent or authorization from the U.S. Army Corps of Engineers, the Environmental Protection Agency or the Louisiana Department of Natural Resources (see page 83 Item 13 of the Louisiana Coastal Resources Program Final Environmental Impact Statement);

n. activities which impact barrier islands, salt domes, cheniers, and beaches;

o. drainage projects;

3. In-Lieu Permits. Coastal use permits shall not be required for the location, drilling, exploration and production of oil, gas, sulphur and other minerals subject to regulation by the Office of Conservation of the Department of Natural Resources as of January 1, 1979. The parameters and procedures of the in-lieu permit process are as provided for under existing Memorandum of Understanding between the Coastal Management Section and the Office of Conservation and the rules and procedures of the Office of Conservation.

B. Activities Not Requiring Permits

1. General

a. The following activities normally do not have direct and significant impacts on coastal waters; hence, a coastal use permit is not required, except as set forth in the following clauses:

i. agricultural, forestry, and aquaculture activities on lands consistently used in the past for such activities;

ii. hunting, fishing, trapping, and the preservation of scenic historic, and scientific areas and wildlife preserves;

iii. normal maintenance or repair of existing structures including emergency repairs of damage caused by accident, fire, or the elements;

iv. construction of a residence or camp;

v. construction and modification of navigational aids such as channel markers and anchor buoys;

vi. activities which do not have a direct and significant impact on coastal waters.

b. Uses and activities within the special area established by R.S. 49:214.29(c) which have been permitted by the Offshore Terminal Authority in keeping with its environmental protection plan shall not require a coastal use permit.

2. Activities on Lands 5 Feet or More above Sea Level or within Fastlands

a. Activities occurring wholly on lands 5 feet or more above sea level or within fastlands do not normally have direct and significant impacts on coastal waters. Consequently, a coastal use permit for such uses generally need not be applied for.

b. However, if a proposed activity exempted from permitting in Subparagraph a, above, will result in discharges into coastal waters, or significantly change existing water flow into coastal waters, then the person proposing the activity shall notify the secretary and provide such information regarding the proposed activity as may be required by the secretary in deciding whether the activity is a use subject to a coastal permit.

c. Should it be found that a particular activity exempted by Subparagraph a, above, may have a direct and significant impact on coastal waters, the department may conduct such investigation as may be appropriate to ascertain the facts and may require the persons conducting such activity to provide appropriate factual information regarding the activity so that a determination may be made as to whether the activity is a use subject to a permit.

d. The secretary shall determine whether a coastal use permit is required for a particular activity. A coastal use permit will be required only for those elements of the activity which have direct and significant impacts on coastal waters.

e. The exemption described in this Section shall not refer to activities occurring on cheniers, salt domes, barrier islands, beaches, and similar isolated, raised land forms in the coastal zone. It does refer to natural ridges and levees.

3. Emergency Uses

a. Coastal use permits are not required in advance for conducting uses necessary to correct emergency situations.

i. Emergency situations are those brought about by natural or man-made causes, such as storms, floods, fires, wrecks, explosions, spills, which would result in hazard to life, loss of property, or damage to the environment if immediate corrective action were not taken.

ii. This exemption applies only to those corrective actions which are immediately required for the protection of lives, property, or the environment necessitated by the emergency situation.

b. Prior to undertaking such emergency uses, or as soon as possible thereafter, the person carrying out the use shall notify the secretary and the local government, if the use is conducted in a parish with an approved local program, and give a brief description of the emergency use and the necessity for carrying it out without a coastal use permit.

c. As soon as possible after the emergency situation arises, any person who has conducted an emergency use shall report on the emergency use to the approved local program or to the administrator. A determination shall be made as to whether the

emergency use will continue to have direct and significant impacts on coastal waters. If so, the user shall apply for an after-the-fact permit. The removal of any structure or works occasioned by the emergency and the restoration of the condition existing prior to the emergency use may be ordered if the permit is denied in whole or in part.

4. Normal Maintenance and Repair

a. Normal repairs and the rehabilitation, replacement, or maintenance of existing structures shall not require a coastal use permit provided that:

- i. the structure or work was lawfully in existence, currently serviceable, and in active use during the year preceding the repair, replacement or maintenance; and
- ii. the repair or maintenance does not result in an encroachment into a wetland area greater than that of the previous structure or work; and
- iii. the repair or maintenance does not involve dredge or fill activities; and
- iv. the repair or maintenance does not result in a structure or facility that is significantly different in magnitude or function from the original.

b. This exemption shall not apply to the repair or maintenance of any structure or facility built or maintained in violation of the coastal management program.

c. Coastal use permits will normally authorize periodic maintenance including maintenance dredging. All maintenance activities authorized by coastal use permits shall be conducted pursuant to the conditions established for that permit. Where maintenance is performed which is not described in an applicable coastal use permit, it shall conform to this Section.

5. Construction of a Residence or Camp

a. The construction of a residence or a camp shall not require a coastal use permit provided that:

- i. the terms shall refer solely to structures used for noncommercial and nonprofit purposes and which are commonly referred to as "single family" and not multiple family dwellings;
- ii. the terms shall refer solely to the construction of one such structure by or for the owner of the land for the owner's use and not to practices involving the building of more than one such structure as in subdividing, tract development, speculative building, or recreational community development.

b. The exemption shall apply only to the construction of the structure and appurtenances such as septic fields, outbuildings, walk-ways, gazebos, small wharves, landings, boathouses, private driveways, and similar works, but not to any bulkheading or any dredging or filling activity except for small amounts of fill necessary for the structure itself and for the installation and maintenance of septic or sewerage facilities.

6. Navigational Aids

a. The construction and modification of navigational aids shall not require a coastal use permit.

b. The term shall include channel markers, buoys, marker piles, dolphins, piling, pile clusters, etc.; provided that the exemption does not apply to associated dredge or fill uses or the construction of mooring structures, advertising signs, platforms, or similar structures associated with such facilities. All navigational aids constructed pursuant to this section shall conform to United State Coast Guard standards and requirements.

7. Agricultural, Forestry and Aquacultural Activities

a. Agricultural, forestry and aquacultural activities on lands consistently used in the past for such activities shall not require a coastal use permit provided that:

- i. the activity is located on lands or in waters which have been used on an ongoing basis for such purposes, consistent with normal practices, prior to the effective date of SLCRMA (Act 361 of 1978);
- ii. the activity does not require a permit from the U.S. Army Corps of Engineers and meets federal requirements for such exempted activities; and
- iii. the activity is not intended to, nor will it result in, changing the agricultural, forestry, or aquacultural use for which the land has been consistently used for in the past to another use.

b. The exemption includes but is not limited to normal agricultural, forestry, and aquacultural activities such as:

- i. plowing;
- ii. seeding;

- iii. grazing;
- iv. cultivating;
- v. insect control;
- vi. fence building and repair;
- vii. thinning;
- viii. harvesting for the production of food, fiber and forest products;
- ix. maintenance and drainage of existing farm, stock, or fish ponds;
- x. digging of small drainage ditches; or
- xi. maintenance of existing drainage ditches and farm or forest roads carried out in accordance with good management practices.

8. Blanket Exemption. No use or activity shall require a coastal use permit if:

- a. the use or activity was lawfully commenced or established prior to the implementation of the coastal use permit process;
- b. the secretary determines that it does not have a direct or significant impact on coastal waters; or
- c. the secretary determines one is not required pursuant to §723.G of these rules.

C. Permit Application, Issuance, and Denial

1. General Requirements

a. Any applicant for a coastal use permit shall file a complete application with the state, or at his option, in areas subject to an approved local coastal management program, with the local government. The department will provide the application forms and instructions, including example plats and interpretive assistance, to any interested party. The staffs of the coastal management section and approved local programs shall be available for consultation prior to submission of an application and such consultation is strongly recommended. Application forms may be periodically revised to obtain all information necessary for review of the proposed project.

b. Separate applications shall be made for unrelated projects or projects involving noncontiguous parcels of property. Joint applications may be made in cases of related construction involving contiguous parcels of property.

c. Applicants for coastal use permits for uses of state concern shall include with their application filed with the state a certification that a copy of the application was forwarded by certified mail or hand delivered to the affected local parish(es) with an approved coastal management program.

d. Applicants for coastal use permits for uses of state concern, who elect to submit their application to the affected local parish(es) with an approved local coastal management program, shall include with their application a certification that a copy of the application was forwarded by certified mail or hand delivered to the state.

2. Content of Application. The application submitted shall contain the same information required for a permit from the U.S. Army Corps of Engineers and such additional information as the secretary determines to be reasonably necessary for proper evaluation of an application.

3. Fee Schedule

a. Effective May 1, 2002, the fee schedule of Coastal Use Permits of state concern will be divided into the two categories of residential uses and nonresidential uses.

b. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be \$20 for each application and \$20 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve fewer than 125 cubic yards of dredging or fill volume shall not be assessed additional fees.

(b). Proposed projects which involve 125 cubic yards of dredging and/or filling but less than 50,000 cubic yards shall be assessed at the rate of \$0.04 per cubic yard.

(c). Proposed projects which involve 50,000 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of \$2,000.

c. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the non-residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be \$100 for each application and \$100 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve more than 0 and fewer than 500 cubic yards of dredging or fill volume shall be assessed a fee of \$25.

(b). Proposed projects which involve 501 cubic yards of dredging and/or filling but less than 100,001 cubic yards shall be assessed at the rate of \$0.05 per cubic yard.

(c). Proposed projects which involve 100,001 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of \$5,000.

d. If the appropriate fees are not included along with the coastal use permit application, the application will be considered incomplete, and returned to the applicant. The application fee and additional fees, if any, should be paid separately.

e. A coastal use permit application which has been returned to the applicant by the Coastal Management Division or withdrawn by the applicant and is subsequently resubmitted shall be subject to an additional processing fee which will consist of an application fee and a permit fee if the application has undergone substantial revisions, pursuant to Subparagraph D.1.a of this Section.

f. Nothing contained in Subparagraphs 3.a-e shall affect the right of local government and parishes with approved programs to assess fees for processing and evaluating coastal use permit applications.

g. In addition to the fees identified at §723.C.3.a, the following fees related to compensatory mitigation shall be charged when appropriate pursuant to §724:

i. compensatory mitigation processing fee (§724.D);

ii. mitigation bank initial evaluation fee, mitigation bank habitat evaluation fee, mitigation bank establishment fee, and mitigation bank periodic review fee (§724.F.3);

iii. advanced mitigation project initial evaluation fee, advanced mitigation project establishment fee, advanced mitigation post-implementation habitat evaluation fee, advanced mitigation periodic review fee (§724.G.5);

iv. compensatory mitigation variance request fee (§724.K.2.h).

4. Processing the Application

a. When an apparently complete application for a permit is received, the permitting body shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it.

b. Application processing will begin when an application that is apparently complete is accepted by the permitting body.

c. Within two working days of receipt of an apparently complete application by a local government with an approved program, a copy of the application and all attachments and the local government's decision as to whether the use is one of state or local concern shall be sent to the secretary.

d. Public notice as described in Paragraph 5 below, will be issued within 10 days of receipt of an apparently complete application by the secretary.

e. The permitting body shall evaluate the proposed application pursuant to Paragraph 6 below, to determine the need for a public hearing.

f. The permitting body, pursuant to Paragraph 8 below, shall either send a draft permit to the applicant for acceptance and signature or send notice of denial to the applicant within 30 days of the giving of public notice or within 15 days after the closing of the record of a public hearing, if held, whichever is later.

g. Public notice of permit decisions shall be given pursuant to Paragraph 5.a.ii below.

5. Public Notice and Consideration of Public Comment

a. Public notice of the receipt of all apparently complete applications for coastal use permits shall be given by posting or causing to be posted notices of application on the department's internet site. The administrator shall distribute copies of the application to all affected governmental bodies.

b. Notice by Publication. A public notice as provided in §728 of all apparently complete applications for coastal use permits will be published by the administrator or by the local government with an approved local coastal management program for uses of local concern. The public notice shall be published by the administrator at least one time in the official journal of the state and, for a use of local concern in a parish with an approved local program, by the local government one or more times in the official journal of the parish in which the activity is to be conducted. Notice shall be considered given upon publication in the official journal.

c. Contents of the notice of an apparently complete application for a coastal use permit should at a minimum contain the following:

- i. the name and address of applicant;
- ii. a brief description of the activity proposed in the application;
- iii. the nature and location of the activity;
- iv. the name and address of the administrators, or local governments, if the application is filed with a local government with an approved local coastal management program, representative to whom comments shall be submitted;
- v. a statement that comments will be received for 25 days following publication; and
- vi. a statement indicating that additional information is on file and may be inspected at any time during normal working hours, with copies available upon payment of a reasonable fee to cover costs of copying, handling, and mailing.

d. Additional Forms of Notice. The administrator, in his discretion, may require the applicant to undertake the following additional forms of public notice:

- i. by posting or causing to be posted a copy of the application at the location of the proposed use; and
- ii. by publishing notice of the application in media newspaper of general circulation in the parish or parishes in which the use would be located.

e. The permitting body shall consider comments received in response to the public notice in its subsequent actions on the permit application. Comments received will be made a part of the official file on the application. If comments received relate to matters within the special expertise of another governmental body, the permitting body may seek advice of that agency. If necessary, the applicant will be given the opportunity to furnish his proposed resolution or rebuttal to all objections from government agencies and other substantive adverse comments before a final decision is made on the application.

f. The administrator shall maintain a current list of permits issued or denied during the previous month. This list will be posted on the department's internet site in the same manner as notices of apparently complete applications for coastal use permits.

g. Notice by Mail. A copy of the public notice of all apparently complete applications for coastal use permits and the current list of permits issued or denied since the last mailing but no less than monthly will be mailed to each person on the public notice mailing list, pursuant to §728.

h. Notice by Electronic Transmission. A copy of the public notice of all apparently complete applications for coastal use permits and the monthly list of permits issued or denied will be sent to subscribers of the electronic public notice list, pursuant to §728.

i. The department shall maintain the public content of its current permit application files in the SONRIS system, so that those records are available for public inspection.

j. A copy of any public record, including the application, will be sent to any person requesting it upon payment of a reasonable fee to cover costs of copying, handling, and mailing, except that information of a confidential or proprietary nature shall be withheld. In the event that attachments to the application are not readily reproducible, they shall be available for inspection at the permitting office.

6. Public Hearings on Permit Applications

a. A public hearing may be held in connection with the consideration of an application for a new permit and when it is proposed that an existing permit be modified or revoked.

b. Any person may request in writing within the comment period specified in the public notice that a public hearing be held to consider material matters at issue in a permit application. Upon receipt of any such request, the permitting body shall determine whether the issues raised are substantial, and there is a valid public interest to be served by holding a public hearing.

c. Public hearing(s) are appropriate when there is significant public opposition to a proposed use, or there have been requests from legislators or from local governments or other local authorities, or in controversial cases involving significant economic, social, or environmental issues. The secretary or local government with an approved program has the discretion to require hearings in any particular case.

d. If the determination is made to hold a public hearing, the permitting body shall promptly notify the applicant, set a time and place for the hearing, and give public notice.

e. If a request for a public hearing has been received, and the decision is made that no hearing will be held, public notice of the decision shall be given.

7. Additional Information

a. If an application is found to be incomplete or inaccurate after processing has begun or if it is determined that additional information from the applicant is necessary to assess the application adequately, processing will be stopped pending receipt of the necessary changes or information from the applicant and the processing periods provided for in Paragraph 4.d and f will be interrupted. Upon receipt of the required changes or information, a new processing period will begin.

b. If the applicant fails to respond within 30 days to any request or inquiry of the permitting body, the permitting body may advise the applicant that his application will be considered as having been withdrawn unless and until the applicant responds within 15 days of the date of the letter.

8. Decisions on Permits

a. The permitting body will determine whether or not the permit should be issued. Permits shall be issued only for those uses which are consistent with the guidelines, the state program, and affected approved local programs. The secretary shall not consider the use to be consistent with the state program unless the permit includes condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the use. Permit decisions will be made only after a full and fair consideration of all information before the permitting body, and shall represent an appropriate balancing of social, environmental, and economic factors. The permitting body shall prepare a short and clear statement explaining the basis for its decision on all applications. This statement shall include the permitting body's conclusions on the conformity of the proposed use with the guidelines, the state program and approved local programs. The statement shall be dated, signed, and included in the record prior to final action on the application.

b. If the staff of the permitting body recommends issuance of the permit, the permitting body will forward two copies of the proposed permit to the applicant. A letter of transmittal to the applicant shall include the recommendations to the secretary and the anticipated date on which the application shall be presented to him for action. Unless good cause is then presented in support of changes to the permit and the conditions therein, the permit will be presented to the secretary for action in such form.

c. Final action on the permit application is the signature of the issuing official on the permit or the mailing of the letter notifying the applicant of the denial.

9. Conditions of Permit

a. By accepting the permit, the applicant agrees to:

- i. carry out or perform the use in accordance with the plans and specifications approved by the permitting body;
- ii. comply with any permit conditions imposed by the permitting body;
- iii. adjust, alter, or remove any structure or other physical evidence of the permitted use if, in the opinion of the permitting body, it proves to be beyond the scope of the use as approved or is abandoned;
- iv. provide, if required by the permitting body, an acceptable surety bond in an appropriate amount to ensure adjustment, alteration, or removal should the permitting body determine it necessary;
- v. hold and save the state of Louisiana, the local government, the department, and their officers and employees harmless from any damage to persons or property which might result from the work, activity, or structure permitted;
- vi. certify that any permitted construction has been completed in an acceptable and satisfactory manner and in accordance with the plans and specifications approved by the permitting body. The permitting body may, when appropriate, require such certification be given by a registered professional engineer.

b. The permitting body shall place such other conditions on the permit as are appropriate to ensure compliance with the coastal management program.

c. Permitted uses subject to this Part shall be of two types, continuing and noncontinuing uses, which are defined below as follows.

i. Continuing uses are activities which by nature are carried out on an uninterrupted basis, examples include shell dredging and surface mining activities, projects involving maintenance dredging of existing waterways, and maintenance and repair of existing levees.

ii. Noncontinuing uses are activities which by nature are done on a one-time basis, examples include dredging access canals for oil and gas well drilling, implementing an approved land use alteration plan, and constructing new port or marina facilities.

d. The term of issuance of permits shall be as follows.

i. The term to initiate a coastal use permit shall be two years from the date of issuance, and the term to complete the use shall be five years from the date of issuance.

D. Modification, Suspension or Revocation of Permits

1. Modifications

a. The terms and conditions of a permit may be modified to allow changes in the permitted use, in the plans and specifications for that use, in the methods by which the use is being implemented, or to assure that the permitted use will be in conformity with the coastal management program. Changes which would significantly increase the impacts of a permitted activity shall be processed as new applications for permits pursuant to Subsection C, not as a modification.

b. A permit may be modified upon request of the permittee:

i. if mutual agreement can be reached on a modification, written notice of the modification will be given to the permittee;

ii. if mutual agreement cannot be reached, a permittee's request for a modification shall be considered denied.

2. Suspensions

a. The permitting body may suspend a permit upon a finding that:

i. the permittee has failed or refuses to comply with the terms and conditions of the permit or any modifications thereof; or

ii. the permittee has submitted false or incomplete information in his application or otherwise; or

iii. the permittee has failed or refused to comply with any lawful order or request of the permitting body or the secretary.

b. The permitting body shall notify the permittee in writing that the permit has been suspended and the reasons therefor and order the permittee to cease immediately all previously authorized activities. The notice shall also advise the permittee that he will be given, upon request made within 10 days of receipt of the notice, an opportunity to respond to the reasons given for the suspension.

c. After consideration of the permittee's response, or, if none, within 30 days after issuance of the notice, the permitting body shall take action to reinstate, modify or revoke the permit and shall notify the permittee of the action taken.

3. Revocation. If, after compliance with the suspension procedures in Subsection B, above, the permitting body determines that revocation or modification of the permit is warranted, written notice of the revocation or modification shall be given to the permittee.

4. Enforcement. If the permittee fails to comply with a cease and desist order or the suspension or revocation of a permit, the permitting body shall seek appropriate civil and criminal relief as provided by §214.36 of the SLCRMA.

5. Extension

a. The term to initiate a coastal use permit or the term to complete the use of a coastal use permit may be extended, notwithstanding the provision of Subparagraph j below, as follows:

i. The term to initiate a coastal use permit may be extended for an additional 2 years beyond the term set forth in Subsection C.9.d.

ii. The term to complete the use may be extended for up to a total of an additional 3 years beyond the term for completion of use set forth in Subsection C.9.d.

iii. A grant of an extension request for the term to initiate a coastal use permit does not automatically extend the term to complete use of a coastal use permit. Requests to extend the term to initiate a coastal use permit and complete use of the same permit may be submitted separately or together in accordance with Subparagraph f. Each request shall include the appropriate fee consistent with schedule of fees set forth in Subparagraphs f-g. Each request shall be considered separately consistent with Subparagraph a.iv.

iv. The secretary may, in his discretion, upon a showing of good cause and upon receipt of a complete request for an extension, grant a permittee an extension up to 30 days beyond the last day of the term to initiate work on a use pursuant to a permit, or 30 days beyond the last day of the term to complete the permitted use without public notice of the request, a public

comment period, or further formality, except that notice required in Subparagraph i below, of the secretary's decision to grant or deny the extension shall be made.

b. The secretary shall review extension requests subject to this Part on a case-by-case basis. The secretary shall determine, based upon the merits of the request and upon the compliance of the permitted activity with the regulations and policies existing at the time of the request, whether extension may be considered.

c. If the secretary determines that extension may be considered, the Permits, Mitigation and Support Division shall cause to be issued for public comment, for a period of 10 days, a notice containing a brief summary of the original permit in accordance with Subparagraph i below. The secretary shall consider public comments received during this period prior to the final decision on whether to allow permit extension. The sole reason for not allowing extension based upon public comment shall be that there has been a change in the conditions of the area affected by the permit since the permit was originally issued.

d. If the secretary determines that a permit should not be extended, the permittee shall be notified and, provided that the permittee desires a new permit, the use shall be subject to processing as a new permit application pursuant to the procedures set forth in Subsection C. A decision of the secretary not to allow extension of a permit shall not be subject to appeal. A decision of the secretary to allow extension shall be subject to appeal only on the grounds that the proposed activity should be treated as a new application pursuant to Subsection C rather than be considered for extension.

e. All coastal use permits in effect on the date these rules are adopted are eligible for extension provided that all requirements in Subparagraph f below are met.

f. Extension requests shall be in the form of a written letter which shall refer to the original coastal use permit application number and specifically state that a permit extension is desired. A nonrefundable extension request fee in the amount of \$80 shall be included with such a request, and the request must be received by the Permits, Mitigation and Support Division no sooner than 180 days and no later than 60 days prior to the expiration of the permit in question. Requests received later than 60 days prior to the expiration date of the permit shall be eligible for consideration for extension, however a permittee who fails to make a timely request for an extension shall not engage in any activity requiring a coastal use permit past the original permit expiration date until an extension of the lapsed permit or a new permit is granted.

g. If the appropriate fees are not included along with the request for an extension to initiate a coastal use permit and/or to complete the use, the request will be considered incomplete, and returned to the permittee.

h. Extension requests involving modifications to a permitted activity which would result in greater impacts to the environment than previously permitted will be considered as new applications rather than as extension requests. Extension requests involving modifications to a permitted activity which would result in identical or lesser impacts to the environment than previously permitted may be considered as extension requests, and must, in addition to the requirements in Subparagraph f above, contain adequate information (such as drawings, maps, etc.) to support and explain the proposed modifications.

i. The Permits, Mitigation and Support Division shall issue notice of the extension request to all members of the joint public notice mailing list, and shall publish notice that the extension request has been granted or denied in the bi-weekly status report that is published in the state journal as well as mailed to joint public notice mailing recipients.

j. The secretary may issue administrative orders that modify, suspend, or extend the terms of all coastal use permits, or the secretary may order or delegate the authority to order modification, suspension, or extension of an individual permit when, in either case, the permits are in an area where an executive order or proclamation is issued declaring an emergency, and the need for the modification, suspension, or extension is related to the emergency.

E. General Permits

1. General

a. The administrator may, after compliance with the procedures set forth in Paragraphs C.4 and 5, issue general permits for certain clearly described categories of uses requiring coastal use permits. After a general permit has been issued, individual uses falling within those categories will not require full individual permit processing unless the administrator determines, on a case-by-cases basis, that the public interest requires full review.

b. General permits may be issued only for those uses that are substantially similar in nature, that cause only minimal adverse impacts when performed separately, that will have only minimal adverse cumulative impacts and that otherwise do not impair the fulfillment of the objectives and policies of the coastal management program.

c. When an individual use is authorized under a general permit, the authorization shall include condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the individual use.

d. In addition to the fees identified at §723.C.3.a, any person seeking authorization under a general permit shall be charged a compensatory mitigation processing fee, if applicable, pursuant to §724.D.

2. Reporting

- a. Each person desiring to commence work on a use subject to a general permit must give notice to the secretary and receive written authorization prior to commencing work. Such authorization shall be issued within 30 days of receipt of the notice.
- b. Such notice shall include:
 - i. the name and address of the person conducting the use;
 - ii. such descriptive material, maps, and plans as may be required by the secretary for that general permit.

3. Conditions of General Permits

- a. The secretary shall prescribe such conditions for each general permit as may be appropriate.
- b. A general permit may be revoked if the secretary determines that such revocation is in the public interest and consistent with the coastal management program.

4. Local General Permits. A local government with an approved local program may issue general permits for uses of local concern under its jurisdiction pursuant to the above procedures. Such general permits shall be subject to approval by the secretary.

F. Determinations as to Whether Uses Are of State Concern or Local Concern

1. Filing of Applications with a Local Government with an Approved Local Coastal Program

- a. The local government shall make the initial determination as to whether the use is one of state concern or local concern on all applications filed with the local government. This determination shall be based on the criteria set forth in Paragraph 3 below.
- b. The determination and a brief explanation of the rationale behind the determination shall be forwarded to the secretary within two working days of receipt of the apparently complete application, pursuant to Subparagraph C.4.d.
- c. The secretary shall review the decision and rationale and shall let it stand or reverse it. If the secretary reverses the local decision, notice, including a brief explanation of the rationale for the reversal shall be sent to the local government within two working days of receipt of the application from the local government.
- d. The appropriate permitting body for the use, as determined by the secretary, shall thereafter be responsible for the permit review process.

2. Filing of Application with the Secretary. Within two working days of the filing of an apparently complete application with the secretary, the secretary shall make a determination as to whether the use is one of state concern or local concern based on the criteria set forth in Paragraph 3 below. Notice shall be given to affected local programs of the determination whether the use is a use of state or local concern. The secretary shall give full consideration to local program comments or objections to any such determination in making future determinations.

3. Criteria for Determination

- a. The following factors shall be used in making a determination as to whether a use is of state or local concern:
 - i. the specific terms of the uses as classified in the Act;
 - ii. the relationship of a proposed use to a particular use classified in the Act;
 - iii. if a use is not predominately classified as either state or local by the Act or the use overlaps the two classifications, it shall be of local concern unless it:
 - (a). is being carried out with state or federal funds;
 - (b). involves the use of or has significant impacts on state or federal lands, water bottoms, or works;
 - (c). is mineral or energy development, production or transportation related;
 - (d). involves the use of, or has significant impacts, on barrier islands or beaches or any other shoreline which forms part of the baseline for Louisiana's offshore jurisdiction;
 - (e). will result in major changes in the quantity or quality of water flow and circulation or in salinity or sediment transport regimes; or
 - (f). has significant interparish or interstate impacts.
- b. For purposes of this Paragraph, the term *state* shall mean the state of Louisiana, its agencies, and political subdivisions; but not local governments, their agencies and political subdivisions.

G. Determination as to Whether a Coastal Use Permit Is Required

1. Request by Applicant

a. Any person who proposes to conduct an activity may submit a request in writing to the secretary for a formal finding as to whether the proposed activity is a use of state or local concern within the coastal zone subject to the coastal use permitting program. The person making the request shall submit with the request a complete application for a coastal use permit and shall provide such additional information requested by the secretary as may be appropriate.

b. The requesting party must set forth sufficient facts to support a finding that the proposed activity either:

- i. is exempt from coastal use permitting; or
- ii. does not have a direct and significant impact on coastal waters; or
- iii. is outside the coastal zone boundary.

c. Within 30 days of receipt of the request and the complete application, the requestor shall be sent notice of the decision on the request and public notice of the decision shall be given.

2. Finding without Request

a. In reviewing a permit application for which no request has been submitted, the secretary may find after full consideration of the application, likely impacts of the proposed use, comments received, and applicable rules, regulations and guidelines, that a coastal use permit is not required. If he finds that no permit is required, the secretary shall notify the applicant and give public notice.

b. A local government with an approved program may request that the secretary review an application for a use of local concern and make a determination as to whether a coastal use permit is required, pursuant to the procedures provided for in Paragraph 2.a above. The secretary shall notify the local government of his decision.

3. Decisions

a. Only the secretary may determine that a coastal use permit is not required. A permit shall not be required if the proposed use or activity will not occur within the boundary of the coastal zone, does not have a direct and significant impact on coastal waters, or is exempt from permitting by Subsection C of these rules or by §214.31 (B) or (C), §214.32 (A) or §214.34 of the SLCRMA.

b. The notice sent to the requestor or applicant shall include a short and plain statement of the basis for the decision. Public notice of the decision shall be given pursuant to Subparagraph C.5.f of these rules.

4. Actions after Decision

a. If the determination is that a coastal use permit is required, processing of the application may be commenced or continued pursuant to Subsection C of these rules.

b. If the determination is that a coastal use permit is not required, the requestor or the applicant may proceed to carry out the activity. Provided that the secretary shall not be stopped from subsequently requiring a permit or issuing cease and desist orders if it is found that the activity as implemented is significantly different from that shown on the request or application, does in fact have a direct or significant impact on coastal waters, or otherwise requires a coastal use permit. Other civil or criminal sanctions shall not be available in the absence of fraud, ill practices, deliberate misrepresentation, or failure to comply with any cease and desist or other lawful order of the secretary.

H. Beneficial Use of Dredged Material

1. Requirement for Beneficial Use

a.i. An application for a coastal use permit or a general permit authorization for an individual activity that involves 25,000 cubic yards or more of dredging shall include a BUDM Plan. The application is incomplete until a BUDM Plan is submitted. The permit/authorization shall be conditioned upon compliance with the BUDM Plan approved by the secretary.

ii. Beneficial use is required only when the primary purpose of the proposed dredging is to facilitate the movement or mooring of vessels.

b. The proposed BUDM Plan shall set forth a plan for the beneficial use of dredged material, in accordance with the provisions of this Section. The applicant may meet the requirements of this Section through the following options or a combination thereof:

- i. implementing a project for the beneficial use of the dredged material;
- ii. providing for beneficial use of the dredged material on an existing coastal restoration project;
- iii. conducting an alternative dredging activity whereby an equivalent volume of material is dredged at another location and put to a beneficial use; and/or

iv. making a contribution to the Coastal Resources Trust Fund.

c. The secretary may disallow conducting an alternative dredging activity or making a contribution to the Coastal Resources Trust Fund as options to meet the requirements of this Section if he finds that such activity or contribution would not replace, substitute, enhance, or protect ecological values sufficiently to offset failure to use the dredged material.

2. Exceptions

a. A BUDM Plan is unnecessary under the following circumstances:

i. To the extent that dredged material will be replaced at the conclusion of the proposed activity, or in the case of a continuing activity, within a reasonable time after initiation of the proposed activity, as determined by the secretary;

ii. To the extent that the proposed activity is excavation of material for construction of a coastal protection project included within the Master Plan or associated Annual Plan(s); or

iii. As specifically approved by the secretary in writing, under exceptional circumstances and if the secretary expressly finds that beneficial use of dredged material is unnecessary to protect, create, or enhance wetlands.

b. If the applicant asserts an exception pursuant to this paragraph 2, the applicant shall submit a statement with the application setting forth the exception and the basis for its application to the proposed activity. If the exception is pursuant to paragraph 2.a.iii, the written approval of the secretary shall be attached.

3. General Provisions

a. Upon grant of a coastal use permit, beneficial use of dredged material in accordance with the BUDM Plan approved by the secretary shall be deemed in compliance with §707(B) of this Chapter. However, all other requirements of this Chapter, including the guidelines set forth in §§701-719, remain applicable.

b. The BUDM Plan shall be treated as part of the coastal use permit application in all respects and shall be subject to all requirements of the application process, including distribution, public notice of the application, public comment, consideration of public comment, public hearings, provision of additional information regarding incomplete or inaccurate applications, review, permit decision, and public notice of a permit decision.

c. In reviewing the BUDM Plan, the secretary shall consider:

i. The recommendations and comments of any state or federal agencies that demonstrated an interest, during application processing, in participating in the approval or disapproval of the BUDM Plan. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated, during application processing, an interest in participating in approval or disapproval of the BUDM Plan; and

ii. The manner and extent to which a project for dredged material is proposed to be used, a proposed use for material dredged pursuant to an alternative dredging activity, and/or use of a proposed in-lieu contribution will protect, create, or enhance wetlands, including by having an anticipated positive impact on the ecological value of the Louisiana Coastal Zone and/or the hydrologic basin. The proposed project or use shall be designed to provide for the long-term viability of the coastal ecosystem.

d. The applicant shall obtain and provide to the secretary together with the BUDM Plan all permits or permissions required by any other state, federal, or local agency under any other law, regulation, or ordinance for any project or use proposed in the plan. In particular, if the project or use involves placement of material on state water bottoms, the applicant shall obtain or submit a copy of an approved reclamation permit from the State Land Office in accordance with their regulations and requirements. The secretary may accept the BUDM Plan and grant the permit subject to issuance of permits or permissions by other permitting bodies within a time period determined by the secretary.

e. The applicant shall attach to the BUDM Plan a written affirmation that the applicant has made all reasonable efforts to determine and identify persons who may be affected by the proposed project or use, and has obtained the express consent to the proposed project or use or explaining the nature of any objection and providing contact information for the objecting person.

f. If the proposed project or use involves placement on private property of material dredged from state-owned property, the applicant shall obtain and provide to the secretary together with the BUDM Plan an exemption or waiver from the royalty payment required by state law; or shall make the appropriate payment upon approval of the plan and execution of the project, and submit documentation of payment to the secretary within 15 days of making the payment.

g. The applicant shall attach to the BUDM Plan a written affirmation that the applicant is solely responsible for, and agrees to defend, indemnify, and hold harmless all state and local agencies, officers, and employees from, any responsibility, liability, claim, judgment, or regulatory order or direction arising from the approved BUDM Plan or any activity undertaken by the applicant or its employees, agents, or contractors pursuant to or in relation to the approved BUDM Plan.

4. Implementation of Project for Beneficial Use of Dredged Material

a. An applicant electing to implement a project for the beneficial use of the dredged material shall submit a BUDM Plan proposing the implementation of a specific project for which the dredged material will be used in a manner to protect, create, or enhance wetlands.

b. The BUDM Plan shall include:

- i. statement of the nature and location of the proposed project;
- ii. statement of the manner in which the material is proposed to be used in the project, including the type of equipment proposed to be used;
- iii. statement of the manner and extent to which the project is expected or intended to protect, create, or enhance wetlands;
- iv. statement of the manner and extent to which the project may or will create impacts that may require mitigation;
- v. statement of the estimated time schedule for the project;
- vi. statement of the estimated cost of the project;
- vii. design and construction plan for the project; and
- viii. any other information or statements required by the secretary.

5. Providing for Use on Existing Coastal Restoration Project

a. An applicant electing to provide for use of the dredged material on an existing coastal restoration project shall submit a BUDM Plan proposing a specific project for which the dredged material will be used in a manner to protect, create, or enhance wetlands. The project may be one being implemented pursuant to the Master Plan, or a specific project to be conducted by a public or private entity.

b. The BUDM Plan shall include:

- i. statement of the nature and location of the project for which the dredged material is proposed to be used;
- ii. statement of the means by which the material is proposed to be stored pending use and transported to storage and to the project, including the type of equipment proposed to be used;
- iii. statement of the manner in which the material is proposed to be used in the project, including the type of equipment proposed to be used;
- iv. statement of the estimated time schedule for use of the material for the project;
- v. statement whether the project is included in the Master Plan or associated Annual Plan(s), page reference if so, and specific citation of the project by name, number, and/or other appropriate identifying information;
- vi. statement of the manner in which the project is expected or intended to protect, create, or enhance wetlands;
- vii. statement of the manner in which use of the dredged material for the project is expected or intended to protect, create, or enhance wetlands;
- viii. statement of the manner and extent to which use of the material and transportation of the material to the project may or will create impacts that may require mitigation;
- ix. contact information for project managers for each state, federal, and/or local agency and each private entity involved in the project;
- x. written agreement signed by the agency or person charged with construction of the project, and by the prime contractor responsible for constructing the project, if applicable, agreeing to the proposed use of the dredged material for the project in the proposed time frame, and setting forth the authority of the persons signing the agreement to enter such an agreement;
- xi. estimated cost to the applicant for transporting or otherwise processing the material for the proposed project; and
- xii. any other information or statements required by the secretary.

6. Conducting an Alternative Dredging Activity

a. An applicant electing to conduct an alternative dredging activity and beneficially use material dredged pursuant to that activity shall submit a BUDM Plan proposing a specific alternative dredging activity, a specific use of material to be dredged pursuant to that activity, and disposition of the dredged material from the proposed activity.

- i. The volume of material dredged and used pursuant to the alternative activity shall be equal to or greater than the volume of dredged material from the proposed activity.

ii. The material dredged pursuant to the alternative activity may be used for an independent activity not associated with a project, a project being implemented pursuant to the Master Plan, or a specific project to be conducted by a public or private entity.

b. The BUDM Plan shall include:

- i. statement of the nature and location of the alternative dredging activity;
- ii. statement of the means by which material dredged pursuant to the alternative activity is proposed to be stored pending use and transported to storage and to the site of use, including the type of equipment proposed to be used;
- iii. statement of the nature and location of the proposed site of use of the material.
- iv. statement of the manner in which the material is proposed to be used, including the type of equipment proposed to be used;
- v. statement of the estimated time schedule for the proposed use of the material;
- vi. statement whether the proposed use is for a project included in the master plan or associated annual plan(s), page reference if so, and specific citation of the project by name, number, and/or other appropriate identifying information;
- vii. statement of the manner in which the proposed use is expected or intended to protect, create, or enhance wetlands;
- viii. statement of the manner and extent to which the proposed alternative dredging activity, use of the material, and transportation of the material to the site of use may or will create impacts that may require mitigation;
- ix. if the proposed dredging activity or use involves an agency or person other than the applicant, contact information for project managers for each state, federal, and/or local agency and each private entity involved in the proposed dredging activity and use;
- x. if the proposed use is for a project or other activity being conducted by an agency or person other than the applicant, written agreement signed by the agency or person charged with construction of the project, and by the prime contractor responsible for constructing the project, if applicable, agreeing to the proposed use of the material for the project in the proposed time frame, and setting forth the authority of the persons signing the agreement to enter such an agreement;
- xi. statement of the estimated cost to the applicant for the proposed alternative dredging activity, use of the material dredged pursuant to that activity, and transportation or other processing of the material for the proposed use;
- xii. design and construction plan for the proposed alternative dredging activity and for the proposed use of the material dredged pursuant thereto;
- xiii. statement of the proposed manner of disposition of the dredged material from the proposed activity; and
- xiv. any other information or statements required by the secretary.

7. In-Lieu Contribution

a. In lieu of constructing a project, providing for use on another project, or conducting an alternative dredging activity for the beneficial use of dredged material, the applicant may elect to make a contribution in accordance with this section. An applicant electing to make an in-lieu contribution shall submit a BUDM Plan proposing the contribution in accordance with this section.

b. The amount of the contribution shall be the greater of \$1 or 1.5% of the average of the 12 monthly postings by the United States Department of Energy, Energy Information Administration of the Cushing, Oklahoma West Texas Intermediate Spot Price FOB (dollars per barrel) for crude oil for the fiscal year (July – June) immediately preceding the date of submission of a complete application, per cubic yard of dredged material that will not be replaced at the conclusion of the proposed activity, or within a reasonable time after initiation of the proposed activity in the case of a continuing activity. However, the amount of the contribution shall be limited to one-third of the cost of the dredging component of the proposed activity, unless the dredging is to be accomplished by “prop washing” or any variation thereof, in which case the amount of the contribution shall be limited to one-third of the cost to perform traditional excavation-type dredging of the same volume of material.

c. Prior to issuance of the final coastal use permit or other authorization, an applicant electing to make an in-lieu contribution shall remit payment to the department payable to Louisiana Department of Natural Resources.

d. For a continuing activity for which a coastal use permit or other authorization has been issued and the applicant has elected to make an in-lieu contribution, the contribution shall be paid at the time each individual dredging incident authorized by the permit is approved. The applicant shall remit payment to the department payable to Louisiana Department of Natural Resources.

e. In-lieu contributions are designed to provide a cost-effective mechanism for permit applicants to meet the performance standards established by R.S. 49:214.30(H) without sacrificing safeguards to the coastal ecosystem and opportunities for multiple

uses of the coastal zone. In accordance therewith, such contributions shall be paid into the Coastal Resources Trust Fund as provided by R.S. 49:214.40.

i. The department shall keep records clearly showing all deposits to, payments from, and the current net amount in the Coastal Resources Trust Fund attributable to in-lieu contributions.

ii. The secretary may use the funds in the Coastal Resources Trust Fund attributable to in-lieu contributions for the following purposes:

- (a). creation of long term management strategy disposal areas for beneficial use of dredged material;
- (b). creation of vegetated wetlands, including coastal forests;
- (c). creation or enhancement of barrier islands, barrier shorelines, or associated dunes;
- (d). structural or non-structural shoreline modifications to hydrology to achieve the creation, enhancement or protection of coastal wetlands, barrier islands, beaches or dune assemblages; or
- (e). any other purpose that the secretary determines will result in creation, enhancement, or protection of coastal wetlands.

iii. The secretary shall adopt a method whereby the success of each project undertaken with these funds is determined and monitored.

iv. Funds in the Coastal Resources Trust Fund attributable to in-lieu contributions may not be used for administrative purposes.

8. Non-Compliance.

a. Compliance with the requirements of this section is a condition of approval of the application and of any permit issued to the applicant. If an application is approved and the applicant fails to comply with applicable provisions of this section, the applicant shall be deemed to be in violation of the permit and subject to all applicable penalties.

b. If an application is approved and in the applicant does not comply with the approved BUDM Plan, the applicant shall be deemed to be in violation of the permit and subject to all applicable penalties.

9. Miscellaneous

a. The secretary shall determine whether to cumulate activities sought to be permitted through multiple applications, for purposes of determining whether the 25,000-cubic-yard threshold is exceeded. This determination shall be made on the basis of whether the activities would normally be considered to be parts of a single economic activity and/or whether the applicant has sought to evade the beneficial use requirement.

b. The secretary may approve the accrual of mitigation credits resulting from the beneficial use of dredged material. Any mechanism adopted by the secretary for this purpose shall conform to state mitigation regulations in Subpart C of this Part. The secretary shall also make every reasonable effort to have the mechanism adopted for this purpose conform to federal mitigation regulations of the U.S. Army Corps of Engineers as set forth at 33 CFR Parts 320-330 and the U.S. Environmental Protection Agency as set forth at 40 CFR Part 120.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended by the Department of Natural Resources, Office of the Secretary, LR 35:2184 (October 2009), LR 35:2188 (October 2009), amended by the Department of Natural Resources, Office of Coastal Management, LR 39:327 (February 2013).

§724. Rules and Procedures for Mitigation

A. General. This Section provides general procedures for avoiding and minimizing adverse impacts identified in the permit review process, restoring impacted sites when appropriate, quantifying anticipated unavoidable wetland ecological value losses, requiring appropriate and sufficient compensatory mitigation, establishing mitigation banks, establishing advanced mitigation projects, and evaluating and processing requests for variances from the compensatory mitigation requirement.

B. Avoidance, Minimization, and Restoration of, and Compensation for, Potential Wetland Ecological Value Losses

1. The secretary shall not grant a coastal use permit or issue a general permit authorization for an individual activity unless the permit/authorization is conditioned to include:

- a. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to avoid and minimize those adverse impacts identified during the permit review process; and

- b. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to restore impacted sites when appropriate; and
- c. a requirement for compensatory mitigation to offset any net loss of wetland ecological value that is anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts (i.e., unavoidable net loss of wetland ecological value), unless a variance is granted pursuant to §724.K.

2. If the secretary determines that a proposed activity would comply with §§701-719 and would not result in a net loss of wetland ecological values, the secretary shall not require compensatory mitigation.

3. When a proposed oil and gas exploration site would impact vegetated wetlands, the determination regarding the avoidance and minimization of adverse impacts and impact site restoration for the proposed exploration activity and its associated production and transmission activities shall be made through the geological review procedure.

4. In addition to the requirement contained in §724.B.3, the secretary may utilize the geologic review procedure, when requested by the Louisiana Department of Wildlife and Fisheries (LDWF), to render the determination regarding avoidance and minimization of adverse impacts and impact restoration, for proposed oil and gas exploration activities and its associated production and transmission activities which would:

- a. occur within 1/4 mile of an oyster seed ground, oyster seed reservation, or a public oyster harvesting area;
- b. impact other oyster or other shell reef(s);
- c. occur within the boundaries of a wildlife refuge or wildlife management area owned or managed by LDWF; or
- d. occur within an area designated as a natural and scenic river in accordance with the provisions of R.S. 56:1840 et seq.

C. Quantification of Anticipated Net Gains and Unavoidable Net Losses of Ecological Value

1. When compensatory mitigation would be accomplished via the use of the Castex-Laterre Mitigation Bank or the Nature Conservancy's Pine Flatwood Mitigation Bank, net gains and unavoidable net losses of ecological value shall be quantified in accordance with the valuation and accounting procedures described in the respective memoranda of agreement.

2. Except as allowed in §724.C.1 and §724.H.3, anticipated net gains and unavoidable net losses of ecological value shall be quantified as cumulative habitat units (CHUs) or average annual habitat units (AAHUs), whichever is most appropriate for the given situation.

3. If CHUs are determined to be appropriate:

- a. net gain or net loss of ecological value = (sum of CHUs produced in a future-with-project scenario) - (sum of CHUs produced in a future-without-project scenario);
- b. CHUs for each time interval within the project years shall be calculated by the following formula and in general accordance with the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure: $CHUs = (T_2 - T_1) \times \{[(A_1 \times HSI_1 + A_2 \times HSI_2) / 3] + [(A_2 \times HSI_1 + A_1 \times HSI_2) / 6]\}$, where T_1 = first year of time interval, T_2 = last year of time interval, A_1 = wetland acres at beginning of time interval, A_2 = wetland acres at end of time interval, HSI_1 = habitat suitability index at beginning of time interval, and HSI_2 = habitat suitability index at end of time interval.

4. If AAHUs are determined to be appropriate:

- a. net gain or net loss of ecological value = (AAHUs produced in a future-with-project scenario) - (AAHUs produced in a future-without-project scenario);
- b. AAHUs = (sum of CHUs for a given scenario) / (project years).

5. The quantification of "wetland acres," at selected times throughout the project years, shall be based on the following factors:

- a. the vegetated wetland acreage depicted, in the accepted permit application, as being directly impacted by the proposed activity;
- b. when determined to be appropriate by the secretary, vegetated wetland acreage of secondary impact; see definition of secondary impact in §700; and
- c. the vegetated wetland acreage that would have been present at the activity site, at selected times throughout the project years, without implementation of the proposed activity, based on the best available, as determined by the secretary, vegetated wetland loss or gain data.

6. If:

- a. the vegetated wetland acreage to be altered by the proposed activity is limited to the area depicted in the accepted permit application; and

b. the only anticipated variation in that acreage would be due to vegetated wetland loss or gain, an "adjusted acreage" can be calculated with the following formula and utilized in lieu of calculating acreage at selected times throughout project years: Adjusted acres = {acres of direct impact - [acres of direct impact x annual land loss rate x (project years / 2)]}.

7. The secretary shall provide upon request, to any interested party, the source and resultant vegetated wetland loss or gain data which would be applied to a specific proposed activity.

8. "Habitat suitability indices" (HSI) shall be determined by applying:

a. for marsh habitats, the May 2, 1994, version of the Wetland Value Assessment Methodology Models, developed by the Coastal Wetland Planning, Protection, and Restoration Act (P.L. 101-646) Environmental Work Group; or

b. for bottomland hardwoods and fresh swamp, the January 10, 1994, version of "Habitat Assessment Models for Fresh Swamp and Bottomland Hardwoods Within the Louisiana Coastal Zone."

9. The secretary may adopt modifications to those models, provided that the resultant "habitat suitability index" values do not vary more than 15 percent from the above referenced versions. Modifications which cause greater than 15 percent variation in "habitat suitability index" values or adoption of alternative models or methodology may be undertaken only in accordance with provisions of R.S. 49:953. The amount of variation shall be determined by comparing the results of the models referenced above with the results of the modified models on a minimum of 10 sites for the appropriate habitat type(s).

D. Compensatory Mitigation Processing Fees

1. In addition to the fees identified at §723.C.3.a.i-ii, when the secretary determines that compensatory mitigation would be required pursuant to §724.B, a fee shall be charged for the evaluation, processing, and determination of compensatory mitigation requirements. The fee shall apply regardless of which compensatory mitigation option is selected and shall be in addition to any cost incurred to implement the required compensatory mitigation. The requested permit or general permit authorization for an individual activity shall not be issued until the secretary has received the compensatory mitigation processing fee. This fee shall be determined as follows.

a. Noncommercial activities which directly impact 1.00 acre or less of vegetated wetlands shall be assessed a compensatory mitigation processing fee of \$50.

b. All other activities shall be assessed a compensatory mitigation processing fee according the following table.

Vegetated Wetland Acres Depicted as Directly Altered in Accepted Permit Application	Compensatory Mitigation Processing Fee
0 - 0.50	\$ 150
0.51 - 1.00	\$ 300
1.01 - 2.00	\$ 600
2.01 - 3.00	\$ 900
3.01 - 4.00	\$ 1,200
4.01 - 5.00	\$ 1,500
5.01 - 10.00	\$ 2,250
10.01 - 15.00	\$ 3,750
15.01 - 25.00	\$ 6,000
25.01 - 100.00	\$12,500
> 100.00	\$15,000

2. Unless waived or reduced by the secretary, the compensatory mitigation processing fee shall apply even if the secretary grants a full variance to the compensatory mitigation requirement pursuant to §724.K.

E. Compensatory Mitigation Options

1. Compensatory mitigation shall be accomplished through one or more of the following compensatory mitigation options as approved by the secretary:

a. use or acquisition of an appropriate type and quantity of mitigation credits from a mitigation bank approved by the secretary, pursuant to §724.F;

b. use or acquisition of an appropriate type and quantity of advanced mitigation credits from an advanced mitigation project approved by the secretary, pursuant to §724.G;

c. implementation of an individual mitigation measure or measures to offset the unavoidable ecological value losses associated with the permitted activity, pursuant to §724.H;

d. monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund, pursuant to §724.I; and

e. "other" compensatory mitigation options determined to be appropriate by the secretary.

F. Mitigation Banks

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to establish wetland mitigation banks.
2. In determining the acceptability and appropriateness of establishing a mitigation bank, the secretary shall consider the following factors:
 - a. the potential mitigation bank operator's history of compliance with the guidelines and the state program over at least the preceding five years;
 - b. the mitigation bank operator's potential ability to operate and maintain the mitigation bank throughout the life of the bank (i.e., 20 years for marsh mitigation banks or 50 years for forested wetland mitigation banks);
 - c. the mitigation bank's potential to create, restore, protect, and/or enhance vegetated wetlands;
 - d. the mitigation bank's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;
 - e. the mitigation bank's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the bank; and
 - f. whether the proposed project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, or enhance vegetated wetlands.
3. In addition to the fees identified at §723.C.3.a.i-ii, nonrefundable fees shall be charged for the initial evaluation, habitat evaluation, establishment, and periodic review of mitigation banks according to the following table.

Proposed Mitigation Bank Acreage	Informal Review	Initial Evaluation Fee	Habitat Evaluation Fee	Establishment Fee	Periodic Review Fee
0 - 100	\$0	\$ 75	\$ 350	\$ 75	\$ 50
101 - 500	\$0	\$150	\$ 700	\$150	\$100
501 - 1,000	\$0	\$225	\$1,050	\$225	\$200
1,001 - 5,000	\$0	\$300	\$1,400	\$300	\$300
> 5,000	\$0	\$375	\$1,750	\$375	\$400

4. Proposals for the establishment of mitigation banks utilizing projects which have been permitted but not fully implemented or projects which would not require a permit shall be considered as follows.
 - a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.
 - b. Potential mitigation bank operators shall submit a written request for the secretary to consider designation of a mitigation bank; the following must be provided with the request:
 - i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;
 - ii. detailed drawings and project description unless such information is already on file with the department;
 - iii. a statement describing the extent to which the project has been implemented;
 - iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and
 - v. the mitigation bank initial evaluation fee identified at §724.F.3.
 - c. The secretary shall review the request and within 20 days:
 - i. inform the potential operator of the request's completeness; and
 - ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential operator, in writing, of the additional information necessary to evaluate and process the request.
 - d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).

e. Within 90 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as a mitigation bank and:

i. if the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as a mitigation bank.

f. If a permit modification is necessary and is requested by the permittee in accordance with §723.D, the secretary shall process the request for modification in accordance with §723.D.

g. If and when the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

h. Within 90 days of receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

i. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

j. The secretary shall render a final determination as to whether the project would be acceptable as a mitigation bank. If the project is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a memorandum of agreement (MOA) which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

5. Proposals for the establishment of mitigation banks utilizing projects which would require a permit shall be considered as follows.

a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential mitigation bank operators shall submit a standard permit application in accordance with §723.C. The following must be provided with the permit application:

i. a statement indicating the applicant's interest in establishing a mitigation bank;

ii. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

iii. the mitigation bank initial evaluation fee identified at §724.F.3.

c. The secretary shall review and process the permit application in accordance with §723.C, with added consideration that the project is proposed as a mitigation bank.

d. During the public notice period, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s), received in writing during the public notice period, or received in writing within 20 days of any such meeting(s).

e. The secretary shall render a preliminary determination as to whether the proposed activity would be acceptable as a mitigation bank, and:

i. if the proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the proposed activity preliminarily acceptable as a mitigation bank.

f. If and when a proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

g. Following receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

h. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

i. The secretary shall render a final determination as to whether the proposed activity would be acceptable as a mitigation bank. If the proposed activity is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a MOA which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

6. The secretary shall determine the quantity, by habitat type, of mitigation credits potentially available for donation, sale, trade, or use from a proposed mitigation bank as follows.

a. Following receipt of the mitigation bank habitat evaluation fee (§724.F.3), the secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator to participate in the determination of potential mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting held to determine the type and quantity of potentially available mitigation credits.

b. The total quantity of potential mitigation credits (AAHUs or CHUs), by habitat type, attributable to the proposed mitigation bank shall be predicted by applying the methodology described in §724.C. The secretary shall consult with the state advisory agencies, the Corps, and federal advisory agencies to ensure that data gathering techniques of sufficient quality and intensity to allow replication of habitat response assessments throughout the mitigation bank life are employed.

c. For projects which have been partially implemented prior to designation as a mitigation bank, total potential mitigation bank credits would be limited to those attributed to features implemented after designation as a bank, except that if agreed to in advance by the secretary total potential credits could include those attributed to features implemented between the time of the mitigation request being accepted by the secretary and bank designation. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of total potential mitigation credits.

d. Mitigation credits which are donated, sold, traded, or otherwise used for compensatory mitigation shall be referred to as debited credits.

7. Mechanisms for Ensuring Remediation, Operation, and Maintenance of Mitigation Bank Features

a. Three options are available to meet the requirements of §724.F.4.i and §724.F.5.h:

i. for any mitigation bank, mitigation credits could be made available to the mitigation bank operator incrementally over the life of the bank based on periodic reviews of habitat response pursuant to §724.F.10; or

ii. for banks which include features which do not typically require operation or maintenance and involve the types of mitigation measures which have produced consistent and demonstrated success, 100 percent of available credits would be made available to the mitigation bank operator when the bank becomes operational, provided that:

(a). the operator has established a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank; and

(b). the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for a period of five years, for remediation of the mitigation bank features; or

iii. for banks which include features which typically require remediation, operation, or maintenance (such as water control structures, plugs, channel improvement works, shore or bank protection structures, etc.) or involve the types of mitigation measures which lack consistent and demonstrated success, 25 percent of available credits would be made available, when the bank becomes operational, to the mitigation bank operator for the first two years of operation provided that (1) the operator establishes a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank, (2) the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for the life of the bank, for remediation (as may be needed for expectable and catastrophic events), operation, and maintenance of the mitigation bank, and (3) the operator provides for the life of the bank, in case the operator fails to remediate, operate, or maintain the mitigation bank in accordance with the MOA, legal authority for the department to perform the warranted remediation, operation, or maintenance; the remaining 75 percent of the credits would be made available in the third year provided that a review of habitat response (§724.F.9) indicates initial success of the mitigation features.

b. The conservation servitude shall be established in accordance with R.S. 9:1271 et seq. and shall:

i. cover all the property located within the mitigation bank;

ii. if appropriate, contain specific language regarding the extent of allowable timber harvesting;

- iii. if appropriate, contain specific language regarding the extent of other allowable activities;
 - iv. prohibit all other activities which may reduce the ecological value of the site;
 - v. specify the term to be 20 years or more for marsh habitats and 50 years or more for forested habitats;
 - vi. designate the department as the holder of the servitude;
 - vii. convey a "third party right of enforcement" to any interested MOA signatory or other party as may be mutually agreed to by the secretary and the mitigation bank operator; and
 - viii. be recorded in the property records of the parish in which the property is located.
- c. The financial mechanism established by the mitigation bank operator could be a letter of credit, surety bond, escrow account, or other mechanism; to be acceptable to the secretary the financial mechanism shall:
- i. for mitigation banks described in §724.F.7.a.ii, ensure payment of the designated amount for remediation of the mitigation measures for a period of five years;
 - ii. for mitigation banks described in §724.F.7.a.iii, ensure payment of the designated amount for remediation, operation, or maintenance of the mitigation measures for a period equal to the life of the mitigation bank; and
 - iii. ensure that such payments would be made to the Louisiana Wetlands Conservation and Restoration Fund in the event that the mitigation bank operator fails to perform the remediation, operation, or maintenance specified in the MOA.
- d. If a letter of credit or escrow account is utilized, the letter or account should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act.
- e. If a surety bond is utilized, the bond shall be written by a surety or insurance company which, at the time of MOA execution, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus.
8. The formal MOA to be developed between the secretary and the mitigation bank operator shall, at a minimum:
- a. provide a statement of purpose;
 - b. define the physical boundaries of the mitigation bank;
 - c. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;
 - d. specify that the period of operation and maintenance of the mitigation bank is 20 years or more for marsh habitats and 50 years or more for forested habitats;
 - e. describe the mechanism(s), which meets or which will meet the requirements of §724.F.7;
 - f. identify the habitat assessment methodology utilized to establish the quantity of mitigation to be credited, including an explanation of any calculations necessary to account for a project life which may, at the option of the mitigation bank operator, be greater than 20 years for marsh projects or greater than 50 years for forested wetland projects;
 - g. identify, by habitat type, the quantity of total credits;
 - h. identify the schedule for credits becoming available;
 - i. identify the schedule for reviewing habitat response over the life of the bank;
 - j. specifically identify the bank operator responsibilities regarding monitoring and/or providing information necessary for habitat response reviews;
 - k. for mitigation banks described at §724.F.7.a.iii, specifically define the remedial actions for situations where the bank operator fails to perform the necessary remediation, operation, or maintenance, including securing payments pursuant to §724.F.7 and ensuring legal authority for the department to perform necessary remediation, operation, or maintenance; and
 - l. for mitigation banks described at §724.F.7.a.iii, specifically define the course of action where habitat response is greater than or is less than predicted.
9. The secretary shall review the habitat response of mitigation banks as follows.
- a. The mitigation bank operator shall submit the periodic review fee identified at §724.F.3 to the department within 60 days of being requested to do so by the secretary.
 - b. Failure to submit such payment shall result in suspension of the mitigation bank until such time that the fee is submitted; if the fee is not submitted within 120 days of the secretary's request, the mitigation bank shall be terminated and the

secretary shall require the mitigation bank operator to provide compensatory mitigation to offset the ecological value credits which were debited but not actually produced by the time of termination.

c. State advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator shall be invited to participate in each habitat response review; the secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting related to these reviews.

d. For all banks, a review shall be conducted prior to the end of the second full year of the bank being considered operational, but at least 20 months after commencement of operation; the purpose of this review is to determine if any remediation or adjustments to the prescribed operation or maintenance is necessary.

e. For those banks described at §724.F.7.a.iii, if the review conducted prior to the end of the second full year of operation indicates that the mitigation measures are functioning as projected, the remaining 75 percent of the mitigation credits shall be made available to the mitigation bank operator; if that review indicates that the mitigation measures are not functioning as projected, no additional mitigation credits shall be made available to the mitigation bank operator until such time that a recalculation of projected credits is made and/or it is demonstrated that the mitigation measures are functioning as predicted.

f. In addition to the review conducted prior to the end of the second full year of operation, a review of all marsh mitigation banks shall be conducted within four months prior to the completion of the fifth, tenth, fifteenth, and twentieth years, and a review of all forested wetland mitigation banks shall be conducted prior to the completion of the fifth, tenth, twentieth, thirtieth, fortieth, and fiftieth years. The purposes of these reviews are to determine if remediation is needed, to determine the possible benefit of revising project features and/or their operation or maintenance, to determine if the mitigation bank operator has operated and maintained the mitigation measures as agreed to in the MOA, and to determine if the habitat has responded as predicted.

10. If the secretary and mitigation bank operator agree, pursuant to §724.F.7.a, to ensure appropriate remediation, operation, and maintenance of mitigation bank features via the incremental availability of mitigation credits during the life of the bank, the following procedures shall be followed.

a. Twenty-five percent of the total credits for mitigation banks (marsh and forested wetland banks) shall be made available to the mitigation bank operator upon full implementation of the wetland mitigation measures described in a signed MOA; or if a signed MOA calls for phased implementation of the mitigation measures, an appropriate percentage, not to exceed 25 percent shall be made available to the mitigation bank operator upon implementation of the initial phase(s); these credits shall be referred to as available credits.

b. If at any time, the mitigation bank can not be operated and maintained as described in the MOA due to force majeure, the mitigation bank operator shall have the option of rectifying the wetland creation, restoration, protection, and enhancement measures.

i. If the mitigation bank operator chooses to rectify those measures, the secretary shall recalculate the number of total credits, if it is anticipated that such a recalculation would yield a result substantially different from the current projection of total credits.

(a). The amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
1 – 5	Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater.
6 – 10	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
11 – 15	Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater.
16 – 20	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(b). The amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
1 – 5	Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater.
6 – 10	Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater.
11 – 20	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
21 – 30	Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater.
31 – 40	Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater.
41 – 50	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

ii. If the mitigation bank operator chooses not to rectify those measures, the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall continue only if the initially available credits (i.e., 25 percent) have not yet been debited, and shall cease when those initially available credits are debited. If credits debited already exceed the initially available credits, the secretary shall not require the mitigation bank operator to compensate for credits already debited.

c. If a periodic review reveals that the mitigation bank operator has complied with the MOA, total and available credits shall be adjusted as follows.

i. If the habitat is responding as predicted:

(a). the amount of total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	50 percent of total credit minus previously debited credit.
10	75 percent of total credit minus previously debited credit.
15	100 percent of total credit minus previously debited credit.

(b). the amount of total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	35 percent of total credit minus previously debited credit.
10	50 percent of total credit minus previously debited credit.
20	65 percent of total credit minus previously debited credit.
30	80 percent of total credit minus previously debited credit.
40	100 percent of total credit minus previously debited credit.

ii. If the habitat is responding better than predicted and the secretary anticipates that the total credits to be generated would likely be greater than the original projection of total credits, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
5	50 percent of recalculated total credit minus previously debited credit.
10	75 percent of recalculated total credit minus previously debited credit.
15	100 percent of recalculated total credit minus previously debited credit.

(b). the amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
5	35 percent of recalculated total credit minus previously debited credit.
10	50 percent of recalculated total credit minus previously debited credit.
20	65 percent of recalculated total credit minus previously debited credit.
30	80 percent of recalculated total credit minus previously debited credit.
40	100 percent of recalculated total credit minus previously debited credit.

iii. If the habitat is responding favorably but not as well as predicted, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
10	Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater.
15	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater.
10	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
20	Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater.
30	Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater.
40	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(c). the secretary shall not require the mitigation bank operator to compensate for credits already debited as long as the mitigation bank continues to operate.

iv. If implementation of the mitigation bank is adversely affecting the bank area (i.e., actually producing less ecological value than would have been produced without implementation of the mitigation bank):

(a). the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall cease unless and until the mitigation bank operator implements measures, as prescribed by the secretary, to reverse the adverse effect;

(b). if the adverse effect is not reversed, the secretary may not require the mitigation bank operator to compensate for credits already debited;

(c). if the mitigation bank operator attempts to reverse the adverse effect, the debiting of mitigation credits may continue, but shall not go beyond the initially available credits (i.e., 25 percent) until the secretary determines that adverse affect is reversed;

(d). if the adverse effect is reversed, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank; and

(i). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(a); and

(ii). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(b);

(e). the secretary shall determine if the adverse effect has been reversed based on field investigations; consultation with the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator; and other methods the secretary deems appropriate.

d. If a periodic review reveals that the mitigation bank operator has failed to comply with the MOA, unless such failure is due to force majeure, the debiting of mitigation credit shall cease and shall not resume unless the compliance failures are rectified within 90 days from a notification by the secretary of apparent failures:

i. if the compliance failures are rectified, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank if it is anticipated that such a recalculation would yield a result substantially different from the current projection:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(a);

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(b);

ii. if the compliance failures are not rectified, the secretary may require the mitigation bank operator to provide compensatory mitigation to offset the ecological value of the credits which were debited, but not actually produced, and the secretary may require additional measures via permit modification or revocation.

11. Use of Mitigation Banks for Meeting Compensatory Mitigation Requirements

a. The mitigation bank shall not be considered operational until the following conditions have been met:

i. the mitigation bank operator has submitted to the department the mitigation bank establishment fee (§724.F.3);

ii. the MOA described in §724.F.8 has been signed by the bank operator and the secretary;

iii. the mitigation bank operator has provided evidence that one of the options required pursuant to §724.F.7 has been selected and the conditions of such option have been met;

iv. the wetland mitigation measures described in a signed MOA have been fully implemented; or at least the initial phase(s) of the mitigation measures have been implemented if the signed MOA calls for phased implementation.

b. A permit applicant may acquire, subject to approval by the secretary, mitigation credits from the operator of an approved mitigation bank to meet compensatory mitigation requirements; the applicant is required to provide written evidence to the secretary that such acquisition has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary; mitigation credits may be acquired as compensatory mitigation for activities which are not subject to this Chapter, provided that the secretary is advised of any such transactions; acquired credits shall be debited from available credits.

c. Mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

- d. The type of, and acceptability of utilizing, mitigation credits shall be determined in accordance with §724.J.
 - e. The quantity of credits to be debited shall be determined in accordance with §724.C.
 - f. The secretary shall maintain an account of total, available, and debited credits for each approved mitigation bank.
 - g. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are available from that mitigation bank, shall be accomplished as follows:
 - i. the applicant shall acquire, from the mitigation bank operator, the type and quantity of mitigation credits equivalent to the anticipated net loss of ecological value due to the permitted activity; and
 - ii. the quantity of total credits for that mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the mitigation bank and from the calculation of total credits.
 - h. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are not available from that mitigation bank, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.
12. Any donation, sale, trade, or other transfer of mitigation credits, for purposes other than those provided in §724.F.11, must receive approval of the secretary and shall be allowed only upon a concurrent transfer of the mitigation bank MOA or upon concurrent execution of a separate MOA between the recipient of those credits and the secretary.

G. Advanced Mitigation Projects

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to implement advanced mitigation projects.
2. A party which establishes an advanced mitigation project shall be referred to as an advanced mitigation sponsor.
3. In determining the acceptability and appropriateness of establishing an advanced mitigation project, the secretary shall consider the following factors:
 - a. the potential advanced mitigation sponsor's history of compliance with the guidelines and the state program over at least the preceding five years;
 - b. the advanced mitigation sponsor's willingness and potential ability to maintain the advanced mitigation project for a period of time determined to be appropriate for the subject project;
 - c. the advanced mitigation project's potential to create, restore, protect, and/or enhance vegetated wetlands and the project's potential to be "self-maintaining" for the appropriate period of time;
 - d. the advanced mitigation project's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;
 - e. the advanced mitigation project's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the advanced mitigation project; and
 - f. whether the proposed advanced mitigation project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, and/or enhance vegetated wetlands.
4. The area from which credits would accrue for advanced mitigation projects shall not exceed 20 acres. In certain special cases, however, the secretary may allow expansion of the area from which credits would accrue, provided that after a waiting period of at least five years from project implementation a habitat re-evaluation demonstrates that an area beyond 20 acres has been benefited.
5. In addition to the fees identified at §723.C.3.b.i-ii, nonrefundable fees shall be charged for the initial evaluation, establishment, habitat evaluation, and periodic review of advanced mitigation projects according to the following table.

Informal Review	\$ 0
Initial Evaluation Fee	\$ 50
Establishment Fee	\$100
Post-Implementation Evaluation Fee	\$250
Periodic Review Fee	\$ 50

6. Use of Advanced Mitigation Credits

- a. Advanced mitigation credits shall not be available for use until the following conditions have been met:
 - i. the advanced mitigation sponsor has submitted all necessary fees to the department;
 - ii. the MOA described in §724.G.7.h has been signed by the advanced mitigation sponsor and the secretary;
 - iii. the wetland mitigation measures described in the signed MOA have been implemented and in place for one year or more, as determined on an individual case basis;
 - iv. the secretary has, pursuant to §724.G.9, performed the post-implementation evaluation and determined the type and quantity of advanced mitigation credits which would be attributable to the subject advanced mitigation project.
- b. Advanced mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.
- c. If the advanced mitigation sponsor is a permit applicant, the sponsor may use, subject to approval by the secretary, advanced mitigation credits from its approved advanced mitigation project to meet its compensatory mitigation requirements; other permit applicants may acquire advanced mitigation credits from the sponsor of an approved advanced mitigation project to meet compensatory mitigation requirements, subject to approval by the secretary and subject to following limitations.
 - i. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a local governmental entity may be used to meet compensatory mitigation requirements only for activities occurring within the geographic limit of the sponsoring entity's jurisdiction.
 - ii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a private entity (including but not limited to businesses, industry, landowners, resource conservation groups) may be used to meet compensatory mitigation requirements only for activities undertaken by the advanced mitigation sponsor or for activities undertaken on property owned by the advanced mitigation sponsor.
 - iii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a state or federal agency may be used to meet compensatory mitigation requirements only for activities undertaken by the sponsoring agency or on the refuge, management area, etc. where the advanced mitigation project is located.
- d. For situations where the permit applicant is not the sponsor of the advanced mitigation site, the applicant is required to provide written evidence to the secretary that the acquisition of credits has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary.
- e. The secretary shall maintain an account of total, debited, and remaining advanced mitigation credits for each approved advanced mitigation project.
- f. The type of, and acceptability of utilizing, advanced mitigation credits shall be determined in accordance with §724.J.
- g. The quantity of credits needed to meet compensatory mitigation requirements shall be determined in accordance with §724.C.
- h. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are remaining for that advanced mitigation project, shall be accomplished as follows:
 - i. the sponsor shall use, or other permit applicants shall acquire, the appropriate type and quantity of advanced mitigation credits needed to offset the anticipated net loss of ecological value due to the permitted activity; and
 - ii. the quantity of total and remaining credits for that advanced mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the advanced mitigation project and from the calculation of total and remaining credits.
- i. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are not available from that advanced mitigation project, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

7. Proposals for the establishment of advanced mitigation projects shall be processed as follows.

- a. The secretary shall provide, without charging a fee, potential advanced mitigation sponsors an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.
- b. Potential advanced mitigation sponsors shall submit a written request for the secretary to consider designation of an advanced mitigation project; the following must be provided with the request:
 - i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

- ii. detailed drawings and project description unless such information is on file with the department;
- iii. a statement describing the extent to which the project has been implemented;
- iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and
- v. the advanced mitigation project initial evaluation fee of \$50.
- c. The secretary shall review the request and within 20 days:
 - i. inform the potential advanced mitigation sponsor of the request's completeness; and
 - ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the additional information necessary to evaluate and process the request.
- d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in an on-site meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).
- e. Within 60 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as an advanced mitigation project, and:
 - i. if the project is preliminarily determined to be acceptable as an advanced mitigation project, the secretary shall inform the potential advanced mitigation sponsor of such determination; or
 - ii. if the project is preliminarily determined to be unacceptable as an advanced mitigation project, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as an advance mitigation project.
- f. Once the proposed project is preliminarily determined to be acceptable as an advanced mitigation project, the potential advanced mitigation sponsor shall obtain any necessary permits/authorizations in accordance with applicable state and federal laws.
- g. Once all necessary permits/authorizations have been obtained, the potential advanced mitigation sponsor shall submit the advanced mitigation project establishment fee of \$100.
- h. Within 10 days of receipt of the establishment fee, the secretary shall initiate negotiations among the department, the potential advanced mitigation sponsor, other state agencies, the Corps, and federal advisory agencies to develop a formal MOA. The MOA signed by the secretary and the advanced mitigation sponsor shall serve as the formal document which designates a project as an advanced mitigation project. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the advanced mitigation project by signing the MOA. The formal MOA shall, at a minimum:
 - i. provide a statement of purpose;
 - ii. define the area of benefit of the advanced mitigation project;
 - iii. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;
 - iv. establish the period of time that the advanced mitigation project would be operational;
 - v. identify the habitat assessment methodology utilized to establish the quantity of advanced mitigation credits, including an explanation of any calculations necessary to account for a project life which may differ from 20 years for marsh projects and which may differ from 50 years for forested wetland projects;
 - vi. sufficiently identify pre-project conditions to allow comparison at the time of the post-implementation habitat evaluation;
 - vii. specify the period of time allowed for project implementation, the period of time between completion of implementation and the post-implementation habitat evaluation (one year or more), the period of time allowed for the advanced mitigation sponsor to submit the post-implementation habitat evaluation fee of \$250, the period of time allowed for the habitat evaluation to be completed by the secretary, and the point in time when advanced mitigation credits would be made available to the advanced mitigation sponsor;
 - viii. if deemed necessary for the subject project, identify a schedule for review of habitat response subsequent to the post-implementation habitat evaluation;

ix. if deemed necessary for the subject project, identify the advanced mitigation sponsor's responsibilities for providing post-construction information (e.g., as-built drawings), monitoring information, or other information necessary for any habitat response reviews; and

x. if deemed necessary for the subject project, identify any requirements or mechanisms for performing or assuring maintenance of project features.

8. In accordance with the MOA, the advanced mitigation sponsor shall implement the advanced mitigation project and, at the appropriate time, submit the post-implementation habitat evaluation fee of \$250.

9. The secretary shall determine the quantity, by habitat type, of advanced mitigation credits available for donation, sale, trade, or use from an advanced mitigation project within the time frame established in the MOA and in accordance with the following.

a. The secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor to participate in the determination of advanced mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor made during, or received in writing within 20 days of, each field investigation or other meeting held to determine advanced mitigation credits.

b. The total quantity of advanced mitigation credits (AAHUs or CHUs), by habitat type, attributable to the advanced mitigation project shall be determined by applying the methodology described in §724.C.

c. For projects which have been partially implemented prior to designation as an advanced mitigation project, advanced mitigation credits would be limited to those attributed to only those features implemented after execution of the MOA. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of the total advanced mitigation credits.

10. The use of advanced mitigation credits shall be in accordance with §724.G.6.

H. Individual Compensatory Mitigation Measures

1. A permit applicant may implement an individual mitigation measure or measures to satisfy the compensatory mitigation requirements of a proposed activity.

2. The secretary shall determine the acceptability of an individual compensatory mitigation measure(s) in accordance with §724.J.

3. The sufficiency of an individual mitigation measure or measures shall be determined in accordance with §724.C, best professional judgment, or a combination of the methodology presented in §724.C and professional judgment. When applying the methodology presented in §724.C, the secretary shall consider the probable life of the proposed mitigation measure and the future ability and willingness of the permit applicant to maintain the proposed mitigation.

I. Monetary Contributions to the Affected Landowner, Affected Parish, and/or the Louisiana Wetlands Conservation and Restoration Fund

1. Compensatory mitigation may be accomplished by monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund.

2. Such monetary contributions shall be used only to offset anticipated unavoidable net losses of ecological values and shall be selected as the compensatory mitigation option only in accordance with §724.J.

3. The secretary shall determine the amount of the monetary contribution by the formula: (anticipated unavoidable net loss of ecological value, measured in AAHUs) x (annual base mitigation cost) x (project years) = compensatory mitigation cost.

4. The determination of anticipated unavoidable net loss of ecological value, in AAHUs, that would result from the proposed activity shall be made in accordance with §724.C.

5. The annual base mitigation cost (ABMC) represents the cost of producing one AAHU for one year, within each habitat type within each hydrologic basin. The ABMC is based on example projects which could feasibly be constructed within each habitat type, within each basin, and was determined by the following formula: [sum for example projects (annual project cost / AAHUs produced)] / number of example projects.

6. ABMCs are provided in the following table.

Hydrologic Basin	Fresh Marsh	Intermediate Marsh	Brackish Marsh	Saline Marsh	Hardwoods	Fresh Swamp
Pontchartrain	380	396	420	443	32	283
Breton	364	389	411	518	32	283
Mississippi River	331	331			32	283

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Hydrologic Basin	Fresh Marsh	Intermediate Marsh	Brackish Marsh	Saline Marsh	Hardwoods	Fresh Swamp
Barataria	373	389	411	443	32	283
Terrebonne	338	353	376	443	32	283
Atchafalaya River	350	350			32	283
Teche/Vermilion	369	387	412	455	32	283
Mermentau	369	387	412	455	32	283
Calcasieu/Sabine	359	387	412	455	32	283

7. The secretary may periodically update the table at §724.I.6 utilizing the best available data, in accordance with provisions of R.S. 49:953.

8. If compensatory mitigation is to be accomplished via monetary contribution, the issued permit shall include a condition which:

- a. identifies the monetary amount determined pursuant to §724.I.3-6; and
- b. specifies that the money would be transferred, upon request by the secretary, to the affected landowner, affected parish, or the Louisiana Wetlands Conservation and Restoration Fund as selected by the secretary in accordance with §724.I.9.a or §724.I.12-20.

9. To ensure compliance with such a permit condition, the permit shall not be issued:

- a. until the monetary contribution has been made to the affected landowner, provided that a plan for use of that money has been accepted by the secretary prior to, or during, the permit processing period, subsequent to coordination among the applicant, affected landowner, the Corps, and state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation; or

- b. until the secretary has received a letter of credit on behalf of the permit applicant, pursuant to §724.I.10; or

- c. until it has been demonstrated to the secretary that a surety bond has been established by the permit applicant pursuant to §724.I.11.

10. If a letter of credit is utilized, the letter:

- a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permittee fails to comply with the permit condition required by §724.I.8;

- b. should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act;

- c. shall include a clause which causes an automatic renewal of the letter of credit until such time that the secretary returns the letter of credit to the permit recipient and/or depository; and

- d. shall require the secretary to return the letter of credit to the permit recipient and/or depository upon compliance with the permit condition.

11. If a surety bond is utilized, the bond:

- a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permit recipient fails to comply with the permit condition required by §724.I.8;

- b. shall be written by a surety or insurance company which, at the time of permit issuance, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus;

- c. shall have a term of five years; and

- d. shall require the secretary to release the bond to the permit recipient upon compliance with the permit condition.

12. Unless a plan for the use of compensatory mitigation funds has been accepted by the secretary pursuant to §724.I.9.a, the secretary shall request proposals for the utilization of compensatory mitigation money from each affected landowner which demonstrated an interest, pursuant to §724.J.5.a.vi or §724.J.6.d.vi, in receiving compensatory mitigation. The secretary's request for proposals shall be made in writing and within 10 days of permit issuance. The request shall include the following:

- a. identification of the permitted activity for which payment of compensatory mitigation money is being required;
- b. information regarding the habitat type and ecological value (acreage and habitat value) to be strived for;
- c. announcement of the sum of money potentially available; and
- d. a request that the affected landowner provide to the secretary, in writing and within 25 days of receipt of such a request, a conceptual mitigation plan for use of the compensatory mitigation money.

13. Proposals for expenditure of compensatory mitigation money shall be acted upon as follows.

a. Within 10 days of receipt of a conceptual mitigation proposal, the secretary shall forward the proposal to those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation. Concurrently, the proposal shall also be forwarded to the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

b. Over the following 60 days, the secretary shall interact with the interested agencies, the affected landowner, and the affected parish (if interested) to finalize the plan for use of the compensatory mitigation money. To be considered acceptable by the secretary, the plan must satisfy the criteria presented in §724.J.2-6. The 60-day period may be extended if requested by the landowner, provided that negotiations are being carried on in "good-faith."

c. If any permits/approvals are needed to implement the acceptable plan, the landowner shall submit the applications/requests to the appropriate entities within 20 days of the plan being deemed "acceptable."

d. If the affected landowner is unable to obtain the necessary approvals for a plan which had been deemed "acceptable" within 60 days of submittal due to concerns of, or lack of consent by, the Corps or state and federal advisory agencies, the secretary shall allow the landowner an additional 30 days to submit an alternate conceptual plan, and the alternate proposal shall be acted upon in accordance §724.I.13.

14. Once a plan is deemed "acceptable" and all necessary approvals have been obtained:

a. within 30 days, the landowner shall provide the secretary with a detailed written estimate of the total cost of implementing the plan;

b. within 10 days of receipt of the estimate, the secretary shall:

- i. review the estimate for apparent completeness and accuracy, etc.; and
- ii. if the estimate does not appear complete, accurate, and generally in order, identify the deficiencies and request the landowner to revise and submit a complete and accurate estimate; the revised estimate shall be submitted within 15 days of receipt of the secretary's request;

c. within 10 days of receipt of an apparently complete and accurate estimate, the secretary shall request in writing, the permit recipient to provide to the affected landowner a payment of money equal to the estimate, but not to exceed the amount identified in the issued permit;

d. the permit recipient shall make such payment to the affected landowner and provide evidence to the secretary that such payment has been made within 30 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of evidence by the secretary;

e. if such payment is made to the landowner:

- i. the plan shall be initiated within 45 days of receipt of the payment unless the accepted plan includes seasonal considerations for implementing certain measures, such as grass or tree plantings;
- ii. within 15 days of the end of the period allowed for initiation, the landowner shall inform the secretary in writing of the status of plan implementation;

iii. the plan shall be completely implemented within 90 days of initiation unless the accepted plan includes a specific time allotment for completion, or an unexpected circumstance provides a valid reason for delay;

iv. within 30 days of completion of the accepted plan, the landowner shall submit evidence that the accepted plan has been implemented, including a copy of invoices, bills, receipts demonstrating the total monetary expenditure;

v. if the landowner fails to implement the plan in a timely manner, the landowner shall make payment, equal to the amount received from the permit recipient, to the Louisiana Wetlands Conservation and Restoration Fund within 30 days of being requested by the secretary;

vi. if the landowner fails to implement the plan in a timely manner and fails to make payment to the Louisiana Wetlands Conservation and Restoration Fund in a timely manner, the landowner shall be subject to legal remedies to compel the landowner to make such payment, and further, the landowner shall be ineligible to receive compensatory mitigation money in the future; and

vii. if the total expenditure for implementing the plan is less than the amount paid by the permit recipient, the landowner shall:

(a). utilize the difference within 60 days to implement an additional wetland creation, restoration, protection, and/or enhancement measure(s) approved by the secretary; or

(b). pay the difference to the Louisiana Wetlands Conservation and Restoration Fund;

f. if the permit recipient fails to make the requested payment to the landowner within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary;

g. if the secretary pursues payment via the letter of credit or surety bond:

i. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund; and

ii. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option; and

iii. the secretary shall negotiate with the affected landowner(s) on an individual case basis to formulate an acceptable plan for use of that money on the affected landowner's property; or

iv. if an acceptable plan can not be negotiated for the affected landowner's property, the money shall be utilized pursuant to §724.I.21.

15. The secretary may delay the process of formulating a plan for utilizing compensatory mitigation money for the purpose of combining the compensatory mitigation money from more than one permitted activity, provided that:

a. prior to delaying the process, the secretary considers the views of those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

b. prior to delaying the process, the secretary considers the views of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

c. the time elapsed from issuance of the first permit to implementation of the mitigation measure(s) would not be expected to exceed two years; and

d. the landowner (or parish) is aware, and can demonstrate, that additional impacts are likely to be proposed on the ownership (or within the parish) within 180 days, and the landowner (or parish) has obtained the necessary permits/approvals for a specific mitigation measure that would require an amount of money greater than that generated from a single permitted activity.

16. A landowner's "right" to utilize the required compensatory mitigation money would cease:

- a. if the landowner failed to comply with the requests described in §724.J.5.a.vi, §724.J.6.d.vi, or §724.I.12.d; or
- b. if the secretary determines, during the interaction period described in §724.I.13.b, that the attempt to derive a plan mutually acceptable to the landowner and the secretary is futile; or
- c. if the landowner failed to comply, without good reason, within the time periods described in §724.I.13.c-d and §724.I.14.a, b, and e; or
- d. if the necessary permits/approvals described at §724.I.13.c have not been obtained within 180 days of the submittal of applications/requests, due to failure on the part of the landowner to provide, in a timely manner, adequate information or other material necessary for processing the applications/requests; or
- e. if, following an attempt to combine compensatory mitigation money from more than one permitted activity, pursuant to §724.I.15, the mitigation measure is not implemented within two years.

17. If a landowner's "right" to utilize the compensatory mitigation money should cease, the secretary shall, in writing and within 10 days of such cessation:

- a. inform the landowner that his/her right to utilize the compensatory mitigation money has ceased; and
- b. inform the affected parish of the potential availability of that money for implementing wetland creation, restoration, protection, and/or enhancement measures; such notification shall include the items identified in §724.I.12.a-d.

18. Proposals for expenditure of compensatory mitigation money by a parish shall be acted upon in the manner described for a landowner in §724.I.13 and implemented in the manner described for a landowner in §724.I.14-15.

19. A parish's "right" to utilize the compensatory mitigation money would cease if the conditions described in §724.I.16 existed with regard to the parish.

20. If a parish's "right" to utilize the required compensatory mitigation money should cease, the secretary shall within 10 days of such cessation:

- a. inform the parish that its right to utilize the compensatory mitigation money has ceased; and
- b. request the permit recipient to provide payment of the amount of money identified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of such payment by the secretary.

21. If such payment is made to the Louisiana Wetlands Conservation and Restoration Fund, the secretary shall select a specific wetland creation, restoration, protection, and/or enhancement measure(s) to be implemented with that money, following consideration of the comments of those state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation during permit processing and utilize that money to implement the selected measure.

22. If the permit recipient does not make the requested payment to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary.

23. If the secretary pursues payment via the letter of credit or surety bond:

- a. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund and utilized pursuant to §724.I.21; and
- b. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option.

J. Selecting Compensatory Mitigation

1. In selecting compensatory mitigation, the secretary shall consider the recommendations and comments of those state and federal agencies which demonstrated an interest, during permit processing, in participating in the selection of appropriate compensatory mitigation. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

2. The secretary shall ensure that the selected compensatory mitigation, in order of priority, is sufficient (§724.J.3), properly located (§724.J.4), and accomplished by the most desirable available/practicable option (§724.J.5-6).

3. The selected compensatory mitigation proposal must completely offset the unavoidable net loss of ecological value, unless a variance is granted pursuant to §724.K.

4. To be considered properly located, the compensatory mitigation must be selected according to the following prioritized criteria:

- a. must have an anticipated positive impact on the ecological value of the Louisiana Coastal Zone;
- b. should be on-site if the opportunity exists and if the compensatory mitigation would contribute to the wetland health of the hydrologic basin;
- c. should be located, in accordance with R.S. 214.41.E, on the affected landowner's property, provided the secretary determines that the proposed mitigation is acceptable and sufficient;
- d. shall be located within the same hydrologic basin as the proposed impact, unless no feasible alternatives for compensatory mitigation exist in that basin; and
- e. shall, in order of preference, be located within the same habitat type as the proposed impact; or produce ecological values which would be similar to those lost as a result of the proposed activity, despite being located in a different habitat type; or contribute to the overall wetland health of the hydrologic basin, despite being located in a different habitat type.

5. The procedure for selecting compensatory mitigation for proposed activities which would adversely impact vegetated wetlands on only one landowner's property shall be as follows.

- a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall:
 - i. determine the habitat type and extent (i.e., acreage) of anticipated impact to the affected landowner;
 - ii. in writing, provide to the applicant basic information regarding the anticipated impact (acreage, habitat type);
 - iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated with the affected landowner; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;
 - iv. in writing, provide to the affected landowner basic information regarding the anticipated impact (acreage, habitat type);
 - v. in writing, suggest to the landowner, that he/she assist the applicant in developing a compensatory mitigation proposal; and
 - vi. in writing, request that the landowner submit to the secretary, in writing and within 30 days of such request, a statement which would:

- (a). indicate acceptance of the applicant's compensatory mitigation proposal; or
- (b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or
- (c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or
- (d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.

b. An applicant's failure to submit a compensatory mitigation proposal as described in §724.J.5.a.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.

c. A landowner's failure to submit the statement described in §724.J.5.a.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.

d. All compensatory mitigation proposals submitted by the landowner or applicant; negotiated among the landowner, applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

e. Subject to §724.J.1-4, the secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

- i. acquisition of mitigation credits, if the affected landowner has an approved mitigation bank;
- ii. use of advanced mitigation credits if the affected landowner has an approved advanced mitigation project, if allowable pursuant to §724.G.6;
- iii. if the proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

(a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowner (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution; or

(b). if the affected landowner forfeited his/her right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on the affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;

- iv. individual compensatory mitigation proposal on the affected landowner's property;
- v. acquisition of credits from a mitigation bank not on the affected landowner's property;
- vi. use of advance mitigation credits from an advanced mitigation project not on the affected landowner's property, if allowable pursuant to §724.G.6;
- vii. individual mitigation proposal not on the affected landowner's property;
- viii. if the proposed activity would directly impact more than 5.0 acres but no more than 10.0 acres, monetary contribution pursuant to §724.I.

f. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10 acres.

6. For Proposed Activities Which Would Impact Vegetated Wetlands on More than One Landowner's Property

a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall request the applicant to provide a map(s) to the secretary with accurate scale and sufficient detail to determine the extent of impact (i.e., acreage) to each landowner identified pursuant to R.S. 49:214.30.C.2.

b. At this time, the permit processing period identified at §723.C.4.f shall be interrupted until the requested map(s) has been provided.

c. When the anticipated impact to a given landowner would be less than 1 acre, it shall be considered unacceptable to allow that landowner to require compensatory mitigation to be performed on his/her property, unless it is determined to be acceptable by the secretary in certain special cases.

d. Within 10 days of receipt of the map(s) described in §724.J.6.a, the secretary shall:

- i. determine the habitat type and extent (i.e., acreage) of anticipated impact to each affected landowner;
- ii. in writing, provide to the applicant a list of affected landowners whose anticipated direct impact is 1.0 acre or greater and basic information regarding the anticipated impact (acreage, habitat type) to each of those landowners and for the entire project;
- iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated among all affected landowners whose anticipated direct impact is 1 acre or greater; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;
- iv. in writing, provide to each landowner whose anticipated direct impact is 1 acre or greater, basic information regarding the anticipated impact (acreage, habitat type) to the subject property and for the entire project;
- v. in writing, suggest to each of those landowners, that they assist the applicant in developing a compensatory mitigation proposal; and
- vi. in writing, request that each of those landowners submit to the secretary, in writing and within 30 days of such request, a statement which would:
 - (a). indicate acceptance of the applicant's compensatory mitigation proposal; or
 - (b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or
 - (c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or
 - (d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact a total of 5 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.

e. An applicant's failure to submit a compensatory mitigation plan as described in §724.J.6.d.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.

f. A landowner's failure to submit the statement described in §724.J.6.d.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.

g. All compensatory mitigation proposals submitted by the landowner(s) or applicant; negotiated among the landowner(s), applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

h. In situations where landowners have proposed separate/multiple compensatory mitigation measures, the secretary shall consider the following factors in selecting compensatory mitigation:

i. cost effectiveness of offsetting ecological value losses via separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s);

ii. practicability, on the part of the secretary, of confirming/enforcing implementation, operation, and maintenance of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s); and

iii. the long-term ecological benefits of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s).

i. The secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

i. if an affected landowner has an approved mitigation bank, acquisition of mitigation credits, at least for that portion of the impact which occurs on that landowner's property;

ii. if an affected landowner has an approved advanced mitigation project, use of advanced mitigation credits, for that portion of the impact which occurs on that landowner's property, if allowable pursuant to §724.G.6;

iii. if the proposed activity would qualify for authorization under a general permit or if the proposed use would directly impact 5 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

(a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowners (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution; or

(b). if the affected landowners forfeited their right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on an affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;

iv. individual compensatory mitigation measure(s) acceptable to all interested landowners;

v. individual compensatory mitigation measure(s), that would have a positive effect on one or more, but not necessarily all, of the interested landowner's properties;

vi. acquisition of credits from a mitigation bank not on an affected landowner's property;

vii. use of advanced mitigation credits from an approved advanced mitigation project not on an affected landowner's property, if allowable pursuant to §724.G.6;

viii. individual mitigation proposal not on an affected landowner's property;

ix. if the proposed activity would directly impact more than 5 acres but no more than 10 acres, monetary contribution pursuant to §724.I.

j. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10 acres.

K. Variances from Compensatory Mitigation Requirements

1. Pursuant to the remainder of this Section, the secretary shall grant a full or partial variance from the compensatory mitigation requirement (variance) when a permit applicant has satisfactorily demonstrated to the secretary:

a. that the required compensatory mitigation would render impracticable an activity proposed to be permitted; and

b. that such activity has a clearly overriding public interest.

2. Variance Request Requirements

a. Following the application of §724.B; development of a compensatory mitigation option(s) pursuant to §724.J; and presentation by the secretary (in accordance with §723.C.8.b) of a draft permit, including conditions for compensatory mitigation, the permit applicant may file a variance request with the secretary.

b. The variance request must be filed and resolved prior to initiation of the proposed activity.

c. The variance request must be filed in writing and include the following:

i. a statement explaining why the proposed compensatory mitigation requirement would render the proposed activity impracticable, including supporting information and data; and

ii. a statement demonstrating that the proposed activity has a clearly overriding public interest by explaining why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, including supporting information and data.

d. As part of the requirements of §724.K.2.c, requests for variances for mineral exploration, extraction, and production activities shall include production projections, including supporting geologic and seismographic information; a projected number of new jobs; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

e. As part of the requirements of §724.K.2.c, requests for variances for mineral transportation activities shall include information regarding the amount of product proposed to be transported; the destination of the product; a projected number of new jobs and their location; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

f. As part of the requirements of §724.K.2.c, requests for variances for flood protection facilities shall include the following information:

i. a detailed description of the existing infrastructure which would be protected by the flood protection facility, including public facilities (e.g., roads, bridges, hospitals, etc.), residential areas (including approximate number of homes and associated residents), industries, and businesses;

ii. detailed drawings or photographic documentation depicting the locations of the above infrastructure components;

iii. a detailed description of the extent and severity of past flooding problems and projections of potential damages due to future flooding events; and

iv. a description of nonstructural and structural flood protection and reduction measures which have been undertaken or implemented in the past, or are reasonably expected to occur in the future.

g. As part of the requirements of §724.K.2.c, all requests for variances shall include cost estimates for implementing the proposed project and performing compensatory mitigation.

h. The request shall be accompanied with a nonrefundable filing and hearing fee of \$250.

3. Review and Notification by the Secretary

a. The secretary shall review a variance request and inform the applicant of its completeness within 15 days of receipt.

b. If the variance request is not complete or if additional information is needed, the secretary shall request from the applicant, the additional information necessary to evaluate and process the request. If the applicant fails to respond to such request within 30 days, the secretary may advise the applicant that his request will be considered withdrawn unless the applicant responds within 15 days of such advisement. If the request is considered withdrawn,

to reinstate the request, the applicant will be required to resubmit the request, accompanied with an additional nonrefundable filing and hearing fee of \$250.

c. The secretary shall not issue a variance prior to publishing a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement", and accepting and considering public comments.

d. Within 30 days of the secretary's acceptance of the variance request as complete, the secretary shall review the request, considering the criteria set forth in §724.K.1, and either:

- i. notify the applicant of the secretary's intention to deny the request, including his rationale; or
- ii. determine that the variance request warrants further consideration and publish a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

e. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall be published in the official state journal, mailed to Joint Public Notice mailing recipients and all persons that submitted comments on the original public notice, and provided to the local governing authority of the parish or parishes where the proposed activity would take place.

f. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall contain the following:

- i. name and address of the applicant;
- ii. the location and description of the proposed activity;
- iii. a description of the area to be directly impacted (acres and habitat types) and quantification of anticipated unavoidable net losses of ecological value;
- iv. a description of the compensatory mitigation plan proposed as a condition of permit issuance;
- v. a description of the nature and extent of the variance;
- vi. a summary of the information presented by the applicant in fulfillment of §724.K.2.c-g;
- vii. an unsigned secretarial "Statement of Finding" regarding why the proposed compensatory mitigation requirement may render the proposed activity impracticable and comparing the public interest benefits of the proposed activity to the public interest benefits of requiring compensatory mitigation for the wetland values lost as a result of the activity; and
- viii. notification that public comments, including requests for public hearings, will be accepted for 25 days from the date of publication of the "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

4. Public Hearings on Variance Requests

- a. A public hearing shall be held when:
 - i. requested by the applicant following the secretary announcing his intention to deny a variance request;
 - ii. the secretary determines that a public hearing is warranted, following a review of comments received during the period described in §724.K.3.f.viii; or
 - iii. the conditions described at §723.C.6.c are met.
- b. Public hearings shall be conducted in accordance with §727.

5. Final Variance Decision

a. The secretary shall issue a final variance decision based on full consideration of the criteria set forth in §724.J.1, information submitted by the applicant, comments received during the public comment period, and comments received at the public hearing if one is held. A "Statement of Finding" described in §724.K.5.b shall be prepared:

i. within 15 days of the closing of the public comment period if the secretary determines that a public hearing is not warranted; or

ii. within 15 days of the public hearing if one is held.

b. The secretary shall prepare a signed final "Statement of Finding" which explains the reasons for denying a variance or describes why the proposed compensatory mitigation requirement would have rendered the proposed activity impracticable, describes why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of requiring compensation for wetland values lost as a result of the activity; and describes the nature and extent of the granted variance. This statement shall be part of the permit record, available to the public, and attached to the granted permit.

c. The final variance decision is subject to reconsideration as described at R.S. 49:214.35.

6. Duration of Variance

a. A variance shall be valid only for the original permit recipient. Any party receiving a transferred permit may seek a variance, through the procedures established by §724.K.2-5.

b. A variance shall be valid for the initial terms of the permit to which it is specifically related, unless the variance is modified, or revoked in accordance with §724.K.7.

c. The secretary may extend a variance, in accordance with §723.D.5., concurrently with the extension of the permit to which it is specifically related.

7. Modification or Revocation of Variance

a. If requested by the applicant, the secretary shall consider modifying a variance, according to the procedures described in §724.K.2-5.

b. A third party may request the secretary to consider a modification or revocation of a variance, based on lack of conformance to the criteria set forth in §724.K.1.

c. The secretary may revoke a variance, if:

i. there are inaccuracies in the information furnished by the applicant during the permit or variance review period; or

ii. there is any violation of the conditions and limitations of the permit to which the variance is specifically related; or

iii. there is any violation of the conditions and limitations of the variance; or

iv. the applicant misrepresented, without regard to intent, any material facts during the variance or permit review period; or

v. the actual public interests of the activity turn out to be significantly less than that estimated by the applicant in its statements filed in association with the variance request review.

d. The procedure for revoking a variance shall be as follows.

i. The secretary shall, in writing, inform the variance holder that revocation is being considered, providing reasons for the potential revocation and advising the variance holder that he will be given, if requested within 10 days from receipt of the notice, an opportunity to respond to the reasons for potential revocation.

ii. After consideration of the variance holder's response, or if no response is received, the secretary shall provide written notice to the variance holder, allowing the variance to remain valid or explaining newly imposed compensatory mitigation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995).

Subchapter D. Local Coastal Management Programs

§725. Development, Approval, Modification, and Periodic Review of Local Coastal Management Programs

A. Letter of Intent. Parishes intending to apply for grants to prepare a local coastal management program (LCMP) shall notify the secretary of DNR by sending a letter of intent approved by the parish Police Jury or Council.

B. Program Development

1. The process for developing a local program will consist of:

- a. a division of the parish's coastal zone into units that have similar environmental and natural resource characteristics (environmental management units) and an identification and mapping of the features, resources, and resource users of those units;
- b. an analysis of the projected social and economic growth for the parish. This analysis must include projected population growth, projected expansion of economic sectors, estimated demand for and use of land, and an assessment of how these projected changes will affect the natural resources of each management unit as well as the parish as a whole;
- c. an identification of existing and potential resource-use conflicts including their location and severity. Identified problems should be mapped to the extent possible;
- d. an identification of particular areas, if any, within the parish requiring special management as a result of their unique natural resource or development potentials;
- e. the development of goals, objectives and policies for the management of the parish's coastal zone. This shall include those goals and objectives applicable to the entire parish coastal zone and specific objectives and priorities of use for each management unit and identified particular area, if any. Except as specified in Subparagraph D.1.d below, these policies, objectives and priorities of uses must be consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines;
- f. the development of procedures providing for the full participation of federal, state, local and municipal government bodies and the general public in the development and implementation of the parish program;
- g. the development of the necessary authorities, procedures, and administrative arrangements for reviewing, issuing, and monitoring permits for uses of local concern;
- h. the development of special procedures and methods for considering uses within special areas designated pursuant to §214.29 of the SLCRMA, if any, and the impacts of uses on the special areas;
- i. the development of special procedures and methods for considering uses of greater than local benefit and uses affecting state or national interests.

C. Program Content

1. Local programs may be submitted for approval after being developed in accordance with Subsection B and shall consist of:

- a. a summary of the local program;
- b. maps and descriptions of the natural features, resources, and existing land use in each management unit. These maps shall depict the division of the coastal areas into coastal waters and wetlands, transitional areas, fastlands, and lands more than 5 feet above mean sea level;
- c. the results of the social and economic analysis carried out pursuant to Subparagraph B.1.b, above;
- d. a description of those existing and future resource-use conflicts identified pursuant to Subparagraph B.1.c, above;

- e. an identification of those particular areas, if any, requiring special management as described in Subparagraph B.1.d above, as well as the special policies and/or procedures to be applied to these areas;
- i. statement of the goals, objectives, policies, and priorities of uses included in the program, as described in Subparagraph B.1.e.;
- ii. a statement assuring that the policies of the local program are consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines and that the local program shall be interpreted and administered consistently with such policies, objectives, and guidelines;
- f. a description of the authorities and administration arrangements regulating uses of local concern, for reviewing, issuing, and monitoring local coastal use permits, and for enforcing the local program, including:
 - i. a concise explanation of how the local program's coastal management process is to work;
 - ii. a description and listing of those areas and uses that will require local coastal use permits;
 - iii. an illustrative list of particular activities which occur either in fastlands or on lands more than 5 feet above mean sea level that have, or may have, direct and significant impacts on coastal waters;
 - iv. an analysis of all ordinances included in the local program demonstrating that the effect of such ordinances, when applied to uses not subject to the local coastal use permit program, would result in compliance with the goals and provisions of the SLCRMA, as amended, the objectives of the Louisiana Coastal Resources Program (LCRP), and the policies of the coastal use guidelines;
 - v. a description of the administrative means by which the parish will coordinate with other governmental bodies during program implementation regarding:
 - (a). local program implementation, including copies of any interagency or intergovernmental agreements;
 - (b). multiparish environmental considerations;
 - (c). consideration by the parish of regional, state, or national interests; and
 - (d). regional, state, or national plans affecting the parish coastal zone and other projects affecting more than one parish;
 - vi. certified copies of all ordinances, plans, programs, and regulations proposed to be included in the program;
 - vii. a resolution from the governing body of the parish expressing approval of the local program as submitted and its intent to implement the submitted program subsequent to state approval;
 - g. documentation that the parish has provided a full opportunity for governmental and public involvement and coordination in the development of the local program. It must be shown that:
 - i. at least one public hearing was held in the coastal zone on the total scope of the proposed program;
 - ii. public notice of the availability of the draft proposed program was given at least 30 days prior to the hearing. Copies of the program must have been available for distribution to relevant state, federal and local governmental agencies, and the general public and were available for public inspection at reasonable hours at all libraries within the parish, the offices of the police jury, and the city or town hall of all the municipalities in the coastal zone;
 - iii. full consideration was given to comments received during program development and the public hearings.

D. Program Approval

1. Local programs may be submitted for approval after promulgation of these rules and the state guidelines. The following procedures shall apply.

a. Fifteen copies of the complete proposed local program shall be submitted to the secretary. The local government shall have additional copies available for distribution upon request. The secretary shall, within 15 days of the filing of a complete program give public notice of the submittal of the proposed local program, of the availability of copies of the program for public review and of the date, time and place of a public hearing on the program and request public comment. The secretary shall give full consideration to all comments received.

b. The secretary shall, within 90 days of the giving of public notice, either approve the local program or notify the local government of the specific changes which must be made in order for it to be approved.

c. In order to approve the local program, the secretary must find that:

i. the program is consistent with the state guidelines and with the policies and objectives of the SLCRMA;

ii. the program submitted for approval contains all the elements required by Subsection C above and that the materials submitted are accurate and are of sufficient specificity to provide a basis for predictable implementation of the program;

iii. that the proposed program, and the policies, objectives, and priorities of use in the program, are of a sufficient comprehensiveness and specificity to address the identified resource-use conflicts and are consistent with the goals of the SLCRMA, the objectives of the LCRP, and the policies of the coastal use guidelines;

iv. full opportunity has been provided for federal, state, local and municipal governmental bodies and the general public to participate in the development of the program pursuant to Subparagraph C.1.g above;

v. the local government has included within the program all applicable ordinances and regulatory or management programs which affect the coastal zone; that these authorities are of sufficient scope and specificity to regulate uses of local concern; that the regulatory program meets all requirements for procedures and time frames established by the SLCRMA and regulations of the department; that sufficient authority is provided to enforce the local program, including provisions for those penalties provided by §214.36 of the SLCRMA, and that the program has met all substantive requirements of the SLCRMA and the regulations adopted pursuant thereto;

d. in reviewing a local program for consistency with the state guidelines the secretary, acting jointly with the secretaries of the Department of Natural Resources and the Department of Wildlife and Fisheries, may make reasonable interpretations of the state guidelines, insofar as they affect that particular program, which are necessary because of local environmental condition or user practices. Local programs that may be inconsistent in part with the state guidelines may be approved notwithstanding the conflicts if the secretaries find that:

i. the local environmental conditions and/or user practices are justified in light of the goals of Act 361, (SLCRMA) the objectives of the LCRP, and the policies of the state guidelines;

ii. approval would result in only minimal and inconsequential variance from the objectives and policies of the Act and the guidelines; and

iii. the local program provides special methods to assure that the conflicts remain minimal and inconsequential;

e. the local program shall become effective when approved by the secretary and officially adopted by the local government.

E. Modifications

1. Any significant proposed alteration or modification to an approved local program shall be submitted to the secretary for review and approval along with the following:

a. a detailed description of the proposed change;

b. if appropriate, maps of sufficient scale and detail depicting geographically how the program would be changed;

c. an explanation of how the proposed change would better accommodate local conditions and better serve to achieve the objectives of the state program and the local program;

d. a resolution from the local government expressing approval of the modification as submitted and its intent to implement the change subsequent to state approval;

e. all parish ordinances relevant to the proposed modification;

f. any comments from governmental units that may be affected by the proposed modification;

g. the record of the public hearing on the proposed modification, including any written testimony or comments received; and

h. documentation that the parish has provided a full opportunity for governmental and public involvement in the development of the proposed modification.

2. Significant alterations or modifications shall be reviewed and approved pursuant to Subsection B, C, and D above. They must be consistent with the guidelines and the state program and meet all pertinent substantive and procedural requirements.

3. An alteration or modification shall become effective when approved by the secretary and officially adopted by the local government. If a proposed alteration or modification is not approved, the provisions of the previously approved program shall remain in effect unless specifically rejected by the governing body of the parish.

F. Periodic Review of Programs

1. Local governments shall submit an annual report on the activities of an approved local program. This annual report shall include:

a. the number, type, and characteristics of applications for coastal use and other permits;

b. the number, type, and characteristics of coastal use and other permits granted, conditioned, denied, and withdrawn;

c. the number, type, and characteristics of permits appealed to the courts;

d. results of any appeals;

e. a record of all variances granted;

f. a record of any enforcement actions taken;

g. a description of any problem areas within the state or local program and proposed solutions to any such problems;

h. proposed changes in the state or local program.

2. The administrator shall from time to time, and at least every two years, review the approved local programs to determine the extent to which the implementation of the local program is consistent with and achieving the objectives of the state and local programs.

3. Should the secretary determine that any part of the local program is not consistent with the state program or is not achieving its stated objectives or is not effective, he shall notify the local government and recommend changes and modifications which will assure consistency with, and achievement of, the objectives of the overall coastal program or improve the efficiency and effectiveness of the local program.

4. If the local government fails to give official assurance within one month after receipt of the secretary's notice that it intends to modify the local program in a timely manner to conform to these recommendations, or thereafter fails to make the necessary changes within three months, the secretary may, after public notice, revoke approval of the local program. In such an event the local government shall no longer have the authority to permit uses of local concern or otherwise carry out the functions of an approved program and will lose eligibility to receive management funds other than those funds appropriate and necessary to make the necessary changes. If and when the secretary determines that the local program has been appropriately modified to meet his recommendations pursuant to Subsection B above, he may, after public notice, reinstate approval.

G. Funding of Local Programs

1. All funds provided to local governments by the department for program development or implementation shall be subject to the following.

a. Any state or federal funds provided to local governments for development or implementation of approved local program shall be by contract with the department. Any such financial assistance shall be subject to these rules and any applicable federal requirements.

b. Such financial assistance shall be on a matching fund basis. The required local match shall be determined by the secretary.

c. Eligibility of a local government for such financial assistance shall be determined by the administrator pursuant to these rules and the contractual requirements of the department.

d. Local programs shall receive an equitable share of the total federal money received by the department from the Office of Coastal Zone Management for Section 306 [of the federal Coastal Zone Management Act, as amended] implementation.

2. Planning and development assistance funding shall be subject to the following.

a. Funding for planning and development of local programs shall be available. The level of such funding shall be at the discretion of the administrator and as provided for herein. A base level of funding will be made available to each parish in the coastal zone which does not have an approved program. Any unutilized allocated funds will be available for use by other parishes at the discretion of the administrator for special planning and development projects.

b. To be eligible to continue receiving planning and development assistance, the local government must be making substantial progress toward finalization of an approvable local program.

c. Planning and development funds may only be used to plan for and develop those elements of a local program required by Subsections B and C of these rules and the SLCRMA.

d. Planning and development assistance will be provided by the department for two years from the date of federal approval of the state program or until a parish receives an approved local program, whichever is sooner.

3. The department will make funds available to local governments for costs incurred in applying for approval from the department, including printing and advertising, holding required public hearings and making copies of the local program available to governmental bodies and the general public.

4. Implementation assistance funding shall be subject to the following.

a. Funding for implementation of a local program shall be available after approval of the local program by the department. A local program shall be eligible for such assistance only so long as it continues to be an approved program.

b. The administrator shall establish and modify, as appropriate, a reasonable allocation formula utilizing objective criteria regarding the coastal zone of the parish, including:

- i. population;
- ii. total surface area;
- iii. wetland area;
- iv. number of permits; and
- v. length of interface between urban and agricultural areas and wetland areas.

c. Each parish with an approved program shall be assured of a base level of funding, with additional funding based upon the allocation formula. Any unutilized implementation funds will be available, at the discretion of the administrator, for use by other parishes for special planning, implementation or management projects.

d. Implementation funds may only be used to implement the approved local program, carry out planning for or development of approvable alterations or modifications in the local program, and to update or revise the data base utilized by the local program.

H. Written Findings. All findings and determinations required by these rules shall be in writing and made part of the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Subchapter E. Hearings

§727. Public Hearings and Public Notice

A. Scope. This regulation is applicable to all public hearings and public notices pursuant to the SLCRMA. All such public hearings that are determined to be necessary shall be nonadjudicatory public proceedings conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed action, and will afford the public an opportunity to present their views and opinions on such action. Public notices shall provide the public with information regarding activities that require such notice.

B. Public Notice of Hearings

1. Public notice as provided in §728 shall be given at least 30 days in advance of any public hearings. Notice shall be sent to all persons requesting notices of public hearings and shall be posted in all governmental bodies having an interest in the subject matter of the hearing. Such notice may be limited in area consistent with the nature of the hearing.

2. The notice shall contain the time, place, and nature of hearing; and the location of materials available for public inspection.

C. Time and Place. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the interested public.

D. Presiding Officer

1. The governmental body holding the hearing shall designate a staff member to serve as presiding officer. In cases of unusual interest the administrator shall have the power to appoint such person as he deems appropriate to serve as the presiding officer.

2. The presiding officer shall establish a hearing file consisting of such material as may be relevant or pertinent to the subject matter of the hearing. The hearing file shall be available for public inspection.

E. Representation. At the public hearing, any person may appear on his own behalf, or may be represented by counsel or by other representatives.

F. Conduct of Hearings

1. Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the appropriate decision. Written statements may be presented any time prior to the time the hearing file is closed. The presiding officer may afford participants an opportunity for rebuttal.

2. The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

3. Cross-examinations of witnesses shall not be permitted.

4. All public hearings shall be recorded verbatim. Copies of the transcript will be available for public inspection and purchase at the office of the administrator.

5. All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion for reasons of redundancy, be received in evidence and shall constitute a part of the hearing file.

6. The hearing file shall remain open for a period of 10 days after the close of the public hearing for submission of written comments or other materials. This time period may be extended for good cause.

7. In appropriate cases, joint public hearings may be held with other state, federal, or local agencies, provided the procedures of those hearings are generally consistent with the requirements of this regulation.

8. The procedures in Paragraphs 4 and 6 of this Subsection may be waived by the presiding officer in appropriate cases.

G. Filing of Transcript of the Public Hearing. The testimony and all evidence received at the public hearing shall be made part of the administrative record of the action. All matters discussed at the public hearing shall be fully considered in arriving at the decision or recommendation. Where a person other than the primary decision making official serves as presiding officer, such person shall submit a report summarizing the testimony and evidence received at the hearing to the primary decision making official for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended by the Department of Natural Resources, Office of Coastal Management, LR 39:328 (February 2013).

§728. Public Notice

A. Electronic Public Notice List. The Office of Coastal Management shall maintain the electronic public notice list, which shall contain the name and electronic address provided by all persons who request to receive public notice from the Office of Coastal Management via electronic transmission. Subscribers to the electronic public notice list will receive electronic notification by email or other widely available electronic means of dissemination used for distributing information electronically if the subscriber requests such other means be utilized and if such technology is being used by the Office of Coastal Management. The content of these transmissions will include: public notice of applications, notice of public hearings, notice of other agency actions, and items of general interest related to the programs of the Office of Coastal Management.

1. Procedure for Subscribing to the Electronic Public Notice List

a. Any interested person may request orally or in writing to be added or removed as a subscriber to the electronic public notice list.

b. Once the Office of Coastal Management receives the request, the interested party will be added to the electronic public notice list.

2. Maintenance of the Electronic Public Notice List

a. Periodically, but not more than twice per year, the Office of Coastal Management may send a request to subscribers of the electronic public notice list to verify their intention to remain a subscriber. The request may contain an “opt out” feature that allows the subscriber to request to be removed from the electronic public notice list.

b. Subscribers may be removed from the electronic public notice list anytime after one year after receipt of their latest request to be placed on the list, or upon a request from the subscriber to be removed from the list, whichever occurs first. Subscribers will be informed that they may be removed from the electronic public notice list anytime after one year after receipt of their latest request to be placed on the list at the time they request to be included on such list.

3. Automatic Removal from Public Notice Mailing List

a. A request to be added as a subscriber to the electronic public notice list will serve as a request for removal from the public notice mailing list, as described below.

B. Public Notice Mailing List. The Office of Coastal Management shall maintain a public notice mailing list of all interested persons who request to be subscribers to the public notice mailing list in order to receive notice of applications, public hearings, other agency action, and items of general interest related to the programs of the Office of Coastal Management via the United States Postal Service.

1. Procedure for Subscribing to the Public Notice Mailing List

a. Any person seeking to be added to the public notice mailing list shall submit a request orally or in writing.

b. Once the Office of Coastal Management receives the request, the interested party will be added to the public notice mailing list.

2. Maintenance of the Public Notice Mailing List

a. The fact that any correspondence or dispatch sent to any subscriber on the public notice mailing list, properly addressed with postage prepaid, is returned as unclaimed or undeliverable, may be regarded as evidence of the subscriber's intent to be removed from the public notice mailing list, and the subscriber may be removed from the public notice mailing list without further formality.

b. Subscribers may also be removed from the public notice mailing list anytime after one year after receipt of their latest request to be placed on the public notice mailing list or upon a request by the subscriber to be removed from such list, whichever occurs first. Subscribers will be informed that they may be removed from the public notice mailing list anytime after one year after receipt of their latest request to be placed on the list at the time they request to be included on such list.

c. Any subscriber found on the electronic public notice list shall be removed without further formality from the public notice mailing list.

C. Prior Mailing Lists

1. All mailing lists authorized under regulations in effect prior to the effective date of this regulation are terminated, and all subscriptions on those lists are converted to subscriptions to the public notice mailing list with a start date concurrent with the effective date of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended by the Department of Natural Resources, Office of the Secretary, LR 35:2184 (October 2009), LR 35:2188 (October 2009), amended by the Department of Natural Resources, Office of Coastal Management, LR 39:328 (February 2013).

Subchapter F. Special Areas

§729. Special Areas

A. General. This Section shall establish procedures for the designation, utilization and management of special areas and for establishing guidelines and priorities of uses for each area.

B. Nominations

1. An area may be nominated for designation as a special area by any person, local government, state agency, or the secretary.

2. Areas may be nominated for any of the purposes set forth in §214.27 of the Act, or for similar purposes, provided that such areas:

a. are in the coastal zone;

b. have unique and valuable characteristics;

- c. require special management procedures different from the normal coastal management process; and
- d. are to be managed for a purpose of regional, state, or national importance.

3. Nominations shall consist of:

- a. a statement regarding the area nominated, including, for example, its unique and valuable characteristics, its existing uses, the environmental setting, its history, and the surrounding area;
- b. a statement of the reasons for the nomination, such as any problems needing correction, anticipated results, need for special management, and need for protection or development;
- c. a statement of the social, economic, and environmental impacts of the nomination;
- d. a map showing the area nominated;
- e. a statement as to why the area nominated was delineated as proposed and not greater or lesser in size or not in another location;
- f. proposed guidelines and procedures for management of the area, including priorities of uses;
- g. an explanation of how and why the proposed management program would achieve the desired results;
- h. a statement as to how and why the designation of the area would be consistent with the state coastal management program and any affected local programs; and
- i. a statement as to why and how the designation would be in the best interest of the state.

C. Administrative Review

1. The secretary shall review proposals for their suitability and consistency with the coastal management program.
2. If he finds that a proposal is suitable and consistent with the coastal management program, the secretary may, with the advice and assistance of affected local programs, prepare a draft "Proposal for a Special Area." The proposal shall consist of the delineation of the area to be designated, the guidelines and procedures for management, and priorities of uses.
3. Public notice announcing a public hearing on the proposal shall be given and published in a newspaper of general circulation in the affected parishes. Copies of the proposal may be obtained from the secretary upon request and copies shall be made available for public review at the offices of the secretary, offices of local programs, and at public libraries in affected parishes. Notice and copies of the proposals shall be sent to appropriate governmental bodies.
4. After the public hearing and consideration of all comments received at or before the hearings, the secretary shall determine whether to designate the area proposed, or a part of it or an approximately similar area, and adopt the guidelines and procedures for management and priorities of uses. Public notice of the secretary's decision shall be given.

D. Gubernatorial Establishment. The governor may designate special areas and establish the guidelines and procedures for management and priorities of uses applicable in such areas.

E. Establishment of Special Area. If the state coastal zone program has not yet received federal approval, the special area designation and its management program shall go into effect upon the order of the governor. If the coastal zone program has been federally approved, the special area designation and its management program shall go into effect after federal approval of the special area as an element or amendment of the state's coastal zone program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).



APPENDIX B

R.S.49:214.21 SUBPART C

SUBPART C. LOUISIANA COASTAL ZONE MANAGEMENT PROGRAM

§214.21. Short title

This Subpart shall be known and may be cited as the State and Local Coastal Resources Management Act of 1978. Acts 1978, No. 361, §1, eff. Jan. 1, 1979.

{{**NOTE:** SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.22. Declaration of public policy

The legislature declares that it is the public policy of the state:

- (1) To protect, develop, and, where feasible, restore or enhance the resources of the state's coastal zone.
- (2)(a) To assure that, to the maximum extent feasible, constitutional and statutory authorities affecting uses of the coastal zone should be included within the Louisiana Coastal Management Program and that guidelines and regulations adopted pursuant thereto shall not be interpreted to allow expansion of governmental authority beyond those laws.
- (b) To express certain regulatory and non-regulatory policies for the coastal zone management program.
Regulatory policies are to form a basis for administrative decisions to approve or disapprove activities only to the extent that such policies are contained in the statutes of this state or regulations duly adopted and promulgated pursuant thereto. They are to be applicable to each governmental body only to the extent each governmental body has jurisdiction and authority to enforce such policies. Other policies are nonregulatory. They are included in the Coastal Zone Management Plan to help set out priorities in administrative decisions and to inform the public and decision makers of a coherent state framework, but such policies are not binding on private parties.
- (3) To support and encourage multiple use of coastal resources consistent with the maintenance and enhancement of renewable resource management and productivity, the need to provide for adequate economic growth and development and the minimization of adverse effects of one resource use upon another, and without imposing any undue restriction on any user.
- (4) To employ procedures and practices that resolve conflicts among competing uses within the coastal zone in accordance with the purpose of this Subpart and simplify administrative procedures.
- (5) To develop and implement a coastal resources management program which is based on consideration of our resources, the environment, the needs of the people of the state, the nation, and of state and local government.
- (6) To enhance opportunities for the use and enjoyment of the recreational values of the coastal zone.
- (7) To develop and implement a reasonable and equitable coastal resources management program with sufficient expertise, technical proficiency, and legal authority to enable Louisiana to determine the future course of development and conservation of the coastal zone and to ensure that state and local governments have the primary authority for managing coastal resources.
- (8) To support sustainable development in the coastal zone that accounts for potential impacts from hurricanes and other natural disasters and avoids environmental degradation resulting from damage to infrastructure caused by natural disasters.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979; Acts 2006, No. 548, §1, eff. June 22, 2006.

{{**NOTE:** SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.23. Definitions

- (1) "Alternative access" shall mean methods of gaining access, ingress and egress, other than by the dredging of canals into the wetlands for drilling, servicing, work over, or any other production of minerals activity.
- (2) "Alternative access vehicle" shall mean any hover craft, helicopter, air cushion vehicle, or any other vehicle which does not require dredging.
- (3) "Coastal use permit" shall mean the permits required by R.S. 49:214.30 of this Subpart and shall not mean or refer to, and shall be in addition to, any other permit or approval required or established pursuant to any other constitutional provision or statute.
- (4) "Coastal waters" shall mean bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).
- (5) "Coastal Zone" shall mean the coastal waters and adjacent shorelands within the boundaries of the coastal zone established in R.S. 49:214.24, which are strongly influenced by each other, and in proximity to the shorelines, and uses of which have a direct and significant impact on coastal waters.
- (6) "Fastlands" are lands surrounded by publicly owned, maintained, or otherwise validly existing levees, or natural formations, as of the effective date of this Subpart or as may be lawfully constructed in the future, which levees or natural formations would normally prevent activities, not to include the pumping of water for drainage purposes, within the surrounded area from having direct and significant impacts on coastal waters.
- (7) "Guidelines" means those rules and regulations adopted pursuant to R.S. 49:214.27.
- (8) "Local government" shall mean the governmental body having general jurisdiction and operating at the parish level.
- (9) "Person" shall mean any individual, partnership, association, trust, corporation, public agency or authority, or state or local government body.
- (10) "Public hearing", wherever required in this Subpart, shall mean a hearing announced to the public at least 30 days in advance, and at which all interested persons shall be afforded a reasonable opportunity to submit data, views, or arguments, orally or in writing. At the time of the announcement of the public hearing all materials pertinent to the hearing, including documents, studies, and other data, in the possession of the party calling the hearing, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the party which conducted the hearing.
- (11) "Residential coastal use" shall mean any coastal use associated with the construction or modification of one single-family, duplex, or triplex residence or camp. It shall also include the construction or modification to any outbuilding, bulkhead, pier, or appurtenance on a lot on which there exists a single-family, duplex, or triplex residence or camp or on a water body which is immediately adjacent to such lot.
- (12) "Secretary" shall mean the secretary of the Department of Natural Resources or his designee.
- (13) "Use" shall mean any use or activity within the coastal zone which has a direct and significant impact on coastal waters.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979; Acts 1983, No. 705, §§4, 7, eff. Sept. 1, 1983; Acts 1984, No. 408, §§1, 3, eff. July 6, 1984; Acts 1987, No. 497, §1, eff. July 9, 1987; Acts 2000, 1st Ex. Sess., No. 147, §1.

{**NOTE:** SEE ACTS 1989 2D EX. SESS., NO. 6, §7.}

§214.24. Coastal zone boundary

- A. The seaward boundary of the coastal zone of Louisiana shall be the seaward limit of the state of Louisiana as determined by law.
- B. The interstate boundaries of the coastal zone shall be the boundary separating Louisiana from Texas on the west and the boundary separating Louisiana from Mississippi on the east, as each is determined by law.

C. The inland boundary of the coastal zone shall generally be a line beginning at the intersection of the northern line of the Intracoastal Canal and the Louisiana/Texas boundary, thence proceeding easterly along the northern bank of the Intracoastal Canal to Highway 82, thence northeasterly along Highway 82 to Highway 690, thence easterly along Highway 690 to Highway 330, thence northeasterly along Highway 330 to Highway 14, thence easterly along Highway 14 to Highway 90, thence southeasterly along Highway 90 to Highway 85, thence northeasterly along Highway 85 to Highway 90, thence easterly along Highway 90 to the intersection of Highway 90 and the East Atchafalaya Basin Protection Levee thence northerly along the East Atchafalaya Basin Protection Levee to the intersection of the boundary which separates the parishes of St. Martin and Iberia, thence easterly along the boundary separating Iberia Parish from St. Martin Parish, to the intersection of the St. Martin Parish boundary with the boundary separating St. Martin Parish from Assumption Parish, thence southerly along the boundary separating St. Martin Parish from Assumption Parish to the intersection of the boundary with the northern shore of Lake Palourde, thence westerly along the northern shore of Lake Palourde to the intersection of the shore with the northern boundary of the city of Morgan City, thence following the boundary of the corporate limits of the city of Morgan City to where it intersects with the northern bank of the Gulf Intracoastal Waterway, thence along the northern bank of the Gulf Intracoastal Waterway to the vicinity of the Bayou du Large Ridge, thence proceeding southerly along the western edge of the Bayou du Large Ridge to the intersection of the Falgout Canal, thence proceeding easterly along the north bank of the Falgout Canal to the eastern edge of the Bayou du Large Ridge, thence proceeding northerly along the eastern edge of the Bayou du Large Ridge to the vicinity of Crozier, thence proceeding easterly to the western edge of the Grand Caillou Ridge, thence proceeding southerly along the western edge of the Grand Caillou Ridge to the vicinity of Dulac, thence proceeding easterly to the eastern edge of the Grand Caillou Ridge, thence proceeding northerly along the eastern edge of the Grand Caillou Ridge to the northern bank of the St. Louis Canal, thence proceeding easterly along the northern bank of the St. Louis Canal to the western edge of the Petit Caillou Ridge, thence proceeding southerly along the western edge of the Petit Caillou Ridge to the vicinity of Chauvin, thence proceeding easterly to Highway 55, thence proceeding northerly along Highway 55 to its intersection with Highway 665, thence easterly along Highway 665 to Bayou Pointe au Chien, thence northerly along Bayou Pointe au Chien to Highway 55, thence northerly along Highway 55 to Highway 24, thence easterly along Highway 24 to Highway 308, thence northerly along Highway 308 to a point of intersection with the northern bank of the Gulf Intracoastal Waterway, thence northeasterly along the northern bank of the Gulf Intracoastal Waterway to a point of intersection with Canal Tisamond Foret, thence proceeding northeasterly along the northern bank of the Canal Tisamond Foret to a point of intersection with a line one hundred yards inland from the mean high tide line of Lake Salvador, thence proceeding northerly along the line one hundred yards inland from the mean high tide of Lake Salvador to a point of intersection with a line one hundred yards from the mean high water line of Bayou Des Allemands, thence proceeding northwesterly along the line one hundred yards inland from the western mean high water line of Bayou Des Allemands and the Petit Lac Des Allemands to a point of intersection with the boundary separating Wards 7 and 8 of Lafourche Parish, thence proceeding southwestwardly along said boundary to a point of intersection with the Midway Canal, thence proceeding northwesterly along the Midway Canal, and in a northwesterly straight line prolongation of said canal, to a point of intersection with U.S. Highway 90, thence proceeding northeasterly along U.S. Highway 90 to a point of intersection with the line one hundred yards from the western mean high water line of Baie Des Deux Chenes, thence proceeding northwesterly along said line one hundred yards from the western mean high water line of Baie Des Deux Chenes to a point of intersection with the line one hundred yards from the mean high water line of Lac Des Allemands, thence proceeding westerly along said line to a point of intersection with a line one hundred yards from the mean high water line of Bayou Boeuf, thence proceeding southerly along the line of one hundred yards from the mean high water line of Bayou Boeuf to a point of intersection with Highway 307, thence proceeding westerly along Highway 307 to a point of intersection with Highway 20, thence proceeding northerly along Highway 20 to a point of intersection with the boundary separating St. James Parish and Lafourche Parish, thence proceeding westerly along said boundary to a point of intersection with the boundary separating St. James Parish and Assumption Parish, thence proceeding northerly along said

boundary to a point of intersection with the boundary separating St. James Parish and Ascension Parish, thence proceeding northerly and easterly along said boundary to a point of intersection with the boundary separating Ascension Parish and St. John the Baptist Parish, thence proceeding northerly along said boundary to a point of intersection with the boundary separating Ascension Parish and Livingston Parish, thence proceeding northwesterly along said boundary to a point of intersection with the boundary separating Livingston Parish and East Baton Rouge Parish, thence proceeding northwesterly along said boundary to a point of intersection with Interstate Highway 12 thence, proceeding easterly along Interstate Highway 12 to a point of intersection with Interstate Highway 10, thence proceeding easterly along Interstate Highway 10 to a point of intersection with the boundary separating Louisiana and Mississippi. The inland boundary of the coastal zone shall also include all or any portions of the parishes of Ascension or Iberville recommended for inclusion in the coastal zone by the final report of the Coastal Protection and Restoration Authority of Louisiana prepared in response to Senate Concurrent Resolution No. 60 of the 2009 Regular Session.

D. The secretary shall adopt a fully delineated inland boundary in accordance with the provisions of Subsection C, which boundary shall not depart appreciably from the boundary delineated therein. The secretary shall be authorized to amend the boundary as may be appropriate to follow the corporate limits of any municipality divided by the boundary. The boundary, as adopted, shall be clearly marked on large scale maps or charts, official copies of which shall be available for public inspection in the offices of the coastal management program of the Department of Natural Resources and each local government in the coastal zone.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979. Amended by Acts 1979, No. 665, §1, eff. July 18, 1979; Acts 1980, No. 396, §1; Acts 1983, No. 705, §4, eff. Sept. 1, 1983; Acts 2010, No. 956, §1.

NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.

§214.25. Types of uses

A. Uses of the coastal zone subject to the coastal use permitting program shall be of two types:

(1) Uses of state concern: Those uses which directly and significantly affect coastal waters and which are in need of coastal management and which have impacts of greater than local significance or which significantly affect interests of regional, state, or national concern. Uses of state concern shall include, but not be limited to:

- (a) Any dredge or fill activity which intersects with more than one water body.
- (b) Projects involving use of state owned lands or water bottoms.
- (c) State publicly funded projects.
- (d) National interest projects.
- (e) Projects occurring in more than one parish.
- (f) All mineral activities, including exploration for, and production of, oil, gas, and other minerals, all dredge and fill uses associated therewith, and all other associated uses.
- (g) All pipelines for the gathering, transportation or transmission of oil, gas and other minerals.
- (h) Energy facility siting and development.
- (i) Uses of local concern which may significantly affect interests of regional, state or national concern.

(2) Uses of local concern: Those uses which directly and significantly affect coastal waters and are in need of coastal management but are not uses of state concern and which should be regulated primarily at the local level if the local government has an approved program. Uses of local concern shall include, but not be limited to:

- (a) Privately funded projects which are not uses of state concern.
- (b) Publicly funded projects which are not uses of state concern.
- (c) Maintenance of uses of local concern.
- (d) Jetties or breakwaters.
- (e) Dredge or fill projects not intersecting more than one water body.

- (f) Bulkheads.
- (g) Piers.
- (h) Camps and cattlewalks.
- (i) Maintenance dredging.
- (j) Private water control structures of less than \$15,000 in cost.
- (k) Uses on cheniers, salt domes, or similar land forms.

B. Subject to the provisions of this Subpart, the delineation of uses of state or local concern shall not be construed to prevent the state or local governments from otherwise regulating or issuing permits for either class of use pursuant to another law.

C. The secretaries of the Departments of Natural Resources and Wildlife and Fisheries are authorized to jointly develop for adoption by the secretary, after notice and public hearing, rules for the further delineation of the types of uses that have a direct and significant impact on coastal waters and that demonstrate a need for coastal management, the classification of uses not listed herein, and for the modification and change of the classifications of uses, provided that no changes shall be made in the classifications of the uses listed in Subsection A.

D. In order for the state to exercise all or part of the federal government's authority for the issuance of permits for discharges of dredged or fill material within the coastal zone, the secretary is authorized to adopt necessary and appropriate rules, consistent with the other provisions of this statute, for the regulation of discharges of dredged or fill material into waters in the coastal zone subject to Section 404 regulation by the Corps of Engineers.

E. When only part of a use lies within the coastal zone, only that portion of the use which is located within the coastal zone is considered a use subject to a coastal use permit under this Subpart.

F. All uses and activities within the coastal zone are permissible, except as subject to the permitting requirements of this Subpart.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979; Acts 1983, No. 705, §4, eff. Sept. 1, 1983.

{ **{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}** }

§214.26. Coastal management program; administration

A.(1) A coastal management program is hereby established within the Department of Natural Resources. The secretary or his designee shall administer the coastal management program.

(2) The secretary is authorized to employ such additional staffing as may be necessary to carry out the coastal management program.

B. The secretary may authorize his designee to administer the program and/or:

- (1) Receive, evaluate, and make recommendations to the secretary concerning applications for coastal uses permits.
- (2) Conduct or cause to be conducted investigations, studies, planning, and research.
- (3) Systematically monitor and conduct surveillance of permitted uses to ensure that conditions of coastal use permits are satisfied.
- (4) Coordinate closely with the secretary and local, state, regional, and federal agencies with respect to coastal management.
- (5) Make recommendations to the secretary relative to appropriate enforcement measures for violations of this Subpart and measures to obtain civil relief, as provided by Section 214.36(D).
- (6) Provide advice and technical assistance to the secretary and local governments.
- (7) Conduct such activities or make such decisions as may be delegated or authorized by the secretary.

C. The secretary shall make decisions on applications for coastal use permits and may establish conditions on the granting of coastal use permits.

D. The secretary is further authorized to carry out those duties delegated to his designee by Subsection B of this Section.

Acts 1983, No. 705, §4, eff. Sept. 1, 1983; Acts 1984, No. 408, §1, eff. July 6, 1984.

{**{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}**}

§214.27. Coastal management programs; development; guidelines

A. The secretary shall develop the overall state coastal management program consisting of all applicable constitutional provisions, laws and regulations of this state which affect the coastal zone in accordance with the provisions of this Subpart and shall include within the program such other applicable constitutional or statutory provisions or other regulatory or management programs or activities as may be necessary to achieve the purposes of this Subpart or necessary to implement the guidelines hereinafter set forth.

B.(1) The secretary shall develop a management program and guidelines in conjunction with the secretary of the Department of Wildlife and Fisheries or his designee. Notice of the issuance of the proposed guidelines shall be given to relevant federal, state, and local governmental bodies and the general public, and public hearings shall be held. After consideration of comments received, the secretary shall adopt the guidelines in final form.

(2) The adopted guidelines shall be followed in the development of the state program and local programs and shall serve as criteria for the granting, conditioning, denying, revoking, or modifying of coastal use permits. The secretary, jointly with the secretary of the Department of Wildlife and Fisheries or his designee, shall review the guidelines periodically at the request of either secretary to consider modifications to the guidelines as a result of experience in issuing coastal use permits and results of research and planning activities.

C. The state guidelines shall have the following goals:

(1) To encourage full use of coastal resources while recognizing it is in the public interest of the people of Louisiana to establish a proper balance between development and conservation.

(2) Recognize that some areas of the coastal zone are more suited for development than other areas and hence use guidelines which may differ for the same uses in different areas.

(3) Require careful consideration of the impacts of uses on water flow, circulation, quantity, and quality and require that the discharge or release of any pollutant or toxic material into the water or air of the coastal zone be within all applicable limits established by law, or by federal, state, or local regulatory authority.

(4) Recognize the value of special features of the coastal zone such as barrier islands, fishery nursery grounds, recreation areas, ports and other areas where developments and facilities are dependent upon the utilization of or access to coastal waters, and areas particularly suited for industrial, commercial, or residential development and manage those areas so as to enhance their value to the people of Louisiana.

(5) Minimize, whenever feasible and practical, detrimental impacts on natural areas and wildlife habitat and fisheries by such means as encouraging minimum change of natural systems and by multiple use of existing canals, directional drilling, and other practical techniques.

(6) Provide for adequate corridors within the coastal zone for transportation, industrialization, or urbanization and encouraging the location of such corridors in already developed or disturbed areas when feasible or practicable.

(7) Reduce governmental red tape and costly delays and ensure more predictable decisions on permit applications.

(8) Encourage such multiple uses of the coastal zone as are consistent with the purposes of this Subpart.

(9) Minimize detrimental effects of foreseeable cumulative impacts on coastal resources from proposed or authorized uses.

(10) Provide ways to enhance opportunities for the use and enjoyment of the recreational values of the coastal zone.

(11) Require the consideration of available scientific understanding of natural systems, available engineering technology and economics in the development of management programs.

(12) Establish procedures and criteria to ensure that appropriate consideration is given to uses of regional, state, or national importance, energy facility siting and the national interests in coastal resources.

D.(1) In the development and implementation of the overall coastal management program, the secretary shall conduct a public education program to inform the people of the state of the provisions of this Subpart and the rules and regulations adopted pursuant hereto, and participation and comments by federal, state, and local governmental bodies, including port authorities, levee boards, regional organizations, planning bodies, municipalities and public corporations, and the general public shall be invited and encouraged.

(2) All governmental bodies may participate to ensure that their interests are fully considered.

E.(1) The secretary shall issue a request for proposals to all major manufacturers of alternative access vehicles and all major oil producers, and shall accept from any interested party proposals to physically demonstrate methods which are technically and economically feasible as well as environmentally sound to gain alternative access to the wetlands for the purpose of oil and gas operations in lieu of the need for dredging.

(2) The secretary shall complete the demonstration project at no cost to the state and report his findings on the technical and economic feasibility of alternative access to the committees on natural resources of the Senate and House of Representatives by March 1, 1988.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979. Acts 1983, No. 705, §4, eff. Sept. 1, 1983; Acts 1984, No. 408, §1, eff. July 6, 1984; Acts 1987, No. 497, §1, eff. July 9, 1987; Acts 1991, No. 640, §1; Acts 2004, No. 459, §1, eff. June 24, 2004.

§214.28. Local coastal management programs

A. Local governments may develop local coastal management programs in accordance with the provisions of this Section.

B. The secretary shall adopt, after notice and public hearing, rules and procedures for the development, approval, modification, and periodic review of local coastal management programs. Such rules and procedures may subsequently be amended by the secretary.

C. The rules and procedures adopted pursuant to this Section shall be consistent with the state guidelines and shall provide particularly, but not exclusively, that:

(1) Local governments, in developing local programs, shall afford full opportunity for municipalities, state and local government bodies, and the general public to participate in the development and implementation of the local program.

(2) A public hearing to receive comments on a proposed local program shall be held in the area to be subject to the program by the local government proposing the program or its duly appointed local committee.

(3) A local program developed under this Section shall be consistent with the state guidelines and with the policies and objectives of this Subpart and shall particularly, but not exclusively, consist of:

(a) A description of the natural resources and the natural resource users of the coastal zone area within the parish, the social and economic needs within particular areas of the coastal zone of the parish, and the general order or priority in which those needs which directly and significantly affect coastal waters should be met within the coastal zone of the parish.

(b) Procedures to be used by the local government to regulate uses of local concern.

(c) Special procedures and methods for considering uses within special areas, uses of greater than local benefit, and uses affecting the state and national interest.

(4) Each local government preparing a local program under this Section may appoint a coastal advisory committee, hereinafter called "local committee". The local committee shall be composed of a reasonable number of persons who represent users of coastal resources and shall include representation of users concerned with conservation and preservation of renewable coastal resources and users concerned with development of resources for commercial purposes. The local committee shall assist local government in the development and implementation of a local program and in the development of special management programs affecting special areas. The local committee may

report progress or problems in the implementation of the state and local programs and may convey ideas and suggestions to the local governments and the secretary.

(5) Local programs shall be submitted to the secretary for review and may be submitted after promulgation of the state guidelines and the rules adopted pursuant to this Section.

D. In approving a local program, the secretary, acting jointly with the secretary of the Department of Wildlife and Fisheries or his designee, may make reasonable interpretations of the state guidelines insofar as they affect that particular local program, which are necessary because of local environmental conditions or user practices. The secretary may otherwise provide for the requirements for approval of local programs.

E. Within ninety days after receipt of a proposed local program, the secretary shall either approve the program or notify the local government of the specific changes which must be made in order for it to be approved. Before making his decision the secretary shall consider each proposed local program, the comments received from other agencies, interested persons and the public hearing, the state guidelines and the rules adopted pursuant to this Section. A local program may be resubmitted, or amended following the same procedures outlined herein.

F. A local government or any other persons adversely affected by a decision of the secretary pursuant to R.S. 49:214.28(E) may appeal the decision in accordance with R.S. 49:214.35.

G. No local coastal program shall become effective until it has been approved by the secretary. Once approved, a local program shall be available for public inspection at the offices of the local government and of the coastal management program.

H. Once a local program is approved by the secretary:

(1) Uses of local concern within the parish's coastal zone must be consistent with the local program and shall be subject to the issuance of coastal use permits by the local government.

(2) The local program may be altered or modified only with approval of the secretary pursuant to the procedures provided for approval of local program.

(3) The local program, its procedures and implementation shall be subject to periodic review by the secretary to ensure continued consistency with the state program, guidelines, and with the policies and purpose of this Subpart. The secretary shall require the modification of the local program or its procedures when necessary to ensure such consistency pursuant to the procedures provided for approval of a local program.

I. The secretary is authorized to enter into contracts with local governments to provide financial assistance on a matching fund basis to aid the development and implementation of approved local programs under this Subpart.

The secretary shall develop rules and procedures after notice and public hearing, under which local governments may qualify for such assistance.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979. Amended by Acts 1979, No. 613, §1, eff. July 18, 1979. Acts 1983, No. 705, §4, eff. Sept. 1, 1983; Acts 1984, No. 408, §1, eff. July 6, 1984.

{{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.29. Special areas, projects, and programs

A. Special areas are areas within the coastal zone which have unique and valuable characteristics requiring special management procedures. Special areas may include important geological formations, such as beaches, barrier islands, shell deposits, salt domes, or formations containing deposits of oil, gas or other minerals; historical or archaeological sites; corridors for transportation, industrialization or urbanization; areas subject to flooding, subsidence, salt water intrusion or the like; unique, scarce, fragile, vulnerable, highly productive or essential habitat for living resources; ports or other developments or facilities dependent upon access to water; recreational areas; freshwater storage areas; and such other areas as may be determined pursuant to this Section.

B. The secretary shall adopt, after notice and public hearing, rules for the identification, designation, and utilization of special areas and for the establishing of guidelines or priorities of uses in each area.

C. Those areas and facilities subject to the jurisdiction of the Offshore Terminal Authority are deemed to be special areas. The environmental protection plan required by R.S. 34:3113 shall constitute the management guidelines for this special area and shall continue to be administered and enforced by the Offshore Terminal Authority or its successor in accordance with the policies and objectives of the state program.

D. The secretary shall have the authority to set priorities, consistent with this Subpart, for funding available under Section 308 of the Federal Coastal Zone Management Act (PL 92-583 as amended by PL 94-370).

E. The secretary is authorized to assist approved local programs and state and local agencies carrying out projects consistent with the guidelines, related to the management, development, preservation, or restoration of specific sites in the coastal zone or to the development of greater use and enjoyment of the resources of the coastal zone by financial, technical, or other means, including aid in obtaining federal funds.

F. Notwithstanding any law, order, or regulation to the contrary, the secretary shall prepare a freshwater diversion plan for the state in order to reserve or offset land loss and salt water encroachment in Louisiana's coastal wetlands. As part of this plan the secretary shall prepare specific recommendations as to those locations which are most in need of freshwater diverted from the Mississippi River and other water bodies of the state, and he shall include the projected costs thereof and the order of priority.

G. The secretary shall develop an indexing system whereby those wetland, coastline, and barrier island areas which are undergoing rapid change or are otherwise considered critical shall be identified; and the secretary shall also undertake a pilot program to create one or more artificial barrier islands in order to determine the effectiveness of such islands in controlling shoreline erosion.

H. The governor may, upon recommendation by the secretary and after consultation with the attorney general as to any adverse impact on the coastline, enter into agreements with the United States regarding the construction, maintenance, and operation of projects along the coastline and in the Gulf of Mexico. The agreements may provide that such projects shall not affect the location of the shoreline or boundaries of the state.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979. Amended by Acts 1978, No. 777, §1; Acts 1979, No. 561, §1; Acts 1979, No. 574, §1; Acts 1979, No. 613, §1, eff. July 18, 1979; Acts 1983, No. 591, §2, eff. July 14, 1983; Acts 1984, No. 408, §1, eff. July 6, 1984.

{{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.30. Coastal use permits

A.(1) No person shall commence a use of state or local concern without first applying for and receiving a coastal use permit. Decisions on coastal use permit applications shall be made by the secretary, except that the local government shall make coastal use permit decisions as to uses of local concern in areas where an approved local program is in effect. Conditions set forth in a coastal use permit shall supersede any and all variances or exceptions granted by the commissioner of conservation in accordance with R.S. 30:4(E)(1) for activities within the coastal zone as defined by R.S. 49:214.24.

(2) Prior to issuance of a coastal use permit, the secretary shall ensure that the activity for which application is being made is consistent with the state's master plan for integrated coastal protection. No activity which is not consistent with the plan shall be granted a coastal use permit. In addition, any permit granted to repair or replace a pipeline that would impact integrated coastal protection in the state's master or annual plan shall include a requirement that the pipeline owner shall be responsible for the cost to repair or replace such pipeline. The pipeline owner shall be responsible for the performance of any pipeline relocation work to accommodate the construction of any integrated coastal protection. Any incremental costs associated with such relocation work shall be reimbursed to the pipeline owner by the appropriate federal, state, or local governmental agency. As used in this Paragraph,

"incremental costs" means the cost of the pipeline relocation required by the appropriate governing authority less the cost that the pipeline operator would have incurred for the maintenance project.

B. Within one hundred twenty days after the effective date of this Subpart, the secretary shall adopt, after notice and public hearing, rules and procedures consistent with this Subpart for both the state coastal management program and approved local programs regarding the form and information requirements for coastal use permit applications, the coastal use permit review process, public notice and public comments, criteria and guidelines for decision making, appeals and emergency activities.

C. The rules promulgated pursuant to this Section shall, among other things, provide that:

(1) Coastal use permit applications shall be submitted to the secretary, except that applications for uses in areas subject to an approved local program may instead be submitted to the local government. Local governments with an approved program to whom applications are submitted shall make the initial determination, subject to review by the secretary with a right of appeal, as to whether the proposed use is of state concern or local concern. Copies of all applications submitted to local governments and the local government's use-type determination shall be transmitted to the secretary within two days of receipt.

(2)(a) Within ten days of receipt of a coastal use permit application by the secretary, copies of the application shall be distributed to the local government or governments in whose parish the use is to occur and all appropriate state and local agencies, and public notice shall be given. A public hearing on an application may be held. Concurrently with the filing of the coastal use permit application, a copy of the application shall be distributed by the applicant to the owner or owners of the land on which the proposed coastal use is to occur. The landowner and his address shall be determined by rules of the administrator. The applicant shall make every reasonable effort, which shall include a search of the public records of the parish in which the use is to occur, if necessary, to determine the identity and current address of the owner or owners of the land on which the use is to occur. The application shall not be considered complete unless the applicant attaches thereto a written affidavit of the fact that reasonable efforts have been made to determine the identity and present address of each owner and a list of the names and addresses of the owners to whom the applicant has furnished a copy of the application. If the proposed activity would be located on property owned by more than ten persons, or on property owned jointly in an undivided interest consisting of more than ten persons, the secretary may deem the application complete upon proof that fifty percent of the persons owning or having an undivided interest in the property have been provided with a copy of the application. The secretary may also approve this method of landowner notification in the case where the applicant holds a valid right-of-way, easement, or servitude for conducting the proposed activity on that property or when a government entity proposes to conduct maintenance activities on existing public works projects.

(b) Notwithstanding any other law to the contrary, the secretary shall, after notification by the department to the applicant that the application is complete, grant or deny all applications for all permits, licenses, registrations, variances, or compliance schedules within sixty days. The notification of completeness shall be issued within fourteen days, exclusive of holidays, by the department. If the application is not complete, the department shall notify the applicant in writing of the deficiencies which cause the application not to be complete. If the secretary does not grant the application, he shall provide written reasons for his decision, and copies of the decision shall be provided to all parties. The secretary may delegate the power to grant permits, licenses, registrations, variances, or compliance schedules to an assistant secretary, division administrator or other designee.

(c) If the secretary does not grant or deny the application within the time period provided for herein, the applicant may file a rule as provided for in R.S. 49:962.1.

(3) The decision to approve, approve with modifications, or otherwise condition approval, or deny the coastal use permit shall be made within thirty days after public notice or within fifteen days after a public hearing, whichever is later. The coastal use permit decision must be consistent with the state program and approved local programs for affected parishes and must represent an appropriate balancing of social, environmental and economic factors. In all instances local government comments shall be given substantial consideration.

- (4) The decision to approve, approve with modifications, or otherwise condition approval, or deny the application for a coastal use permit shall be in writing and copies of the decisions shall be sent to all parties.
- (5) Public notice of coastal use permit decisions shall be given.
- (6) The secretary may adopt rules providing for alternate procedures for the filing of applications, distribution of copies, giving of notices, and public hearings in order to implement the coordinated coastal permitting process established pursuant to R.S. 49:214.33.
- (7) Notwithstanding any contrary provisions of law in this Section, the permitting authority may deny without prejudice, or withdraw or place on inactive status, the application for a coastal use permit if the applicant fails to respond within sixty days to any request or inquiry from the permitting authority.
- (8) Notwithstanding any contrary provision of law or regulation, a coastal use permit, once granted on private continuing marsh management projects, shall be valid for the life of the project or activity for which the permit is issued, unless the secretary shall thereafter modify, revoke, or suspend the permit. Unless the secretary revokes or suspends the permit, no further permits shall be necessary for activities required to operate or maintain the permitted use.
- (9) The secretary shall take into consideration a permit applicant's history of compliance with the provisions of the Louisiana Coastal Resources Program prior to making a determination of whether to approve, approve with modifications or otherwise conditionally approve, or deny the application for a coastal use permit. As used in this Paragraph, "permit applicant" shall mean the specific company, individual, or entity which has made application for the permit. Any use or activity found to not comply with the Louisiana Coastal Resources Program which was conducted by a person or entity or on a property prior to the acquisition of that person, entity, or property by the permit applicant shall not be considered a part of the permit applicant's history of compliance. The applicant shall be allowed to review and comment on his compliance record as compiled by the secretary. The department shall promulgate, under the Administrative Procedure Act, guidelines for implementation of this Paragraph.
- D. The applicant, the secretary, and affected local government or affected federal, state, or local agency, any aggrieved person, or any other person adversely affected by a coastal use permit decision may appeal the coastal use permit decision in accordance with R.S. 49:214.35.
- E. The secretary is authorized to adopt rules and procedures for the issuance of general coastal use permits and for the issuance of variances from the normal coastal use permitting requirements. For the purposes of this Subpart, a general coastal use permit is an authorization to prospective users to perform specific uses within prescribed areas of the coastal zone without the necessity for a complete, independent review of each proposed use and allows the shortest time period of review possible. The rules and procedures which may be adopted pursuant to this Section shall provide for expeditious processing of applications for general coastal use permits and may authorize variances from the normal coastal use permit application and review procedures. General coastal use permits and variances from the normal coastal use permitting requirements may not be issued except when the issuance of such general coastal use permits or variances does not impair the fulfillment of the objectives and policies of the Subpart.
- F. The secretary shall adopt rules whereby specified types of activities may be carried out under prescribed emergency conditions without the necessity of obtaining a coastal use permit in advance.
- G.(1) The secretary is authorized to establish a reasonable schedule for fees to be charged to the applicant for the processing and evaluation of coastal use permit applications.
- (2) The secretary is authorized to increase the fee charged to an applicant for a coastal use permit for a nonresidential coastal use to not more than one hundred dollars per application. In addition, the secretary is authorized to increase the fee charged to an applicant for a coastal use permit for a nonresidential coastal use that involves excavation or filling to not less than twenty-five dollars nor more than five thousand dollars per application, and such fee shall not exceed ten cents per cubic yard of material excavated or filled.
- (3) The secretary shall waive fees authorized by this Section for any individual, state agency, or political subdivision deemed by him to be engaged in coastal restoration activity consistent with the plan as provided in R.S. 49:213.6 and for local public bodies for constructing drainage improvements.

(4) Funds generated from these fees shall be deposited in the Coastal Resources Trust Fund as provided in R.S. 49:214.40.

H.(1) In order for the state to fulfill its obligation under the public policy provisions of this Subpart, the secretary shall insure that whenever a proposed use or activity requires the dredging or disposal of five hundred thousand cubic yards or more of any waterbottom or wetland within the coastal zone, the dredged material shall be used for the beneficial purposes of wetland protection, creation, enhancement, or combinations thereof, in accordance with a long term management strategies plan for each existing or proposed channel or canal as approved by the secretary.

(2) Whenever a proposed use or activity requires a coastal use permit for the dredging or disposal of from twenty-five thousand to five hundred thousand cubic yards of any water bottoms or wetland within the coastal zone, the secretary may require the beneficial use of the dredge material for wetland and barrier island protection, creation, enhancement or combinations thereof. Consideration shall include a site specific statement reflecting estimated costs and the availability of a suitable disposal area. Long term management strategy disposal areas shall be utilized when practical. Activities not in the vicinity of long term management strategy disposal areas shall be considered on a case by case basis through the coastal use permit process. A system of mitigation credits shall be initiated to encourage the beneficial use of dredged material by dredge applicants. The secretary shall require the beneficial use of dredge material in circumstances where it is deemed economically feasible with consideration given to the value of established mitigation credits.

(3) When a proposed use or activity involves dredging to construct or maintain a channel or canal greater than one mile in length in the coastal zone and where the secretary determines that failure to maintain and stabilize the banks of such channel or canal will result in direct or indirect loss of wetlands or adverse impacts to wetlands or water bottoms, the secretary shall require that such banks be maintained and stabilized using dredged materials or structural stabilization measures, or both. In areas where the secretary determines that dredged material placement alone is insufficient to maintain and stabilize the banks along all or part of the canal or channel, the use of structural stabilization measures, including but not limited to rock breakwaters, shall also be required. Any dredged material disposal and channel bank stabilization shall be in accordance with a long term management strategies plan for each existing or proposed channel or canal as approved by the secretary. At a minimum, the plan shall address environmental and economic considerations and emergency situations.

Acts 1990, No. 98, §1; Acts 1990, No. 662, §1, eff. July 19, 1990; Acts 1990, No. 996, §2; Acts 1991, No. 637, §1; Acts 1991, No. 828, §2; Acts 1991, No. 995, §1; Acts 1992, No. 815, §2; Acts 1993, No. 194, §2; Acts 1993, No. 970, §1; Acts 1997, No. 93, §1; Acts 2000, 1st Ex. Sess., No. 147, §1; Acts 2004, No. 277, §1; Acts 2004, No. 386, §1; Acts 2004, No. 459, §1, eff. June 24, 2004; Acts 2010, No. 834, §1.

§214.31. Existing authority of certain state departments and local governments retained

A. Nothing in this Subpart shall abridge the constitutional authority of any department of state government or any agency or office situated within a department of state government. Nor shall any provision, except as clearly expressed herein, repeal the statutory authority of any department of state government or any agency or office situated in a department of state government.

B. Permits issued pursuant to existing statutory authority of the office of conservation in the Department of Natural Resources for the location, drilling, exploration and production of oil, gas, sulphur or other minerals shall be issued in lieu of coastal use permits, provided that the office of conservation shall coordinate such permitting actions pursuant to R.S. 49:214.32(B) and (D) and shall ensure that all activities so permitted are consistent with the guidelines, the state program and any affected local program.

C. Permits issued pursuant to existing statutory authority by the Department of Wildlife and Fisheries for the leasing, seeding, cultivation, planting, harvesting or marking of oyster bedding grounds shall be issued in lieu of coastal use permits, provided that the Department of Wildlife and Fisheries shall coordinate such permitting actions

pursuant to R.S. 49:213.13(B) and (D) and shall ensure that all activities so permitted are consistent with the guidelines, the state program and any affected local program.

D. The provisions of this Subpart are not intended to abridge the constitutional authority of any local governments, levee boards or other political subdivisions.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979.

{{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.32. Intergovernmental coordination and consistency

A. Deep water port commissions and deep water port, harbor, and terminal districts, as defined in Article 6, Sections 43 and 44 of the Louisiana Constitution of 1974, shall not be required to obtain coastal use permits.

Provided, however, that their activities shall be consistent to the maximum extent practicable with the state program and affected approved local programs.

B. The governor, through the secretary, shall ensure that any activity within or outside the coastal zone that affects any land or water use or natural resources of the coastal zone which is undertaken, conducted, or supported by any governmental body is consistent with the state program and any affected approved local program having geographical jurisdiction over the action to the maximum extent practicable and, with respect to federal agencies, to the fullest extent allowed under federal law, particularly 16 U.S.C. 1456 and 15 C.F.R. 930.1-930.154 and amendments thereto. The governor, through the secretary, shall also ensure that such governmental body has considered the sustainability of any activity in the coastal zone and has accounted for potential impacts from hurricanes and other natural disasters.

C.(1) Consistency determinations shall be made by the secretary except that consistency determinations for uses carried out under the secretary's authority shall be made by the governor.

(2) The following schedule of fees shall be charged for the processing and evaluation of consistency determinations required by R.S. 49:214.32 to the person conducting an activity subject to consistency review. A nonrefundable processing fee of three hundred dollars shall accompany each application or request for consistency determination submitted to the Coastal Management Division.

(3) The schedule of fees shall become effective October 1, 1992.

(4) If the appropriate application fees are not included along with the application or request for consistency determination, the application or request shall be considered incomplete, and returned to the applicant.

(5) The following activities are exempted from consistency fees:

(a) The processing and evaluation of any consistency determinations relative to all matters concerning the Oil Spill Prevention and Response Act (R.S. 30:2451 et seq.) and any amendments thereto.

(b) The processing and evaluation of consistency determinations for activities performed by the Louisiana Department of Wildlife and Fisheries on wildlife management areas and refuges maintained or managed by the Department of Wildlife and Fisheries.

(c) The processing and evaluation of consistency determinations for activities performed by the Louisiana Department of Recreation and Tourism on state parks and cultural sites maintained and/or managed by the Louisiana Department of Recreation and Tourism.

(d) The processing and evaluation of consistency determinations for any portions of federally permitted activities which are also subject to the state coastal use permitting requirement.

(e) The processing and evaluation of consistency determinations for federal loans and grants.

(f) The processing and evaluation of consistency determinations for activities performed by the U.S. Fish and Wildlife Service on refuges maintained and/or managed by the U.S. Fish and Wildlife Service.

(g) The processing and evaluation of consistency determinations for activities performed by the U.S. Park Service in national parks.

- (h) The processing and evaluation of consistency determinations for maintenance of existing Outer Continental Shelf mineral facilities, pipelines, and other structures.
 - (i) The processing and evaluation of consistency determinations for relocation and removal of existing Outer Continental Shelf mineral facilities, pipelines, and other structures when such relocation or removal is required by federal or state statute or regulation.
 - (6) The monies generated from the collection of consistency determination fees shall be allocated and expended to employ sufficient personnel to process and evaluate consistency determinations in an expeditious manner.
 - (7) Decisions on consistency determinations shall be made within three months of receipt of the consistency determination by the Coastal Management Division, except as provided by federal regulations at 15 CFR 930.79 and 15 CFR 930.63.
 - (8) All other procedural and substantive requirements for consistency determinations are to be carried out in accordance with federal law, particularly 16 U.S.C. 1456 and 15 C.F.R. Sections 930.1-930.154, and amendments thereto.
- D. Governmental bodies shall fully coordinate their activities affecting the coastal zone with the state program and affected approved local programs. When the secretary finds that governmental actions not subject to the coastal use permitting program may significantly affect land and water resources within the coastal zone, he shall notify the secretary of the Department of Wildlife and Fisheries or his designee and the concerned governmental body carrying out the action. Any governmental body so notified shall coordinate fully with the secretaries or their designees, acting jointly, at the earliest possible stage of the proposed action. The secretaries or their designees, shall make comments to such other agencies in order to assure that such actions are consistent with the state program and affected local programs. These comments shall, to the maximum extent practicable, be incorporated into the action commented upon.
- E. Provided that neither the state nor any local government having an approved local program shall be liable for any damages resulting from activities occurring in connection with the granting of any coastal use permit pursuant to this Section; and provided further that any person undertaking any use within the coastal zone in accordance with the terms and conditions of a coastal use permit issued pursuant to this Section shall be considered in full compliance with the purposes and provisions of this Subpart.
- F.(1) In order for the state to fulfill its obligation under the public policy provisions of this Subpart, the secretary shall insure that whenever a proposed use or activity requires the dredging or disposal of five hundred thousand cubic yards or more of any waterbottom or wetland within the coastal zone, the dredged material shall be used for the beneficial purposes of wetland protection, creation, enhancement, or combinations thereof, in accordance with a long term management strategies plan for each existing or proposed channel as developed by the secretary and adopted pursuant to the provisions of the Louisiana Administrative Procedure Act.
- (2) When a proposed use or activity involves dredging to construct or maintain a channel or canal greater than one mile in length in the coastal zone and where the secretary determines that failure to maintain and stabilize the banks of such channel or canal will result in direct or indirect loss of wetlands or adverse impacts to wetlands or waterbottoms, the secretary shall require that such banks be maintained and stabilized using dredged materials or structural stabilization measures, or both. In areas where the secretary determines that dredged material placement alone is insufficient to maintain and stabilize the banks along all or part of the canal or channel, the use of structural stabilization measures, including, but not limited to rock breakwaters, shall also be required. Any dredged material disposal and channel bank stabilization shall be in accordance with a long term management strategies plan for each proposed or existing channel as developed by the secretary and adopted pursuant to the provisions of the Louisiana Administrative Procedure Act.
- (3) In developing a long term management strategies plan for each existing or proposed channel as provided in Paragraphs F(1) and (2), the secretary shall consult with and address the concerns of the following:
- (a) The local sponsor of the existing or proposed channel.

- (b) The governing authority for the parish in the coastal zone through which the channel is to be constructed or maintained.
 - (c) Representatives of the affected or potentially affected port or waterway facility operators.
 - (d) Representatives of the affected or potentially affected waterway user groups.
 - (e) Appropriate state and federal agencies.
- (4) The plan shall address beneficial use of dredged material disposal for the purposes of wetland protection, creation, enhancement, combinations thereof, and channel bank stabilization, where deemed appropriate by the secretary from a long-range perspective and shall incorporate structural, management, institutional, and economic components for a particular existing or proposed navigation channel. The plan shall include but not be limited to the following:
- (a) A list of projects, programs, or structural channel bank stabilization measures required for the conservation, restoration, or creation of wetlands lost, adversely affected, or with the potential to be lost as a result of existing or proposed navigation channels and the action required of each state or federal agency, port authority, user group, or other responsible party to implement said project, program, or channel bank stabilization measure.
 - (b) A schedule, estimated cost, and source or sources of funding for the implementation of each project, program, or channel bank stabilization measure included in the plan for a particular existing or proposed navigation channel.
 - (c) Scientific data and other reasons, including but not limited to economic, social, geographic, and biological considerations and parameters as to why each project, program, or structural measure was selected for inclusion. Specifically this will include an explanation as to how each project, program, or channel bank stabilization measure advances the plan's objectives with respect to beneficial use of dredged material disposal for the purposes of wetland protection, creation, enhancement, a combination thereof, and channel bank stabilization, where deemed appropriate by the secretary.
 - (d) Provisions which address emergency situations, including but not limited to instances of force majeure, acts of God, acts of war, and other problems or situations not anticipated in the plan.
- (5) Any plan approved by the secretary and adopted in accordance with the Louisiana Administrative Procedure Act shall be consistent with the provisions of R.S. 49:214.27 and 214.32, and the rules, regulations, and guidelines adopted thereunder. Any project, program, or structural channel bank stabilization measures included in an approved and promulgated plan for a particular existing or proposed navigation channel shall be deemed to be consistent with the Louisiana Coastal Resources Program, provided, however, actual construction and implementation is done in accordance with the plan, design memorandum, local cooperation agreement, and local cooperation agreement for a particular existing or proposed navigation channel. Consistency determinations for projects, programs or channel bank stabilization measures implemented or constructed on a channel or canal, or any segment thereof, which has not been made part of any plan approved and adopted pursuant to the provisions herein shall be made on a case-by-case basis in accordance with R.S. 49:214.27 and 214.32 and the rules, regulations and guidelines adopted thereunder. The provisions herein shall be made on a case-by-case basis in accordance with R.S. 49:214.27 and the rules, regulations, and guidelines adopted thereunder.
- (6)(a) Any long term management strategies plan shall have, as a matter of law a term of not more than ten years. At the end of the term, the secretary may, in accordance with applicable statutory law, rules, and regulations:
- (i) Extend or reissue a plan for another term of up to ten years.
 - (ii) Require a modification to incorporate terms and conditions deemed necessary for the wetland protection, conservation, restoration, enhancement, creation, any combination thereof, and channel bank stabilization, or to reflect regulatory changes which have been specified by rule or regulation.
- (b) The secretary may not revoke the consistency determination for any provision of a plan approved and adopted pursuant to the provisions herein unless notice is given to the sponsor assuring agency not less than one calendar year prior to the revocation. Upon such notice, the secretary shall consult with and respond in writing to the concerns of the local sponsor of the existing or proposed channel, the governing authority for the parish in the coastal zone through which the channel is constructed or maintained, representatives of the affected or potentially

affected port or waterway facility operators, representatives of the affected waterway user groups, and appropriate state and federal agencies.

(c) At the end of the term of any plan, the provisions of this Subsection shall apply to any request for an extension or renewal. No plan shall be terminated pursuant to this Section if the secretary has taken no action to extend, modify, or revoke the grant of authority. The grant of authority shall remain until such action is taken.

(7) Until a long term management strategies plan is adopted for a particular proposed or existing channel, the secretary shall continue to act in accordance with the provisions of R.S. 49:214.27 and 214.32 and the rules, regulations, and guidelines adopted thereunder in determining whether channel construction, maintenance, and associated dredged material disposal is consistent with Louisiana's Coastal Management Program.

(8)(a) The secretary may grant variances for consistency determinations for any project, program, or structural channel bank stabilization measure for which no funds are available to construct or implement same from the funding sources identified in a plan approved and adopted in accordance with this Section. Such variances may be granted upon presentation of reasonable evidence that compliance with the provisions of a plan will result in significant economic losses to any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the people of the state.

(b) In determining under what conditions and to what extent a variance from a plan approved and adopted pursuant to the provisions of the Section is granted, the secretary shall give due consideration to progress which the person, entity, sponsor, assuring agency, or state or federal agency requesting the variance shall have made in complying with and implementing a plan, the efforts made by the person, entity, sponsor, assuring agency, or state or federal agency requesting the variance to acquire adequate funding from the funding sources identified in a particular plan, and the degree and nature of the adverse ecological impacts caused by the failure to implement the project, program, or structural channel bank stabilization measure for which the variance is requested.

(c) The secretary may grant such variance which shall be conditioned to require the inclusion of the particular project, program, or channel bank stabilization measure, for which the variance is granted in the subsequent dredging cycle for that particular channel, and upon the requirement to provide a level of compensatory mitigation in accordance with the provisions of R.S. 49:214.41 for the ecological impacts resulting from the failure to implement the project, program, or structural channel bank stabilization measure for which the variance is granted.

Any variance granted pursuant to the provisions of this Section shall be granted for a period of time not to exceed two years, as shall be specified by the secretary. Any variance which may be granted shall be under the condition that the sponsor or assuring agency shall make such periodic reports to the secretary as to the progress made toward acquiring adequate funding. Upon failure of the secretary to take action within sixty days after receipt of a request for a variance, or upon failure of the secretary to enter a final order or determination within sixty days after final argument in any hearing under this Subpart, then for all purposes the person, entity, sponsor, assuring agency, or state or federal agency affected shall be entitled to treat such failure to act as a grant of the variance or of a finding favorable to the party requesting the variance.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979. Acts 1983, No. 705, §4, eff. Sept. 1, 1983; Acts 1991, No. 637, §1; Acts 1992, No. 1075, §1; Acts 2006, No. 548, §1, eff. June 22, 2006.

§214.33. Coordinated coastal permitting process

A. This Section is intended to expedite and streamline the processing of issuing coastal use permits and of obtaining all other concurrently required permits or approvals from other governmental bodies having separate regulatory jurisdiction or authority over uses of the coastal zone without impinging on the regulatory jurisdiction or authority of such other governmental bodies.

B. To implement this intent, within one year of the effective date of this Subpart, the secretary, local governments, and all other relevant governmental bodies having such other regulatory jurisdiction or authority over uses of the

coastal zone shall in cooperation with one another and under the direction of the governor establish a coordinated coastal permitting process by means of binding interagency agreements wherein:

- (1) One application form serves as the application form for all required permits or approvals from all governmental bodies taking part in the coordinated coastal permitting process.
 - (2) The application contains sufficient information so that all necessary reviews by all affected governmental bodies can be expeditiously carried out.
 - (3) A "one window" system for applications is established, with copies of the application being transmitted to all governmental bodies taking part in the coordinated coastal permitting process.
 - (4) Only one public hearing, if any, need be held on the application. Any public hearing held shall be deemed to serve for all governmental bodies taking part in the coordinated coastal permitting process.
 - (5) The shortest practicable period for review of applications by all governmental bodies taking part in the coordinated coastal permitting process insofar as the application pertains to the regulatory jurisdiction or authority of such governmental body, is provided for.
 - (6) The coordinated coastal permitting process shall not affect the powers, duties, or functions of any governmental body particularly the Department of Wildlife and Fisheries and the Office of Conservation in the Department of Natural Resources.
 - (7) If practicable, a joint permitting process with federal agencies issuing permits shall be established incorporating the coordinated coastal permitting process. Nor shall any other permit review or approval that, in the discretion of the secretary, would be inappropriate for inclusion in a unified permit.
- C. Provided that local zoning, subdivision, building, health, and other similar permits, reviewing, or approvals which are not part of an approved local program shall not be included within the unified permitting program; nor shall any other permit review or approval which, in the discretion of the secretary, would be inappropriate for inclusion in a unified permit.
- D. Prior to the implementation of the unified coastal permitting program, the secretary is authorized to develop interim interagency agreements with the respective governmental bodies to coordinate permit handling, decision making, and appeal procedures.
- E. After such process is established as provided in this Section, the secretary shall administer and implement and may modify such process in accordance with the provisions of this Section.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979. Acts 1983, No. 705, §4, eff. Sept. 1, 1983.

{{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.34. Activities not requiring a coastal use permit

A. Whether or not the activity occurs within the geographical boundaries of the coastal zone, the following activities shall not require a coastal use permit:

- (1) Activities occurring wholly on lands five feet or more above mean sea level except when the secretary finds, subject to appeal, that the particular activity would have direct and significant impact on coastal waters.
- (2) Activities occurring within fast lands except when the secretary finds, subject to appeal, that the particular activity would have direct and significant impacts on coastal waters.
- (3) Agricultural, forestry, and aquaculture activities on lands consistently used in the past for such activities; however, alternative oyster culture activities permitted pursuant to R.S. 56:431.2 shall be subject to coastal use permit requirements unless, after June 30, 2015, the secretary determines that these uses are exempt from coastal use permit requirements.
- (4) Hunting, fishing, trapping, and the preservation of scenic, historic, and scientific areas and wildlife preserves.
- (5) Normal maintenance or repair of existing structures, including but not limited to emergency repairs of damage caused by accident, fire, or the elements.
- (6) Uses and activities within the special area established in R.S. 49:214.29(C) which have been permitted by the Offshore Terminal Authority in keeping with its environmental protection plan.

- (7) Construction of a residence or camp.
- (8) Construction and modification of navigational aids such as channel markers and anchor buoys.
- (9) Construction, maintenance, repair, or normal use of any dwelling, apartment complex, hotel, motel, restaurant, service station, garage, repair shop, school, hospital, church, office building, store, amusement park, sign, driveway, sidewalk, parking lot, fence, or utility pole or line, when these activities occur wholly on lands five feet or more above mean sea level or on fast lands except when the secretary finds, subject to appeal, that the particular activity would have direct and significant impacts on coastal waters.
- (10) Uses which do not have a significant impact on coastal waters.

B. The secretary shall maintain a map or collection of maps accurately depicting the areas within the coastal zone that have been determined by the secretary to be a fastland or above the five foot contour. This map shall be readily accessible to the public for inspection and self-service comparison to proposed project footprints to aid in an applicant's own determination whether the applicant's activity is subject to the exemption provided in this Section, thus obviating the need to submit an application for a coastal use permit.

C.(1) The secretary shall adopt rules for the implementation of this Section and may, by such rules, specify such other activities not requiring a coastal use permit as are consistent with the purposes of this Subpart.

(2) Nothing in this Section shall be construed as otherwise abrogating the lawful authority of agencies and local governments to adopt zoning laws, ordinances, or rules and regulations for those activities within the coastal zone not requiring a coastal use permit and to issue licenses and permits pursuant thereto. Individual specific uses legally commenced or established prior to the effective date of the coastal use permit program shall not require a coastal use permit.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979; Acts 1983, No. 705, §4, eff. Sept. 1, 1983; Acts 1984, No. 408, §1, eff. July 6, 1984; Acts 2012, No. 293, §2, eff. May 25, 2012; Acts 2012, No. 588, §1, eff. June 7, 2012.

{**NOTE:** SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.35. Reconsiderations, judicial review

A. This Section shall govern the reconsideration and/or judicial review of actions of the secretary under this Subpart, including coastal use permit and local program approval decisions and determinations of state or local concern under R.S. 49:214.30(C)(1) and determinations of direct and significant impact under R.S. 49:214.34.

B. A decision or determination shall be subject to reconsideration by the secretary if a petition for reconsideration is filed in writing with the secretary within ten days following public notice of a final coastal use permit or local program approval decision, or receipt of written notice of a determination made under R.S. 49:214.30(C)(1) or R.S. 49:214.34. The grounds for reconsideration shall be either that:

- (1) The decision or determination is clearly contrary to the law or the evidence before the secretary;
- (2) The petitioner has discovered, since the decision or determination, evidence important to the issues which he could not, with due diligence, have presented to the secretary prior to the decision;
- (3) There is a showing that issues not previously considered, through no fault of the petitioner, ought to be examined in order to properly dispose of the matter; or
- (4) There exist other good grounds for further consideration of the issues and the evidence in the public interest.

C. The petition for reconsideration shall set forth the grounds which justify such action. Nothing in this Section shall prevent the reopening or reconsideration of a decision or determination in accordance with other applicable statutory provisions or at any time on the grounds of fraud, perjured testimony, or fictitious evidence. The reconsideration shall be limited to those grounds upon which it was granted, and the secretary may adopt regulations for the orderly consideration and disposition of reconsideration petitions. The secretary shall render a decision upon the reconsideration petition within fifteen days of its receipt. If a petition for reconsideration is timely filed, the period within which judicial review must be sought shall run from the final disposition of such petition. The secretary, in the interest of justice, may grant a stay of a decision on a coastal use permit or approval of a local program until the final disposition of a petition for reconsideration.

D. Any person authorized by this Subpart to appeal a coastal use permit decision or any local government aggrieved by a final decision on approval of a local program may seek judicial review of that decision whether or not a petition for reconsideration has been filed under this Section. A preliminary, procedural, or intermediate action by the secretary or a determination of local or state concern under R.S. 49:214.30(C)(1) or of direct and significant impact under R.S. 49:214.34 is immediately reviewable if review of the secretary's final permit decision or action would not provide an adequate remedy or would inflict irreparable injury.

E. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the proposed use is to be situated within thirty days after mailing of notice of the final decision by the secretary or, if a reconsideration is requested, within thirty days after the decision thereon.

F. Judicial review shall otherwise be pursuant to the Louisiana Administrative Procedure Act, provided that all such cases shall be tried with preference and priority. Trial de novo shall be held upon request of any party.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979. Amended by Acts 1982, No. 813, §1; Acts 1983, No. 705, §4, eff. Sept. 1, 1983; Acts 1983, No. 591, §1, eff. July 14, 1983; Acts 1984, No. 408, §1, eff. July 6, 1984.

{**NOTE:** SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}

§214.36. Enforcement; injunction; penalties and fines

A. The secretary and each local government with an approved program shall initiate a field surveillance program to ensure the proper enforcement of the management program. The secretary may enter into interagency agreements with appropriate agencies to assist in the surveillance, monitoring, and enforcement activities pursuant to this Subpart.

B. The secretary, and each local government with an approved program as to uses under its jurisdiction, shall have the authority to issue cease and desist orders against any person found to be in violation of this Subpart or the rules and regulations issued hereunder.

C. The secretary, and each local government with an approved program as to coastal use permits issued by it, shall have the authority to suspend, revoke, or modify coastal use permits if the user is found to have violated any of the conditions of the coastal use permit.

D. The secretary, the attorney general, an appropriate district attorney, or a local government with an approved program may bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the coastal zone for which a coastal use permit has not been issued when required or which are not in accordance with the terms and conditions of a coastal use permit.

E. A court may impose civil liability and assess damages; order, where feasible and practical, the payment of the restoration costs; require, where feasible and practical, actual restoration of areas disturbed; or otherwise impose reasonable and proper sanctions for uses conducted within the coastal zone without a coastal use permit where a coastal use permit is required or which are not in accordance with the terms and conditions of a coastal use permit. The court in its discretion may award costs and reasonable attorney's fees to the prevailing party.

F. Any person found to have knowingly and intentionally violated the provisions of this Subpart, any of the rules and regulations issued hereunder, or the terms or conditions of any coastal use permit shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars, or imprisonment for not more than ninety days, or both. This penalty shall be in addition to any other costs or penalties assessed pursuant to this Section.

G. Any action pursuant to this Section, whether criminal or civil, must be brought in any parish in which the use or activity is situated. If the use or activity is situated in one or more parishes, then any action may be brought in either of the parishes in which the use or activity is situated.

H. In addition to the other enforcement actions authorized by this Section, whenever the secretary determines a violation of any provision of this Subpart, or any rules and regulations issued hereunder or the terms or conditions of any coastal use permit has occurred, the secretary may assess costs and penalties pursuant to Subsection I.

I. In addition to the other enforcement actions authorized by the provisions of this Section, the secretary may do any or all of the following:

(1) Assess the violator all or a portion of the costs of abatement or mitigation of damages to the coastal zone in accordance with R.S. 49:214.41.

(2) Assess the violator an administrative penalty in accordance with the following administrative penalty system:

(a) The amount of administrative penalty per violation shall be determined by a formula of $\$B(V + P + C + I) = \text{Penalty}$, where B is base assessment, V is habitat value, P is prior knowledge value, C is cooperation value, and I is impact damage value. No penalty shall be less than fifty dollars and the maximum penalty for violations shall be twelve thousand dollars.

(b) Base assessment (B) is the amount of a permit application fee and processing fee if a permit had been applied for under this Subpart or fifty dollars where no fee would have been charged.

(c) The ecological value (V) shall be assessed as follows:

(i) A value of one-half shall be applied to areas the secretary determines to be of minor value, such as streams, rivers, canals, developed cheniers, bayous, trenasses, or lakes with insignificant public resource value or wetlands of low resource value as a result of historical disturbances or physical alterations that were not violations existing prior to the violation under consideration.

(ii) A value of one shall be applied to areas the secretary determines to be of average value such as sections of streams, rivers, cheniers, canals, bayous, or trenasses of marginal value for rearing or spawning habitat for fish and wildlife populations, marginal wetlands or beaches of marginal wildlife habitat value.

(iii) A value of one and one-half shall be applied to areas the secretary determines to be of major value, such as a significant fish and wildlife spawning area, eagle nesting areas, significant waterfowl rearing habitat, tidal salt, saline, brackish, or intermediate marshes, cheniers, tidal mudflats, freshwater wetlands with high diversity and high public resources value, beaches of significant wildlife habitat value and state scenic rivers and waterways designated under R.S. 56:1840 et seq. or administrative rules adopted thereunder.

(d) The prior knowledge value (P) shall be determined by the secretary as follows:

(i) A value of one-half shall be applied where the secretary determines the person was unaware of this Subpart, as demonstrated by the fact that the person had neither applied for any coastal use permit in the past, nor received correspondence from the Coastal Management Division concerning the commission of a possible violation.

(ii) A value of one shall be applied where the secretary determines the person had previously applied for a coastal use permit or received correspondence from the Coastal Management Division concerning the commission of a possible violation.

(iii) A value of one and one-half shall be applied where the person had previously violated this Subpart.

(e) The cooperation value (C) shall be determined as follows:

(i) A value of one-half shall be applied where the person restores resource damage as requested by the secretary without the need for an enforcement order or court action by the secretary.

(ii) A value of one and one-half shall be applied where the person is not cooperative in restoring resource damage as requested by the secretary and the secretary must issue an enforcement order or obtain a court order to restore the resource.

(f) The impact damage value (I) shall be determined by the secretary as a measure of the extent or size of the ecologically impacted area as follows:

- (i) Where the secretary determines the adversely affected area of the violation would naturally restore within one year, and the impact area is less than one acre in size or an impacted waterway, shoreline, or waterfront property is less than one hundred linear feet, a value of one-half shall be applied.
- (ii) Where the secretary determines the adversely affected area of the violation would naturally restore within two years, and the impact area is less than one acre in size or the impacted waterway, shoreline, or waterfront property is less than one hundred linear feet, a value of one shall be applied.
- (iii) Where the secretary determines that the adversely affected area would exceed the restoration time or the impacted area criteria required in Item (i) or (ii) of this Subparagraph, a value of one and one-half shall be applied.

J. The monies collected by the state under the provisions of this Section shall be deposited as follows:

(1) The monies collected by the secretary for violations relating to use of state concern shall be used for the following purposes only in the proportions stated:

- (a) Fifty percent of the monies collected shall be used to reimburse the Department of Natural Resources for the cost of enforcing the provisions of this Subpart, and shall be deposited in the Coastal Resources Trust Fund, as provided in R.S. 49:214.40.
- (b) Twenty-five percent of the monies collected shall be placed in local government mitigation banks established in accordance with R.S. 49:214.41 and the rules and regulations adopted thereunder.
- (c) Twenty-five percent of the monies collected shall be placed in the Wetlands Conservation and Restoration Fund established in Article 7, Section 10.2 of the Louisiana Constitution.

(2) The monies collected by the secretary for violations relating to a use of local concern shall be placed in local government mitigation banks established in accordance with R.S. 49:214.41 and the rules and regulations adopted thereunder. Each local government's mitigation bank shall be credited one hundred percent of the monies collected for violations relating to a use of local concern occurring within its geographic borders, except that for violations occurring within the geographic borders of two or more local governments the monies shall be divided on a pro rata basis and deposited accordingly in the local government's mitigation banks. In the event there is no local government mitigation bank in the parish in which the adverse impact is located, the monies shall be deposited in the Wetlands Conservation and Restoration Fund established in Article 7, Section 10.2 of the Louisiana Constitution, and can only be used for mitigation projects within the geographic borders of that local government.

K. In determining whether to assess, pursuant to Subsection I of this Section, costs or penalties, and the amounts of such assessments, the secretary shall consider the following factors:

- (1) The monetary benefits realized by the violator due to the noncompliance.
- (2) The history of previous violations or repeated noncompliance for the last five years.
- (3) The nature and gravity of the violation, including the adverse impact on the coastal zone.
- (4) The degree of culpability, recalcitrance, defiance, or indifference of the violator to the laws, regulations, or orders of the secretary or regulations of the local government.
- (5) The cost to the department or state of bringing and prosecuting an enforcement action against the violator.
- (6) Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by his noncompliance or violation.

L. No penalties or costs shall be assessed without the person charged being given notice and an opportunity for an adjudicatory hearing, pursuant to the Administrative Procedure Act. The secretary shall appoint an independent hearings officer. The person charged may waive the adjudicatory hearing upon payment of the amount demanded by the secretary, and will be liable for all costs associated with the adjudicatory hearing.

M. Nothing in this Section, shall prohibit any local political subdivision, without a local coastal use permit program approved as provided for in R.S. 49:214.30 from enforcing any ordinance or regulation relating to wetlands protection or restoration.

N.(1) In addition to the other enforcement actions authorized by the provisions of this Section, for each incident resulting in an administrative penalty being assessed, the secretary shall issue an after-the-fact coastal use permit or permit modification specifying terms and conditions that must be adhered to for the unauthorized activity to remain in place. In determining the terms and conditions to be placed on the after-the-fact permit, the secretary shall consider the following factors:

- (a) The degree to which the activity complies, or fails to comply, with the coastal use guidelines.
 - (b) The need for compensatory mitigation to be carried out when the activity altered wetlands of the coastal zone.
 - (c) The need for partial restoration of the site if the coastal use could be carried out with lesser impact to coastal waters or wetlands.
 - (d) The need for restoration of the site upon abandonment or completion of the coastal use.
- (2) Prior to issuing a final after-the-fact permit, the secretary shall provide to the person conducting the activity and to the owner of the property on which the activity occurred, a draft after-the-fact coastal use permit. The secretary shall also cause the draft after-the-fact coastal use permit to be published one time in the official state journal and allow the public time to offer comments on the proposed after-the-fact coastal use permit to the secretary. All comments must be received by the secretary within fifteen calendar days following the date of publication in the state journal. The secretary shall fully consider all comments received and issue a final after-the-fact coastal use permit five days following the end of the public comment period.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979. Acts 1983, No. 705, §4, eff. Sept. 1, 1983; Acts 1993, No. 194, §1.

{{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.37. Approval of rules, regulations, or guidelines

Any rule, regulation, or guideline shall be proposed or adopted pursuant to the rulemaking procedures set forth in the Administrative Procedure Act and shall be subject to approval by the House Committee on Natural Resources and Environment and Senate Committee on Natural Resources. Such approval shall be presumed unless either committee submits objections in writing within fifteen days after receipt of the proposed rule, regulation, or guideline, provided that such written objections shall be subject to override by the governor within five days after receipt of the objections by the governor.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979; Acts 2008, No. 580, §6.

NOTE: See Acts 1989, 2nd Ex. Sess., No. 6, §7.

§214.38. Effect on titles

A. Nothing in this Subpart shall be construed as affecting the status of the title of the state or other governmental body to real rights in lands or water bottoms.

B. Except as may be otherwise authorized by law, the involuntary acquisition, directly or indirectly, of privately owned property is not necessary to achieve the intents and purposes of this Subpart, and no rule, regulation, ordinance, order, or standard, the purpose or application of which is to effect an involuntary acquisition or taking of such property, shall be adopted, enacted, or implemented pursuant to the provisions of this Subpart.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979; Acts 2004, No. 633, §1, eff. July 5, 2004.

{{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.39. Effective date

This Subpart shall become effective on January 1, 1979, except that the coastal use permit program established pursuant to R.S. 49:214.30 shall not commence until thirty days after the adoption of guidelines pursuant to R.S. 49:214.27.

Acts 1978, No. 361, §1, eff. Jan. 1, 1979.

{{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

§214.40. Coastal Resources Trust Fund

A.(1) Subject to the exceptions contained in Article VII, Section 9(A) of the Constitution of Louisiana, all funds collected by the Louisiana coastal resources program from processing and evaluation of coastal use permit applications and consistency determinations, from any federal outercontinental shelf revenue sharing program, and from any other sources, shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund.

(2) Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special fund, which is hereby created in the state treasury and designated as the Coastal Resources Trust Fund, an amount equal to the total amount of funds paid into the treasury by the Louisiana coastal resources program.

(3) The monies in the trust fund shall be invested by the state treasurer in the same manner as monies in the state general fund. The monies in the Coastal Resources Trust Fund shall be used solely for the programs and purposes and in the amounts appropriated each year to the Louisiana coastal resources program by the legislature.

B. The Louisiana coastal resources program shall keep a set of books showing from whom every dollar is received and for what purpose and to whom every dollar is paid and for what purpose. It also shall keep in its file vouchers or receipts for all moneys paid out.

C. Any surplus funds remaining to the credit of the trust fund on July 1 of each year commencing with the fiscal year 1983-84, after all appropriations of the preceding fiscal year have been paid, and all interest earned on money from the trust fund since the creation of the fund and thereafter shall remain to the credit of the Coastal Resources Trust Fund for expenditure from year to year solely by the Louisiana coastal resources program or any uses as provided for in the federal outercontinental shelf revenue sharing legislation in accordance with appropriation made by the legislature for the purposes and functions of said program, and no part thereof shall revert to the state general fund. This provision shall not be construed to prohibit the appropriation of funds out of the state general fund to the commission.

Added by Acts 1983, No. 512, §1; Acts 1992, No. 1075, §1.

{{NOTE: SEE ACTS 1989, 2D EX. SESS., NO. 6, §7.}}

{{NOTE: PRIOR R.S. 49:213.21 WAS REPEALED BY ACTS 1989, NO. 662, §8, EFF. JULY 7, 1989. THIS REPEALED SECTION WAS ERRONEOUSLY REDESIGNATED BY ACTS 1989, 2D EX. SESS., NO. 6, §7 AS R.S. 49:214.40. THE SOURCE OF THIS SECTION IS PRIOR R.S. 49:213.22.}}

§214.41. Mitigation of coastal wetlands losses

A. As used in this Section, the following terms shall have the meaning ascribed to them below:

(1) "Compensatory mitigation" means replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of those values caused by a permitted activity.

(2) "Ecological value" means the ability of an area to support vegetation and fish and wildlife populations.

(3) "Mitigation" means all actions taken by a permittee to avoid, minimize, restore, and compensate for ecological values lost due to a permitted activity.

(4) "Overriding public interest" means that the public interest benefits of a given activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, as in the case of certain mineral extraction, production and transportation activities or construction of flood protection facilities critical for protection of existing infrastructure.

(5) "Permit" means a coastal use permit.

(6) "Permitted activity" means any activity authorized by a coastal use permit or any activity for which the secretary may require a consistency determination pursuant to R.S. 49:214.32.

(7) "Wetlands" means the same as defined in R.S. 49:214.3.

B. The secretary shall adopt regulations to require mitigation. The regulations adopted pursuant to the authority of this Section shall require consideration of all relevant factors in determining the extent of mitigation, including societal and economic value of the proposed activity, ecological values impacted by the proposed activity, availability of methods for avoiding or minimizing the impacts associated with the proposed activity and for restoring the site impacted by the proposed activity.

C. Compensatory mitigation, at a level sufficient to replace or to substitute for the ecological value of the wetlands lost as a result of each permitted activity, shall be required, unless the permittee has satisfactorily demonstrated to the secretary that the required mitigation would render impracticable an activity proposed to be permitted and that such activity has a clearly overriding public interest. In such an instance, provided that the secretary has decided to issue the permit, the secretary shall grant a variance to this compensatory mitigation requirement after giving due public notice. The secretary shall also provide a statement of finding as to the reasons for granting such variance.

D. The secretary shall adopt regulations for evaluating ecological values and for establishing and administering a mitigation credit banking system for compensating the loss of those values, as provided for by this Section. The regulations shall, at a minimum, provide for:

(1) Criteria under which mitigation credits may be earned.

(2) Geographical limitations for the application of mitigation bank credits.

(3) Criteria for the use, banking, or sale of banked credits.

(4) The approval by the secretary for the earning, using, banking, or selling of mitigation bank credits.

(5) Requirements for the maintenance and submission by the secretary of records concerning ecological value losses, and credit and debit accounts for each mitigation bank.

E. The owner of the land on which a permitted activity is to occur shall have the option of requiring on-site or off-site compensatory mitigation on his property located in any jurisdictional area of the coastal zone or any area included in the Louisiana Coastal Wetlands Conservation Plan, notwithstanding any geographical limitation otherwise required by the regulations adopted by the secretary, provided that the secretary determines that the proposed mitigation is acceptable and sufficient.

F. The secretary may adopt regulations establishing procedures for defining and delineating proposed "special significance areas" which may include areas of particular ecological uniqueness or vulnerability, or areas which have special ecological values or productivity. The procedures established by the secretary shall provide as follows:

(1) Upon determining that the unique or special resources in such area are susceptible to loss as a result of future activities in such area, the secretary may, in accordance with the provisions of R.S. 49:953(A), designate a special significance area, which area shall in no event exceed two thousand acres. The designation of the area as one of special significance shall expire on the first day of July of the year following the designation and the area, or any part thereof, shall not be subject to redesignation as such except by the legislature as set forth below.

(2) The secretary may propose to the legislature and thereafter the legislature may, by concurrent resolution, delineate special significance areas upon finding that an area is of particular ecological uniqueness or vulnerability or has special ecological values or productivity, which areas shall in no event exceed two thousand acres each.

(3) Upon designation of a special significance area, the regulations adopted by the secretary shall require that a permittee, in order to receive a permit to conduct an activity having a direct and significant adverse impact on unique or special resources of such area, must demonstrate that the public interest benefits of the proposed activity clearly outweigh the public interest benefits of preserving the unique or special ecological values of the area and must, at a minimum, provide full compensatory mitigation for ecological value losses associated with the permitted activity.

G. Notwithstanding any other provision of this Section to the contrary, in no event shall any regulation adopted by the secretary require compensatory mitigation for any use or activity which the secretary determines is primarily designed, over the life of the project, to provide a net gain in ecological values by replacing, substituting, enhancing, or protecting wetlands, including privately funded marsh management projects or plans.

Acts 1990, No. 1040, §1; Acts 2004, No. 459, §1, eff. June 24, 2004; Acts 2006, No. 548, §1, eff. June 22, 2006.

§214.42. Coastal Mitigation Account

A. Subject to the exceptions contained in Article VII, Section 9(A) of the Constitution of Louisiana, all funds received which are to be used for "compensatory mitigation" which is defined as the replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of ecological values caused by a permitted activity shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund.

B. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special account, which is hereby created in the state treasury and designated as the Coastal Mitigation Account in the Wetlands Conservation and Restoration Fund, an amount equal to the total amount of funds paid into the treasury in lieu of compensatory mitigation. The monies in the account shall be invested by the state treasurer in the same manner as monies in the state general fund.

C.(1) The monies in the Coastal Mitigation Account may be used to develop and implement projects in which permittees may pool funds, resources, and activities sufficient for the compensatory mitigation required of each participating permittee.

(2) The secretary may, when appropriate, use the monies in the Coastal Mitigation Account to fund, in whole or in part, wetland restoration projects developed or implemented by the department of a parish with an approved local coastal program.

D. The department may accept payment to the Coastal Mitigation Account in lieu of compensatory mitigation only when a permittee is unable to provide mitigation through an appropriate individual project or through an appropriate mitigation bank or area located within the Louisiana Coastal Zone or Louisiana Coastal Wetlands Conservation Plan area. The determination of appropriate individual mitigation projects and mitigation banks or areas shall be made in accordance with regulations promulgated by the department pursuant to R.S. 49:214.41. The secretary shall ensure that any fees collected in lieu of compensatory mitigation are adequate to fully offset the cost of restoring the habitat value lost.

E. An amount equal to funds collected by the department from the payments made in lieu of compensatory mitigation shall be paid into the Coastal Mitigation Account. The department may further accept funds from public or private sources as authorized by law, including grants and donations, to carry out the provisions of this Section.

An amount equal to all funds accepted under this provision of this Section shall be paid into the Coastal Mitigation Account.

F. The Office of Coastal Restoration and Management shall keep a set of books showing from whom every dollar is received and for what purpose, and to whom every dollar is paid and for what purpose.

G. Any surplus funds in the Coastal Mitigation Account on July first of each year shall remain to the credit of the account and no part thereof shall revert to the state general fund.

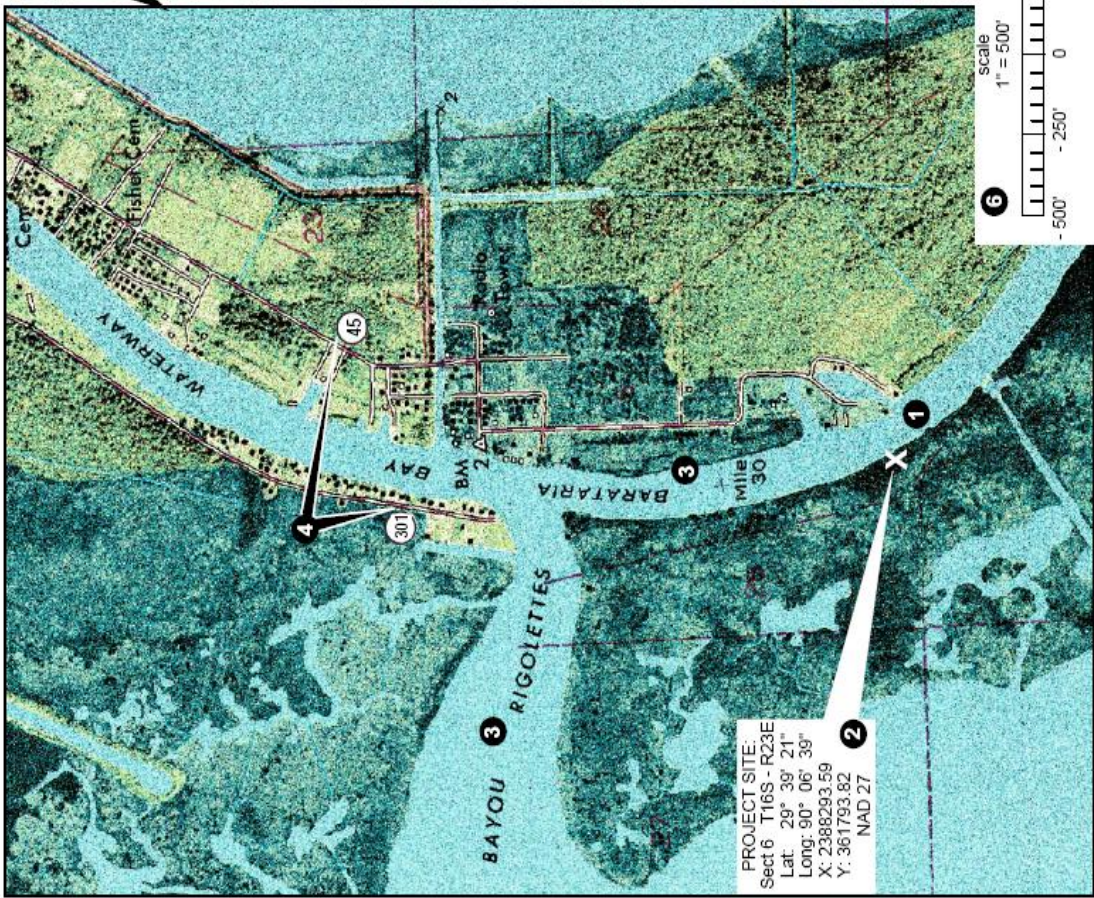
Acts 1999, No. 962, §1; Acts 2004, No. 277, §1.



APPENDIX C

SAMPLE FORMS

VICINITY MAP



Vicinity map should include:

A vicinity map can be obtained from one of these sources:
 a copy from a USGS 7.5 minute (1" = 2,000') quad map (**preferred**);
 a copy of a road map, with scale (is generally acceptable);
 or a map can be downloaded from the following websites:
 Mapquest.com, Topozone.com, or Yahoo.com.
 (Please remove extraneous advertisements from map before submitting)

- ① Exact location of work site
- ② Latitude/Longitude in degrees - minutes - seconds" format, and where available, Section - Township - Range {UTM (Universal Transverse Mercatum) can be provided for informational purposes but is not required, and should include whether the reference is NAD27 or NAD83}
- ③ Name of all major waterbodies in project vicinity
- ④ Roadway names and/or numbers
- ⑤ North Arrow
- ⑥ A drawing scale (i. e. 1" = 100', 1" = 2,000', etc) is preferred.

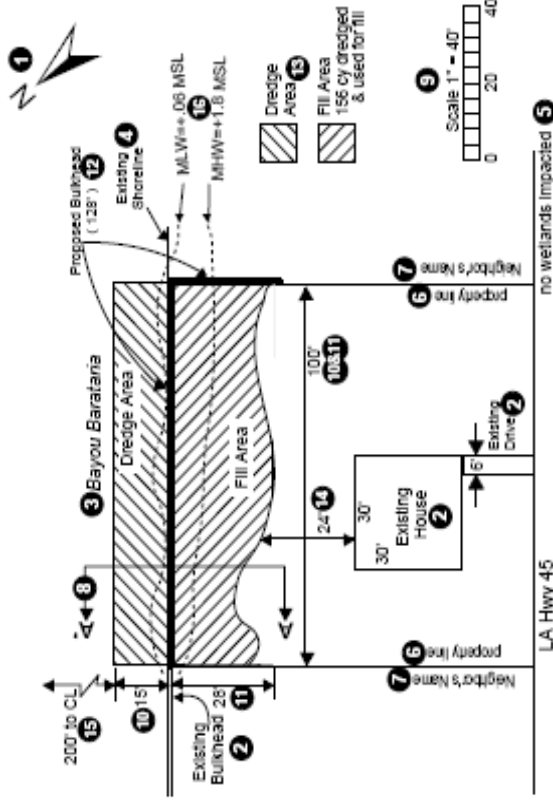
PLUS IF AVAILABLE:

- ☐ Access route from the nearest navigation channel to the project location
- ☐ Access route from shoreline to project location if in marsh
- ☐ Water depth at frequent intervals along the access route

BULKHEAD WITH DREDGE AND FILL

- Provide a vicinity map, plan view (top view), and cross section (side view) that clearly shows the following (do not use color):

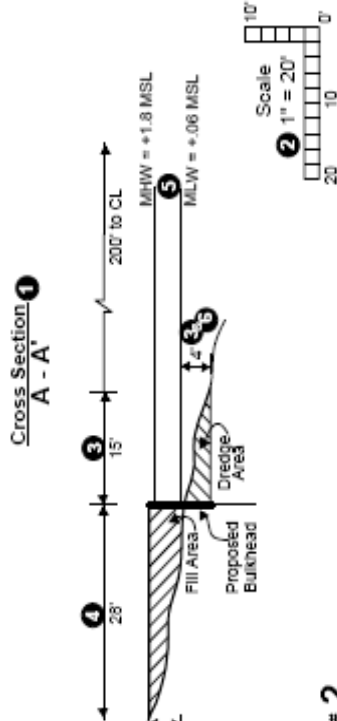
Plan View :



Plan View should include :

- North Arrow
- Existing structures, clearly labeled as existing
- Waterbody name(s)
- Realistic current shoreline contours
- Wetland boundaries, (if applicable and known)
- Property lines
- Adjacent property owner names
- Location and orientation of the cross section (make sure A and A' are orientated consistently with cross section)
- A drawing scale (i.e., 1" = 100', 1" = 2,000', etc.) is preferred. The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of dredge area(s)
- Maximum possible dimensions, in feet, of permanent and temporary fill area(s)
- Total length, in feet, of bulkhead(s) (shoreline and side lengths)
- Maximum possible volume, in cubic yards (length times width times height or depth divided by 27), of each type of material dredged and/or used as fill
- Distance, in feet, of proposed structures to property boundaries, shorelines, existing structures, etc., can be represented by scale(s)
- Distance, in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Parish government, or from the US Army Corps of Engineers)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers)
- For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans

Cross Section :



Cross Section 1 A - A'

- Orientation of the cross section (make sure A and A' are orientated consistently with plan view)
- A drawing scale (i.e., 1" = 100', 1" = 2,000', etc.) The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of temporary AND permanent fill area(s)
- Maximum possible dimensions, in feet, of dredge area(s)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. Can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLLG (Mean Low Gulf) should be included. Whichever datum reference is used, it must be consistent throughout the plans
- Existing and proposed water depths (if dredging and/or filling a waterbody)

Sample Plans # 2

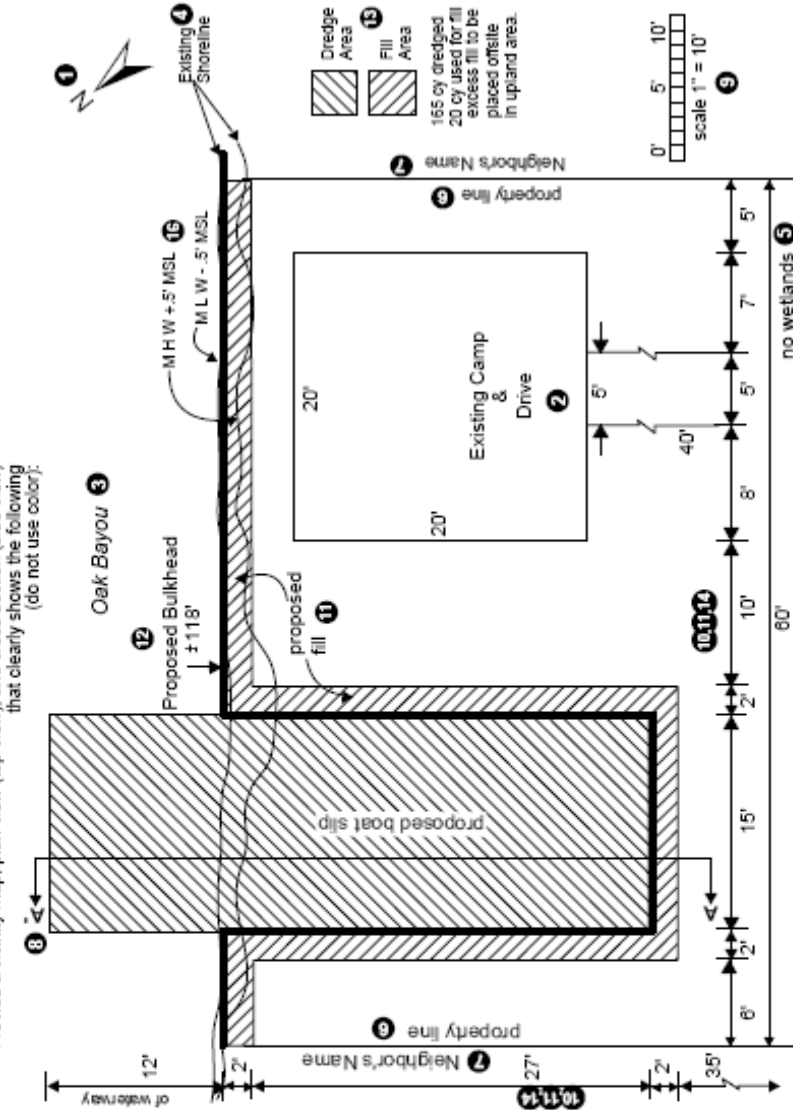
BULKHEAD & BOAT SLIP W/ DREDGE & FILL

- Provide a vicinity map, plan view (top view), and cross section (side view) that clearly shows the following (do not use color):

Plan View :

Plan View should include:

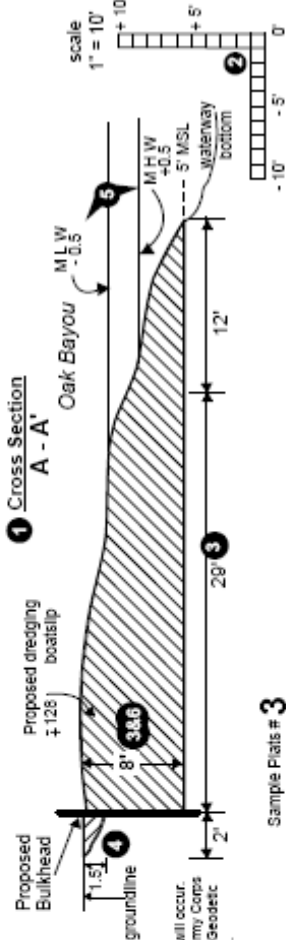
- North Arrow
- Existing structures, clearly labeled existing
- Waterbody name(s)
- Realistic current shoreline contours
- Wetland boundaries, (if applicable and known)
- Property lines
- Adjacent property owner names
- Location and orientation of the cross section (make sure A and A' are oriented consistently with cross section)
- A drawing scale (i.e., 1" = 100', 1" = 2,000', etc.) is preferred. (length, width, and height or depth). The scale should accurately represent all maximum possible dimensions. (If necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of dredge areas
- Maximum possible dimensions, in feet, of permanent and temporary fill areas
- Total length, in feet, of bulkhead(s) (shoreline and side lengths)
- Maximum possible volume, in cubic yards (length X width X height or depth divided by 27), of each type material dredged and/or used as fill
- Distance, in feet, of proposed structures to property boundaries, shorelines, existing structures, etc., can be represented by scale(s)
- Distance, in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Fathom gauge, or from the US Army Corps of Engineers)
- Mean high water (MHW) & mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Fathom gauge, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans



Cross Section :

Cross Section should include :

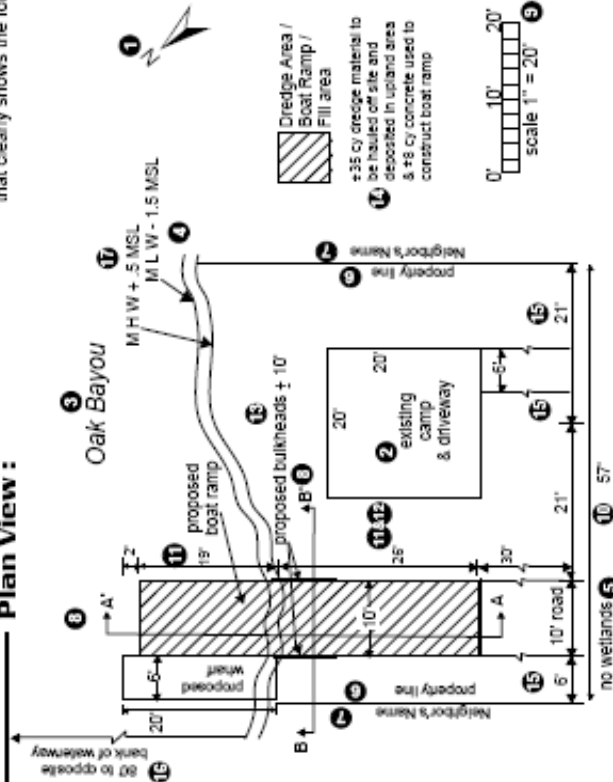
- Orientation of the cross section (make sure A and A' are oriented consistently with plan view)
- A drawing scale (i.e., 1" = 100', 1" = 2,000', etc.) (length, width, and height or depth). The scale should accurately represent all maximum possible dimensions. (If necessary, separate horizontal & vertical scales can be used)
- Maximum possible dimensions, in feet, of dredge areas
- Maximum possible dimensions, in feet, of temporary AND permanent fill areas
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. Can be obtained from personal observation, the local Fathom gauge, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans
- Existing and proposed water depths (if dredging and/or filling a waterbody)



BOAT RAMP / BULKHEAD / WHARF WITH DREDGING

- Provide a vicinity map, plan view (top view), and cross section (side view) that clearly shows the following (do not use color)

Plan View :

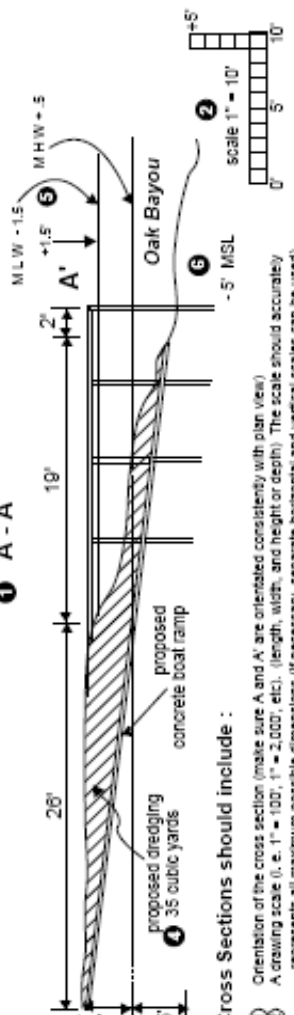


Plan View should include:

- North Arrow
- Existing structures, clearly labeled as existing
- Waterbody name(s)
- Realistic current shoreline contours
- Wetland boundaries, (if applicable and known)
- Property lines
- Adjacent property owner names
- Location and orientation of the cross section (make sure A and A' are oriented consistently with cross section)
- A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, & height or depth) The scale should accurately represents all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of all proposed structures
- Maximum possible dimensions, in feet, of dredge area(s)
- Maximum possible dimensions, in feet, of permanent & temporary fill area(s)
- Total length, in feet, of bulkhead(s) (shoreline and side lengths)
- Maximum possible volume, in cubic yards (length times width times height or depth divided by 27), of each type of material dredged and/or used as fill
- Distance, in feet, of proposed structures to property boundaries, shorelines, existing structures, etc., can be represented by scales)
- Distance, in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Parish government, or from the US Army Corps of Engineers)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans)

Cross Sections :

Cross Section
1 A - A'



Cross Sections should include :

- Orientation of the cross section (make sure A and A' are oriented consistently with plan view)
- A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represents all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of all proposed structures
- Maximum possible dimensions, in feet, of dredge area(s)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. Can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Whichever datum reference is used, it must be consistent throughout the plans
- Existing and proposed water depths (if dredging and/or filling a waterbody)

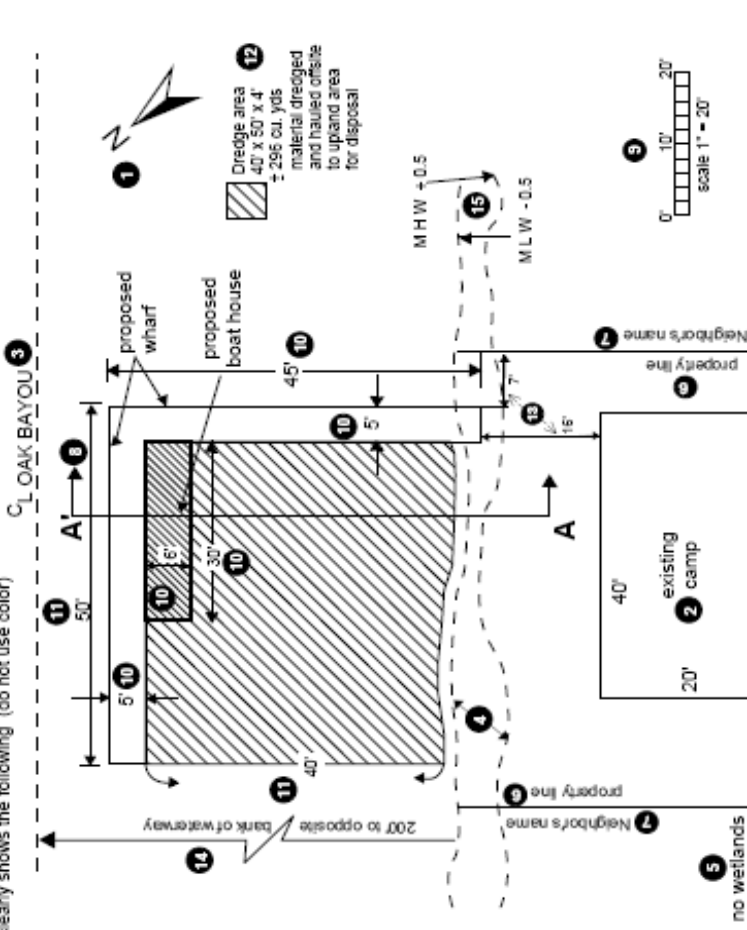
WHARF & BOAT SHED WITH DREDGE

- Provide a vicinity map, plan view (top view), and cross section (side view) that clearly shows the following (do not use color)

Plan View :

Plan View should include :

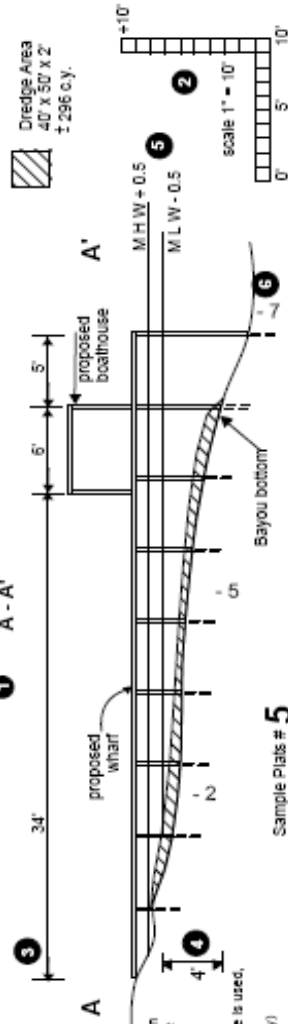
- ① North Arrow
- ② Existing structures, clearly labeled as existing
- ③ Waterbody name(s)
- ④ Realistic current shoreline contours
- ⑤ Wetland boundaries, (if applicable and known)
- ⑥ Property lines
- ⑦ Adjacent property owner names
- ⑧ Location and orientation of the cross section (make sure A and A' are oriented consistently with cross section)
- ⑨ A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- ⑩ Maximum possible dimensions, in feet, of all proposed structures
- ⑪ Maximum possible dimensions, in feet, of dredge areas
- ⑫ Maximum possible volume, in cubic yards (length times width times height or depth divided by 27), of each lot of material dredged and/or used as fill
- ⑬ Distance, in feet, of proposed structures to property boundaries, shorelines, existing structures, etc., can be represented by scales)
- ⑭ Distance, in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Parish government, or from the US Army Corps of Engineers)
- ⑮ Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans



Cross Section :

Cross Section should include :

- ① Orientation of the cross section (make sure A and A' are oriented consistently with plan view)
- ② A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- ③ Maximum possible dimensions, in feet, of all proposed structures
- ④ Maximum possible dimensions, in feet, of dredge areas
- ⑤ Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Whichever datum reference is used, it must be consistent throughout the plans
- ⑥ Existing and proposed water depths (if dredging and/or filling a waterbody)



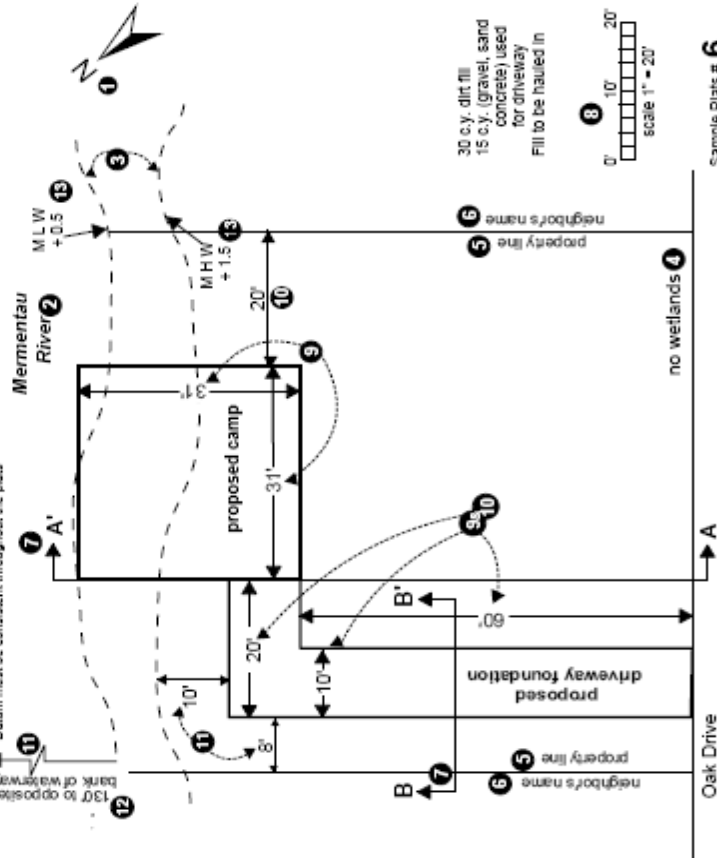
ELEVATED CAMP AND DRIVEWAY

- Provide a vicinity map, plan view (top view), and cross section (side view) that clearly shows the following
(do not use color)

Plan View :

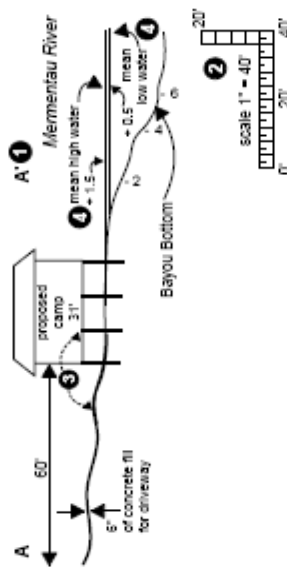
Plan View should include:

- North Arrow
- Waterbody name(s)
- Realistic current shoreline contours
- Wetland boundaries, (if applicable and known)
- Property lines
- Adjacent property owner names
- Location and orientation of the cross section (make sure A and A' are oriented consistently with cross section)
- A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth) The scale should accurately represents all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of all proposed structures
- Maximum possible dimensions, in feet, of permanent and temporary fill area(s)
- Distance, in feet, of proposed structures to property boundaries, shorelines, existing structures, etc., can be represented by scale(s)
- Distance, in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Parish government, or from the US Army Corps of Engineers)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLLG (Mean Low Low Gulf) should be included. Datum must be consistent throughout the plans)

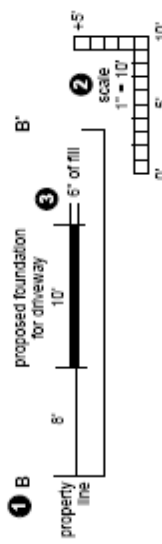


Cross Sections :

Cross Section A - A'



Cross Section B - B'



Cross Sections should include:

- Orientation of the cross section (make sure A and A' are oriented consistently with plan view)
- A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth) The scale should accurately represents all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of all proposed structures
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. Can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLLG (Mean Low Low Gulf) should be included. Whichever datum reference is used, it must be consistent throughout the plans

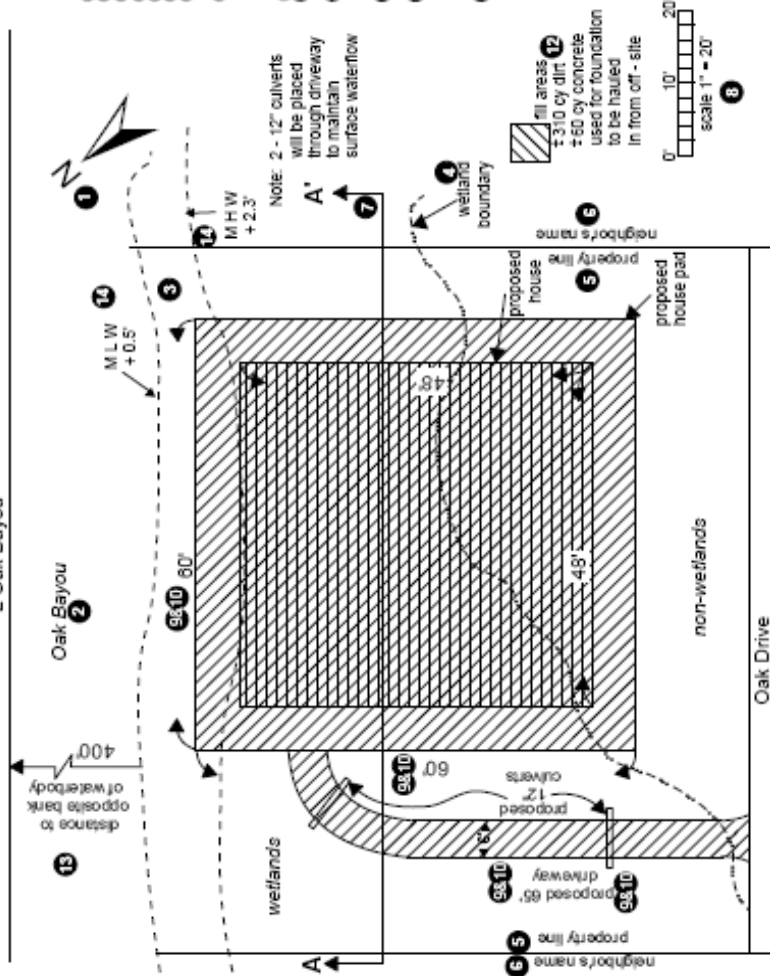
Sample Plats # 6

HOUSE AND DRIVEWAY WITH FOUNDATIONS

Plan View :

C L Oak Bayou

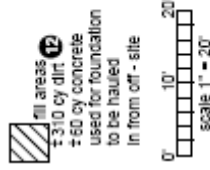
- Provide a vicinity map, plan view (top view), and cross section (side view) that clearly shows the following (do not use color)



Plan View should include:

- North Arrow
- Waterbody name(s)
- Realistic current shoreline contours
- Wetland boundaries, (if applicable and known)
- Property lines
- Adjacent property owner names
- Location and orientation of the cross section (make sure A and A' are oriented consistently with cross section)
- A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, & height or depth) This scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of all proposed structures (fill areas)
- Maximum possible volume, in cubic yards (length times width times height or depth divided by 27), of each type of material dredged and/or used as fill
- Distance, in feet, of proposed structures to property boundaries, shorelines, existing structures, etc., can be represented by scale(s)
- Distance, in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Parish government, or from the US Army Corps of Engineers)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans)

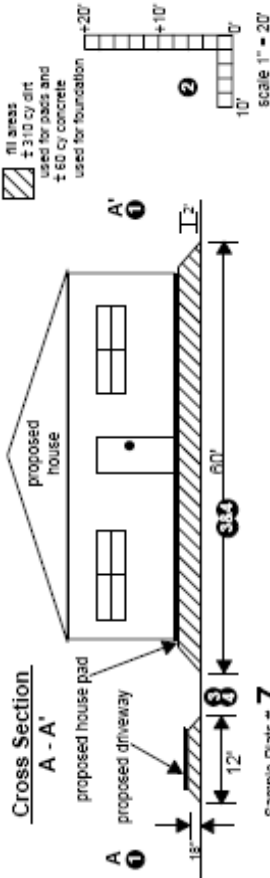
Note: 2 - 12" culverts will be placed through driveway to maintain surface waterflow



Cross Section :

Cross Section should include:

- Orientation of the cross section (make sure A and A' are oriented consistently with plan view)
- A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). This scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of all proposed structures
- Maximum possible dimensions, in feet, of temporary AND permanent fill area(s)



Sample Plats # 7

LEVEE CONSTRUCTION AND/OR REPAIR

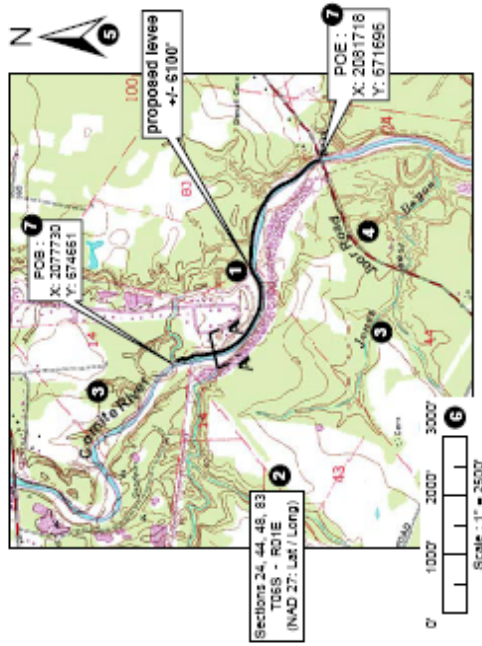
New Levee w/ Borrow Area In Existing Water

Vicinity Map :

Vicinity Map should include :

1. Exact location of work site
2. Section-Range, and where available, Latitude-Longitude, in d-m-s format. (U.S. National Transverse Mercator datum can be provided for NAD83 and NAD53)
3. Name of all major waterbodies in project vicinity
4. Roadway, names and/or numbers
5. North Arrow
6. A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (width & depth). The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
7. Latitude and longitude coordinates for the Point of Beginning (POB) and Point of Ending (POE) of the project.

- AND IF AVAILABLE:
- Access route from the nearest navigation channel to the project location
 - Access route from shoreline to project location if in marsh
 - Water depth at frequent intervals along the access route
 - If multiple turns along project length, please provide Lat. and Long. coordinates for each turn.



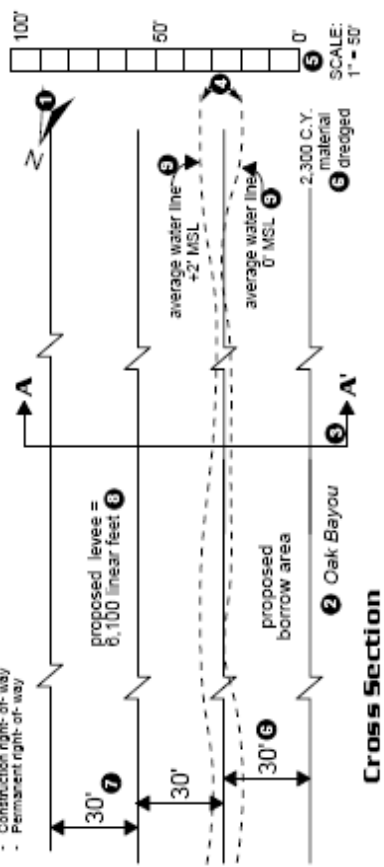
Plan View:

Plan View should include :

1. North Arrow
2. Waterbody name(s)
3. Location and orientation of the cross section (make sure A and A' are oriented consistently with cross section)
4. Realistic current shoreline contours
5. A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
6. Maximum possible dimensions, in feet, of dredge area(s)
7. Maximum possible dimensions, in feet, of permanent and temporary fill area(s)
8. Total length, in feet, of levee(s)
9. Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans)

AND IF AVAILABLE:

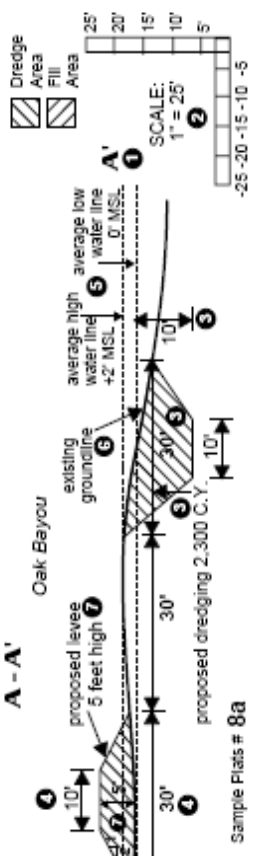
- Existing structures, clearly labeled as existing
- Wetland boundaries, (if applicable and known)
- Property lines
- Adjacent property owner names
- Maximum possible volume, in cubic yds (length X width X height/depth divided by 27), of each type of material dredged and/or used as fill
- Distance, in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Parish government, or from the US Army Corps of Engineers)
- Construction right-of-way
- Permanent right-of-way



Cross Section

Cross Section should include :

1. Orientation of the cross section (make sure A and A' are oriented consistently with plan view)
2. A drawing scale (i.e. 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
3. Maximum possible dimensions, in feet, of dredge area(s)
4. Maximum possible dimensions, in feet, of temporary AND permanent fill area(s)
5. Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Whichever datum reference is used, it must be consistent throughout the plans)
6. Existing and proposed water depths (if dredging and/or filling a waterbody)
7. Elevation of levee



Sample Plats # 8a

LEVEE CONSTRUCTION AND/OR REPAIR

8b

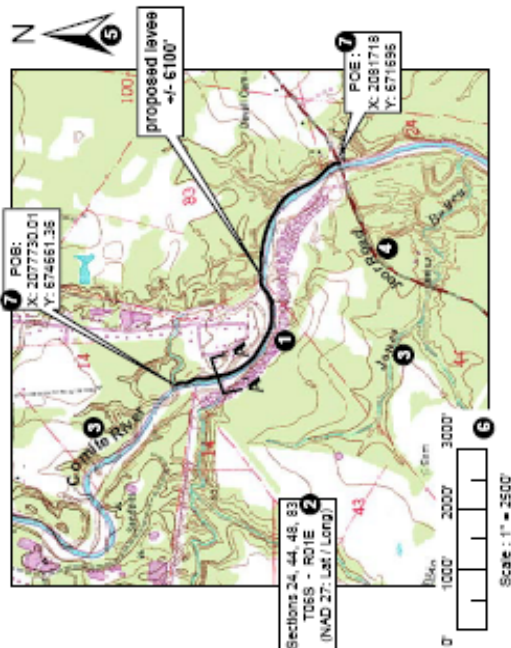
Vicinity Map :

Vicinity Map should include :

- Exact location of work site
- Section-Township-Range, and where available, Latitude-Longitude, in d°-m'-s" format. (UTM (Universal Transverse Mercator) can be provided for informational purposes but is not required, and should include whether the reference is NAD27 or NAD83)
- Name of all major waterbodies in project vicinity
- Roadway names and/or numbers
- North Arrow
- Drawing scale (i.e., 1" = 100', 1" = 2,000', etc.). The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Latitude and Longitude coordinates for the Point of Beginning (POB) and Point of Ending (POE) of the project.

AND IF AVAILABLE:

- Access route from the nearest navigation channel to the project location
- Access route from shoreline to project location if in marsh
- Water depth at frequent intervals along the access route
- If multiple turns along project length, please provide Lat. and Long. coordinates for each turn.



New Levee & Borrow Area

Provide a vicinity map, plan view (top view), and cross section (side view) that clearly shows the following (do not use color)

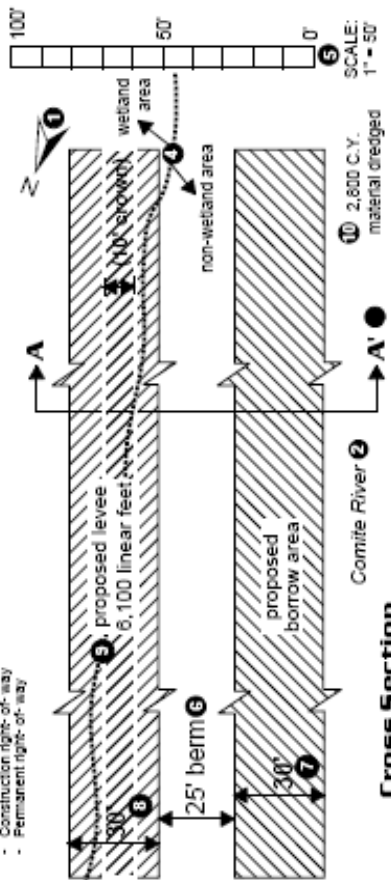
Plan View:

Plan View should include :

- North Arrow
- Waterbody name(s)
- Location and orientation of the cross section (make sure A and A' are oriented consistently with cross section)
- Wetland boundaries, (if applicable and known)
- A drawing scale (i.e., 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represent all maximum possible dimensions (if necessary, separate horizontal and vertical scales can be used)
- Berm width
- Maximum possible dimensions, in feet, of dredge areas
- Maximum possible dimensions, in feet, of permanent and temporary fill areas
- Total length, in feet, of levee(s)
- Maximum possible volume, in cubic yds (length X width X height/depth divided by 27), of each type of material dredged and/or used as fill

AND IF AVAILABLE:

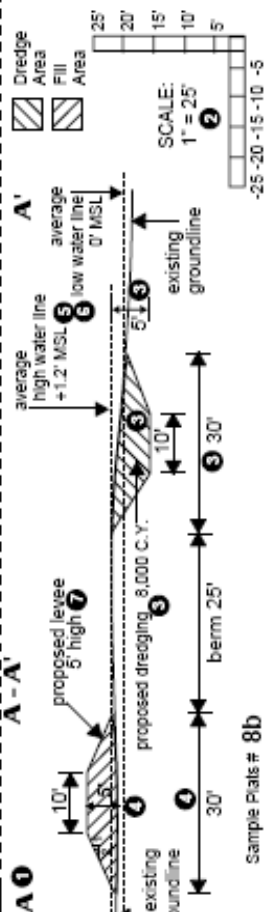
- Existing structures, clearly labeled as existing
- Realistic current shoreline contours
- Adjacent property owner names
- Distance, in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Parish government, or from the US Army Corps of Engineers)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans)
- Construction right-of-way
- Permanent right-of-way



Cross Section

Cross Section should include :

- Orientation of the cross section (make sure A and A' are oriented consistently with plan view)
- A drawing scale (i.e., 1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represent all maximum possible dimensions
- (if necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of dredge areas
- Maximum possible dimensions, in feet, of permanent fill areas
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. Can be obtained from personal observation, the local Parish govt., or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Whichever datum reference is used, it must be consistent throughout the plans
- Existing and proposed water depths (if dredging and/or filling a waterbody)
- Elevation of levee



LEVEE CONSTRUCTION AND/OR REPAIR

8C

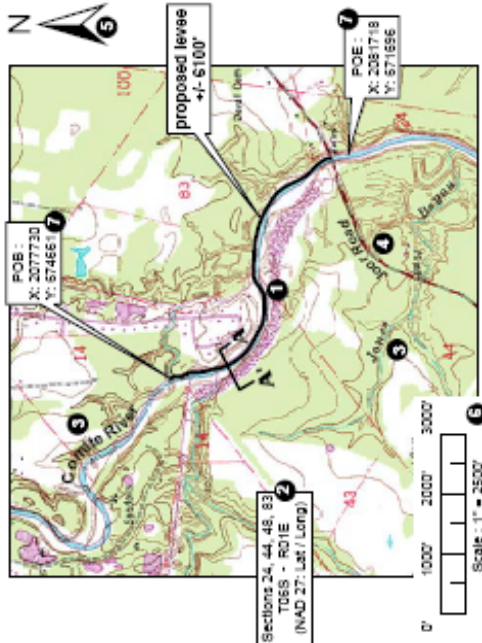
Vicinity Map :

Vicinity Map should include :

- Exact location of work site
- Section- Township-Range, and where available, Latitude/Longitude, in d°, m'-s" format. (UTM (Universal Transverse Mercator) can be provided for informational purposes but is not required, and should include whether the reference is NAD27 or NAD83)
- Name of all major waterbodies in project vicinity
- Roadway names and/or numbers
- North Arrow (Scale: 1" = 100', 1" = 2,000', etc.). (If available, separate horizontal and vertical scales can be used)
- Latitude and Longitude coordinates for the Point of Beginning (FOB) and Point of Ending (FOE) of the project.

AND IF AVAILABLE:

- Access route from the nearest navigation channel to the project location
- Access route from shoreline to project location if in marsh
- Water depth at recommended access along the access route
- If multiple turns along project length, please provide Lat. and Long. coordinates for each turn.



Levee Repair

- Provide a vicinity map, plan view (top view), and cross section (side view) that clearly shows the following (do not use color)

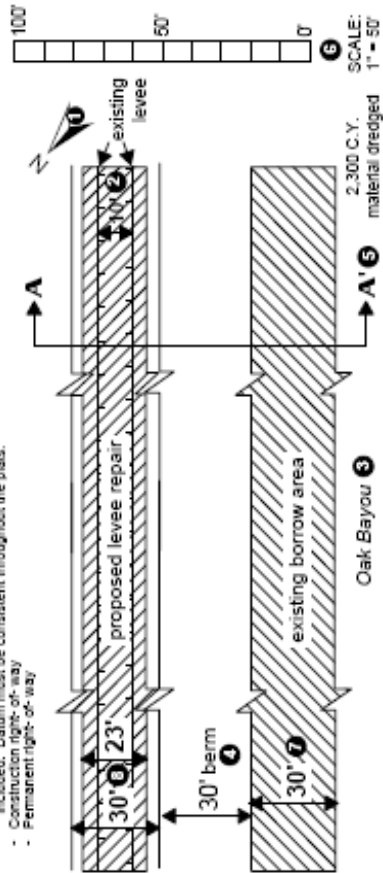
Plan View:

Plan View should include :

- North Arrow
- Existing structures, clearly labeled as existing
- Waterbody name(s)
- Berm width
- Location and orientation of the cross section (make sure A and A' are oriented consistently with cross section)
- A drawing scale (1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represent the project dimensions. (If necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of dredge area(s)
- Maximum possible dimensions, in feet, of permanent and temporary fill area(s)

AND IF AVAILABLE:

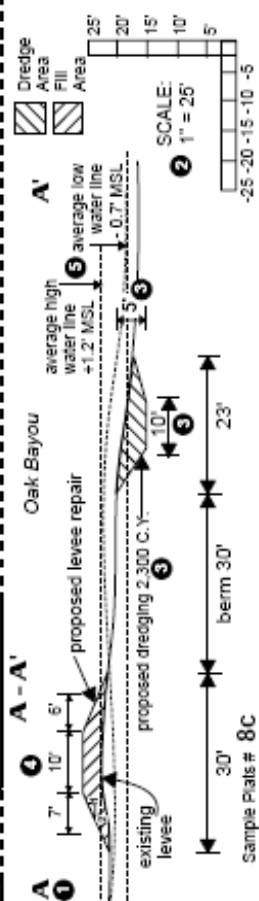
- Realistic current shoreline contours
- Wetland boundaries, (if applicable and known)
- Adjacent property owner names
- Total length, in feet, of levee(s)
- Max possible volume, in cubic yds (length X width X height/depth divided by 27), of each type of material dredged and/or filled as in feet, to centerline or opposite bank of all waterbodies on which proposed activities will occur (can be obtained from personal observation, the local Parish government, or from the US Army Corps of Engineers)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans.
- Construction right-of-way
- Permanent right-of-way



Cross Section

Cross Section should include :

- Orientation of the cross section (make sure A and A' are oriented consistently with plan view)
- A drawing scale (1" = 100', 1" = 2,000', etc.). (length, width, and height or depth). The scale should accurately represent the project dimensions. (If necessary, separate horizontal and vertical scales can be used)
- Maximum possible dimensions, in feet, of temporary AND permanent fill area(s)
- Mean high water (MHW) and mean low water (MLW) of all waterbodies on which work will occur. (can be obtained from personal observation, the local Parish government, or the US Army Corps of Engineers. For commercial activities, a datum reference, such as NGVD (National Geodetic Vertical Datum), MSL (Mean Sea Level), or MLG (Mean Low Gulf) should be included. Datum must be consistent throughout the plans)
- Elevation of levee
- Existing and proposed water depths (if dredging and/or filling a waterbody) (if available)



Sample Plate # 8C