

**2015-0368**

**INTRODUCED BY: V.J. ST. PIERRE, JR., PARISH PRESIDENT  
(COASTAL MANAGEMENT SECTION)**

**ORDINANCE NO. 15-10-13**

An ordinance to amend the St. Charles Parish Code of Ordinance by adding Chapter 26, the St. Charles Parish Local Coastal Program.

**WHEREAS,** St. Charles Parish has been engaged in a Coastal Zone Management program since the early 1970's; and,

**WHEREAS,** there have been several attempts to adopt a Local Coastal Program that can be recognized by both the Louisiana Department of Natural Resources and the National Oceanic and Atmospheric Administration; and,

**WHEREAS,** approval of a Local Coastal Program will increase our parish's say in the management of our coastal resources; and,

**WHEREAS,** the St. Charles Parish Coastal Zone Advisory Committee has worked since the early 1970's toward this goal; and,

**WHEREAS,** the public was engaged throughout the development of the Plan; and,

**WHEREAS,** the Council entered into a contract with South Central Planning and Development Commission to lead the Parish in the development of the Local Coastal Program; and,

**WHEREAS,** the Local Coastal Program ordinance is a part of the Local Coastal Plan and when adopted makes the plan part of St. Charles Parish law; and,

**WHEREAS,** the ordinance was presented to the Coastal Zone Advisory Committee with comments and corrections on October 1, 2015; and,

**WHEREAS,** the Coastal Zone Advisory Committee has forwarded the ordinance to the St. Charles Parish Council with a recommendation to be approved as amended.

**THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:**

**SECTION I.** The ordinance to amend the St. Charles Parish Code of Ordinance by adding Chapter 26, the St. Charles Parish Local Coastal Program shall read as follows:

**SECTION 26-1. – PURPOSES AND CONSTRUCTION**

(a) This article is hereby enacted for the purpose of:

(1) Recognizing the value in natural coastal ecosystems.

a. Protect, restore and enhance the coastal zone as a natural storm barrier, flood control system, and water infiltration system;

b. Protect, restore and enhance the coastal zone as a habitat for wildlife, an aquatic resource, an aesthetic resource, a parish, state and national resource, and an historic cultural resource;

c. Protect, restore and enhance the coastal zone as a legacy to future generations.

(2) Recognizing the value in coastal-dependent commercial activity.

a. Promote coordinated development within the coastal zone.

b. Promote conflict resolution arising from multiple, competing uses.

c. Promote recreational uses (respect private property) and monitor public access within the coastal zone.

(3) Balancing these values in the parish to allow current and future residents the opportunity to enjoy the multiple benefits and cultural values associated with a healthy coastal zone.

(4) Fostering the public safety, health and welfare of parish residents.

(5) In the event that sections of this article may be subject to multiple interpretations, they must be read to further the purposes stated above and to be consistent with the state coastal resources program.

- (6) All exceptions shall be construed narrowly.
- (7) This article applies to all local uses defined in R.S. 49:214.25A (2).
- (8) Should any provision herein be deemed contrary to law, it shall be severed from the remainder and shall not affect other provisions that may remain applicable, irrespective of the invalid provision.
- (9) This article shall be read and construed as a whole and in accordance with this chapter.

## SECTION 26-2. – DEFINITIONS

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) **Act** means State and Local Coastal Resources Management Act (SLCRMA), R.S. 49:214.21 et. seq.
- (2) **Administrator** (See also **State Administrator**) means the administrator of the Office of Coastal Management within the Louisiana Department of Natural Resources.
- (3) **After-the fact permit** means a coastal use permit issued after the commencement of an activity or use.
- (4) **Aggrieved party** means any person who receives a decision adverse to their interests or proposed objectives.
- (5) **Agricultural, forestry and aquaculture activities** means those activities:
  - a. That are common practice and incident to agriculture, forestry and aquaculture, provided that the activity is one of an on-going basis for a period of at least ten years, including the year previous to the activity in question;
  - b. That do not require a permit from the U.S. Army Corps of Engineers; and
  - c. That do not result in a new or changed use of the land.
  - d. Examples include seeding, fence building and harvesting.
- (6) **Applicant** means the owner of the property for which a use requiring a coastal use permit is requested, an agent, or someone specifically authorized in writing by the owner to make an application. No "unknown owner" applicants will be allowed.
- (7) **Buffer zone** means a strip of land adjoining a wetland mitigation site to protect the wetland habitat and wildlife within the bank from the impact of an activity outside the buffer zone. The term includes a strip of land composed primarily of water or a strip of land that includes a fence, wall, or screen of vegetation when these visual barriers also provide functional protection for the wetland.
- (8) **Camp** means a structure built and used for noncommercial and nonprofit purposes and commonly referred to as single-family, not multiple-family dwellings and shall apply only to such structure built singly, not as part of a subdivision, tract development, speculative building, or recreational community development and intended for periodic occupancy.
- (9) **Closely related actions** means those actions that:
  - a. Automatically trigger other actions which may require permits;
  - b. Cannot proceed unless other actions are taken previously or simultaneously; or
  - c. Are interdependent parts of a larger action and depend upon the larger action for their justification.
- (10) **Coastal use permit (CUP) or permit** means those permits required by R.S. 49:214.30.
- (11) **Coastal waters** means bays, lakes, inlets, estuaries, rivers, bayous and other bodies of water within the boundaries of the coastal zone.

(12) **Coastal zone** means that area described in R.S. 49:214.24.

(13) **Coastal zone management program** means the applicable laws, regulations, policies and guidelines developed by federal, state and local government to implement the coastal zone management act.

(14) **Compensatory mitigation** means replacement, substitution, enhancement or protection of ecological values to offset anticipated losses of those values caused by a permitted activity.

(15) **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.

(16) **Cumulative impacts** means the influence on the environment resulting from the incremental effects of the activity when added to other past, present, and reasonably foreseeable future activities regardless of what agency or person undertakes those activities. Cumulative impacts may result from an individually minor but collectively significant activity taking place over a period of time. Secondary impacts caused or enabled by a particular project are considered cumulative, including, but not limited to increased development in an area where new sewers, roads, and other infrastructure have been built, whether plans exist for this area at the time the infrastructure is built or not. Cumulative impacts to coastal zone resources may result from activity outside the coastal zone or from activity exempt under coastal zone permitting.

(17) **CZM Administrator** (See also **Local Administrator**) means the parish professional charged with implementing and administering this article and the local coastal zone management plan.

(18) **Department or DNR** means the Louisiana Department of Natural Resources.

(19) **Direct and significant impact** means an impact that perceptibly or measurably alters the physical, hydrological, chemical, or biological characteristics of coastal waters as a result of an action or series of actions undertaken by man.

(20) **Ecological Value** means the ability of an area to support vegetation and fish and wildlife populations.

(21) **Emergency** means a situation that poses an immediate threat to public safety, life, health or property and action in response to the threat cannot await the permitting process. Declaration of an emergency must come from a governmental body with authority to make such declarations and continues for the time that body specifies.

(22) **Environmental management unit (EMU)** means an area with certain distinguishing physical, hydrological, chemical, biological or cultural characteristics.

(23) **Exempted use** means any use specifically listed in this article as not requiring a permit.

(24) **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.

(25) **Guidelines** means L.A.C. title 43, chapter 7, entitled "Coastal Management."

(26) **In-kind mitigation** means providing goods, services, or funds in an amount valued equally to the fair market value of creating a mitigation site; it is similar in concept to barter trade.

(27) **Interested person** means any of the following:

- a. Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in a proceeding on the matter.
- b. Any person with a financial interest in a matter before the appeals panel, or an agent or employee of the person with a financial interest, or a person representing the person with a financial interest.
- c. A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of the appeals panel on a matter before the appeals panel.

(28) **Levee** means an embankment to control, retain or prevent movement of water or other material.

(29) **Local administrator** (See also **CZM Administrator**) means the parish professional charged with implementing and administering this article and the local coastal zone management plan.

(30) **Local coastal program advisory committee or committee** means the group of nine individuals representing coastal area user groups.

(31) **Local government** means the parish council and/or the parish administration.

(32) **Mitigation** means all actions taken by an applicant to avoid, minimize, restore and compensate for loss of an area's ability to support vegetation, fish and wildlife populations due to a permitted activity.

(33) **Mitigation bank** means a parcel of land that has undergone or is proposed to undergo a physical change necessary to enhance, restore or create wetland habitat on the parcel expressly to offset an adverse impact to another wetland caused by an approved or future projects. Timing distinguishes a bank from off-site mitigation. Off-site mitigation is usually created concurrent with or subsequent to the project rather than before a project. Mitigation credits, as valued under L.A.C. title 43, part I, section 724E.1.b. et al. and defined in this section, may be donated, sold, traded, or otherwise used for the purpose of compensating for ecological values lost due to a permitted activity.

(34) **Mitigation credit** means a unit of measured area that supports wetland habitat, wetland habitat value, and wetland function that did not exist at the mitigation bank site before the bank was developed. Credits are determined in accordance with L.A.C. title 43, part I, section 724.

(35) **Navigational aids** means buoys, marker piles, dolphins, piling, and/or pile clusters when in conformance with U.S. Coast Guard standards and do not involve dredge and fill activity.

(36) **Non-Continuing 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 a new port or marina facility.

(37) **Normal maintenance and repair** means activity taken to reasonably preserve the utility of a lawfully existing structure in active use for the year preceding the proposed activity. It does not include expanding an existing structure, dredging and filling, or altering the magnitude or function of the original structure.

(38) **On-site mitigation** means all measures that may be taken to offset or eliminate damage or destruction to the functional characteristics and processes of a wetland, changing the operational characteristics of the proposed activity, or creating or enhancing wetland functions or values at the project site.

(39) **Out-of-kind mitigation** means the creation of habitat functions and types at the mitigation site substantially different from those that existed at the project site; restoration of a bottomland hardwood site as mitigation for a project in a salt marsh is one example.

(40) **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 the construction of flood protection facilities critical for protection of existing infrastructure.

(41) **Parish Council** means the legislative authority of general jurisdiction at the parish level.

(42) **Permit** means a Coastal Use Permit.

(43) **Person** means any individual, partnership, association, trust, corporation, or government body.

(44) **Public hearing** means any hearing announced to the public at least 30 and no more than 60 days in at least two newspapers covering the parish. Hearings will be held in the closest available site to the permit site or local community. All interested persons shall be afforded a reasonable opportunity to make written or oral submissions on the subject of the meeting.

(45) **Residence** means a structure built and used for noncommercial and nonprofit purposes and commonly referred to as single-family dwellings, not multiple-family dwellings and shall apply only to such structures built singly, not as part of a subdivision, tract development, speculative building, or recreational community development and intended as a primary residence.

(46) **Residents** means both real persons and entities whose occupancy in parish is intended to be on an ongoing, primary nature. These include, but are not limited to civic, environmental, neighborhood, business, labor, trade, or similar organizations or a legally recognized business entity.

(47) **Same-kind mitigation** means the creation of habitat functions and types at the mitigation site substantially similar to those that existed at the project site; restoration of a bottomland hardwood site as mitigation for a project in a bottomland hardwood site is one example.

(48) **Secretary** means the secretary of the department of natural resources or designee.

(49) **Special areas** means those portions of the coastal zone within parish that require special management procedures due to certain unique and valuable characteristics. Examples include barrier islands, shell deposits, salt domes, archaeological sites, transportation corridors, endangered species habitat, ports, and recreational sites among others. These areas may be designated by the parish council and recommended by the committee.

(50) **State Administrator** (See also **Administrator**) means the administrator of the Office of Coastal Management within the Louisiana Department of Natural Resources.

(51) **Supplemental material** means any of the following or other, unlisted material deemed appropriate by the local administrator:

- a. A description of the physical, chemical, hydrological, biological and cultural environment in which the activity is proposed to take place;
- b. A list of alternatives to the proposed activity including a status quo alternative;
- c. A complete description of expected consequences to the physical, chemical, hydrological, biological and cultural environment;
- d. How any such impacts will be mitigated or offset including when these environmental benefits will be achieved, evidence to support the proposal's intended results and how the projected results, both positive and negative, may be monitored in the future.

(52) **Uplands** means land that is five feet or more above sea level.

(53) **Use** means any use or activity within the coastal zone which has a direct and significant impact on coastal waters.

(54) **Wetland** means:

- a. for the purpose of this Ordinance except for Section 724 of SLCRMA 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;

b. for the purpose of Section 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.

(55) **Wetland functions** means a service that wetlands perform, including floodwater storage, floodwater conveyance, groundwater discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, and habitat for fish, wildlife, invertebrates, and plants, among others.

### **SECTION 26-3. – LOCAL CZM ADMINISTRATOR**

(a) The local Coastal Zone Management (CZM) Administrator shall manage the local coastal zone management program based upon the local coastal zone management plan, as adopted by the parish council and perform the following duties:

- (1) Manage the local Coastal Zone Management Program based upon the approved Local Coastal Zone Management Program.
- (2) Issue, deny or modify CUPs consistent with the coastal zone management plan for parish.
- (3) Adopt any rules and regulations that are reasonable and necessary to carry out this article in conformance with the generally established procedures for parish rulemaking.
- (4) Conduct any investigation necessary to ascertain compliance with this article.
- (5) Act as liaison for parish to the U.S. Army Corps of Engineers, other parishes, and other state and local governmental entities relative to projects governed by this article or the Act which are proposed to take place in or impact the coastal zone of parish.
- (6) Review and comment upon uses of state concern, as defined in R.S. 49:214.25A(1).
- (7) Determine whether a proposed project has direct and significant impacts and whether a proposed project is a local use.
  - a. Should the local administrator determine that direct and significant impacts on coastal waters may result from the proposed activity, the local administrator will forward the application materials and any supplemental materials to the secretary for an authoritative determination. Concurrently, the local administrator will notify the project proponent of the referral to the secretary.
  - b. If the secretary determines that direct and significant impacts will result from the proposed project, the finding and application will be returned to the local administrator to continue the permit process.
  - c. If the secretary determines that direct and significant impacts will not result from the proposed project, the finding will be returned to the local administrator who will then notify the project proponent that the activity may proceed without a CUP.
- (8) Maintain and hold open for public inspection records pertaining to this article and activities governed by this article.
- (9) Regularly update the committee on actions taken by the local administrator and seek their advice on future actions.
- (10) Enforce this ordinance/Code Article and the Act.
- (11) Request and receive the assistance of other officers and employees of the parish when necessary to carry out these duties.

(12) Consider written requests from parish residents to add, modify, or delete local rules implementing this article.

#### **SECTION 26-4. – LOCAL COASTAL ZONE MANAGEMENT ADVISORY COMMITTEE**

- (a) The committee shall include representatives from various interest groups or government agencies to encourage full use of the coastal resources recognizing that it is in the public interest of the people to establish a proper balance between development and conservation. Its membership shall be appointed by a majority vote of the parish council.
- (b) A member shall be removed by the parish council only for good cause during their four-year term. Within the first six months of each term, the Council may remove or replace Committee members without cause. With no action on the part of the Council, Committee members shall remain in their seats as there are no express term limits. The committee chairperson is to be selected by standing members.
- (c) Committee activities shall be coordinated by the CZM Administrator.
- (d) The seven-member advisory committee will be appointed by the parish council with a member appointed by each council member.
- (e) The committee shall review and comment upon any proposed rules and regulations impacting the coastal zone.
- (f) The committee shall recommend to the parish council any modifications to this ordinance.
- (g) The committee shall review and comment upon any coastal use permit at the request of the local CZM administrator.
- (h) The committee shall nominate representatives to hear appeals in accordance with this article.
- (i) The committee shall assist the CZM Administrator in submitting a regular report describing the activity of parish's coastal zone management program to the DNR secretary as required and make copies available to the public. The report shall include the number, type and characteristics of the CUP applications, decisions, appeals, variances, enforcement actions, and problem areas in the parish coastal zone management program for the past year and proposed changes in the state or local coastal zone management program.
- (j) The committee shall enforce this Ordinance and the Act.

#### **SECTION 26-5. – COASTAL USE PERMIT APPLICATIONS**

(a) Undertaking a local or state use in the St Charles Parish coastal zone without a Coastal Use Permit or in violation of permit terms is unlawful. Activities listed under L.A.C. 43:1,723(B) et al. and LA R.S. 49:214.34(A) are exempt from this ordinance, except when that particular activity would have direct and significant impact on coastal waters. These exceptions noted in the revised statutes must be described in a completed permit application to allow a determination of whether they have a direct and significant impact on coastal waters. The following procedure shall be followed in applying for a coastal zone use permit:

- (1) All applications shall be made on the forms prescribed by the secretary, available at the parish coastal zone management office or online at the Louisiana Department of Natural Resources, Office of Coastal Zone Management's Website
- (2) Applications may be submitted to either the local CZM Administrator or the State Administrator.
- (3) Applications must include material required by L.A.C. title 43, section 723(C)(2), including, but not limited to, the following:
  - a. Maps showing actual location, size and dimensions of the real property proposed as the use site. Maps shall be the latest available (e.g., earth imaging infrared, coast and geodetic survey maps or equivalent).
  - b. Plans showing the exact location, size, and height of the buildings or structures to be developed;

- c. A list of all applications, approvals and/or denials already made concerning the development by federal, state or local agencies;
  - d. A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of the proposed coastal use;
  - e. A description of how the projects impacts may be tracked in the future;
  - f. If the development involves dredging, a description of the type, quantity and composition of the dredged material, the method of dredging and disposal;
- (4) Applicants may be requested to provide supplemental material upon determination of need by the local CZM Administrator. If after 30 days an applicant should fail to respond to the request for supplemental material, the application will be deemed withdrawn. The local administrator shall notify the applicant in writing of the withdrawal and include a copy of the request for supplemental material;
- a. Processing will be stopped pending receipt of necessary changes or information from the applicant and the processing periods will be interrupted.
  - b. If the applicant fails to respond within 30 days to any request or inquiry of the local CZM Administrator or the State Administrator, 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 receipt of the letter requesting changes or information.
  - c. Upon receipt of the required changes or information a new processing period will begin.
- (5) Assistance and consultation will be provided to any applicant so requesting;
- (6) Separate applications shall be made for each unrelated, single action. Actions that are closely related should be included in a single permit application;
- (7) Application fees may be assessed according to a schedule prepared and posted by the local CZM Administrator;
- (8) Each application may be required to include an acceptable surety bond of \$5,000.00 to ensure adjustment, alteration or removal should the CZM administrator or the committee determine it to be appropriate for compliance with this article, the guidelines, and the Act.
- a. If required, the bond shall be returned to the applicant promptly when:
    - 1. The applicant withdraws the application;
    - 2. The permit application is denied; or
    - 3. The completed project has been inspected and determined to be in compliance with the terms of the permit.
  - b. After demonstrating repeatedly the good faith compliance with all permit terms and conditions, an applicant may request that the local CZM Administrator waive the bond requirement or reduce the amount.
- (9) After following due notice to comply with all permit terms and conditions in the past six months, the local CZM Administrator may enhance the bond requirement or cause the forfeiture of the bond by the owner.

## **SECTION 26-6. – PERMIT REVIEW PROCESS**

- (1) Upon receipt of a complete application packet, the local CZM Administrator shall make an initial review to determine whether the activity fits within the exempted activities or whether the activity would not have a direct and significant impact on the coastal waters.
- (2) If the activity is exempt or upon a finding of no impact(s), the local CZM Administrator forward to the OCM for an authoritative concurrence. If the activity is not exempt or upon a finding that direct and significant impacts(s) will result from the proposed activity, the CZM Administrator shall assign it a number, acknowledge receipt, and ascertain whether the application is for a state or local use in accordance with R.S. 49:214.25 et. al.

(3) Application processing will begin when an application that is apparently complete is accepted by the local CZM Administrator or the State Administrator. When received by the local CZM Administrator, the local CZM Administrator shall assign it a number, acknowledge its receipt and make an initial determination of whether the proposed activity is a state or local concern in accordance with La R.S. 49:214.25(A). Copies of all applications submitted to St Charles Parish CZM Administrator along with the local CZM Administrator's initial determination shall be submitted to the Secretary within two (2) days of receipt.

(b) When it is determined to be a Local Use/Concern:

(1) Upon the determination that a permit application is a local concern either by the State Administrator, the local CZM Administrator shall make public notice of the pending local use application made in accordance with LAC 43:I,723(C)(5).

(2) Notice of a pending application shall include the permit number, the location of the proposed activity, and information allowing members of the public to comment on the proposal for 25 days.

(3) Before expiration of the applicable public comment period, the local CZM Administrator shall:

a. Forward copies of the local concern application to the local Coastal Zone Committee and appropriate parish officials

b. Solicit comment(s) both the Coastal Zone Committee, appropriate parish officials and as appropriate other agencies with expertise.

c. Make a determination regarding the appropriateness of calling a public hearing on the proposed local use based on the same requirements noted for state concerns or at the request of the applicant or a majority of the coastal advisory committee. To be considered, the request must be received within 25 days of the official journal publication. A decision to call a public hearing shall interrupt the timeline for deciding the appropriateness of issuing or denying the permit application, however, the hearing shall be scheduled in a prudent manner. Any documents, studies or other data in the applicant's possession relevant to the proposed use must be made available to the public for review, study, and duplication at least five (5) days prior to the hearing. As additional materials are developed, they must also be made available. When appropriate, the local CZM Administrator shall hold a public hearing in accordance with the St Charles Parish's procedures governing public hearing. After expiration of the applicable public comment period, the local CZM Administrator shall take one of the following actions:

1. Consider and address in writing each comment received on the application in the final permit decision.

2. Include a short, plain statement explaining the basis for decision on each final permit decision.

3. Either

i. Issue the local use permit, based on this article, the guidelines and the Act;

OR

ii. Issue the local use permit with conditions, based on the parish coastal zone management plan, the guidelines and the Act.

- 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 and in accordance with LAC 43:I.723(C)(8).

4. Or

i. Deny the local use permit, based upon the parish coastal zone management plan, the guidelines, and the Act.

(c) When it is determined to be a State Use/Concern:

(1) Upon the determination that a permit application is a use of state concern, concern, the local administrator shall review the proposed activity for consistency with their program guidelines and with the goals, objectives and policies developed for the environmental management units(s) in which the proposed activity would take place. Based on this review the local administrator shall:

- a. Forward copies of the state concern application to appropriate parish officials,
- b. Solicit comments from the local program committee and parish officials,
- c. Request a public hearing when there is significant public opposition to a proposed use, or when there have been requests from legislators or local governments or other local authorities, or in controversial cases involving significant economic, social, or environmental issues.
- d. Follow the guidelines for public hearing for a local concern and then after expiration of the applicable public comment period, the local CZM Administrator shall take one of the following actions:
  - i. Comment upon a state use application.
  - ii. Solicit comment upon a state use application from the committee.
- e. The local CZM Administrator may submit comments to the State Administrator regarding the application within 25 days from the date of the official journal publication of the notice.

(2) Note: General permits have a shorter window of review time and the local administrator should forward comments in accordance with the general permit timelines.

(d) Any person may obtain a copy of the permit application and supporting documents by making a request to parish office of coastal zone management and providing reasonable costs of copying, postage, and handling.

(e) Terms and acceptance of permits

(1) Term of issued permits. A CUP shall remain valid for two years after the date of issuance. Should a project proponent desire more time, they may seek to either:

- a. Have the permit renewed based on a demonstration that diligent efforts have been made to complete the project within the allotted time but that events beyond the proponent control delayed completion; or
- b. Have the permit issued for a longer period up to three years based upon conclusive evidence demonstrating that the use will extend beyond a year under ordinary circumstances. After three years, a new permit application must be made.

(2) The local CZM Administrator has discretion to grant an applicant more time under either of the circumstances in subsection 6.6.1. of this section.

(3) By accepting the permit, the applicant agrees to the following:

- a. To act in accordance with the plans and specifications as contained in the approved application;
- b. To comply with permit conditions imposed to ensure compliance with this article;
- c. To adjust, alter or remove any structure or physical alteration if the local CZM Administrator and a majority of the committee determine such action is necessary to achieve compliance with this article;
- d. To provide an acceptable surety bond, in an appropriate amount as posted by the CZM Administrator, to ensure adjustment, alteration, or removal should the applicant fail to take such action when requested;
- e. To hold the state, the parish and all officers and employees thereof harmless from any injury to persons or property resulting from actions undertaken to carry out the permit;

- f. To certify that the permitted activity has been completed in accord with permit or, upon request of the local administrator, provide certification from a licensed professional to that effect;
- g. To allow reasonable inspection of the project for purposes of monitoring and compliance inspections.

#### **SECTION 26-7. - AFTER THE FACT PERMITS.**

- (a) A CUP may be issued as an after-the-fact permit under one of the following circumstances:
  - (1) The activity taken was undertaken in response to an emergency and the parish official was notified of the activity;
  - (2) The activity taken was in violation of this article but would likely have been permitted if the applicant had applied for a permit;
  - (3) The activity taken was in violation of this article but would likely have been permitted if the applicant had accurately described the project as completed in the application materials.
- (b) An after-the-fact permit may be limited in duration at the discretion of the local administrator but shall not exceed the time allocated for issuance of similar CUPs obtained through the normal process.
- (c) An after-the-fact permit must be requested within 15 days of the activity subject to permitting, at which time the application will proceed as any other application.
- (d) When an after-the-fact permit is issued as part of an enforcement action, additional terms and conditions may be included at the discretion of the local administrator or committee as consideration of circumstances unique to the particular applicant, including, but not limited to fines, posting of larger bonds to assure compliance and reporting requirements to monitor the project. Increased mitigation requirements may be required on or off site over normal permit requirements.
- (e) An applicant for an after-the-fact permit may be required to fulfill conditions in the permit despite completion of the activity or return the area to its pre-emergency state if the application is denied.
- (f) For purposes of this article, an after-the-fact permit shall be treated as any other permit after it is issued.

#### **SECTION 26-8. - MITIGATION**

- (a) Applicability; requirements
  - (1) Provisions on mitigation shall be read and construed as a whole and in accordance with applicable state regulations, L.A.C. title 43, part I, chapter 7, section 724, which designate the secretary of the Louisiana Department of Natural Resources (LDNR) as the authority responsible for all decisions respecting mitigation.
    - a. In accordance with R.S. 49:214.41(C), compensatory mitigation is not required in a CUP for an activity that does not have direct and significant coastal zone impacts:
      - 1. In a wetland existing in a fastland;
      - 2. In a wetland more than five feet above mean sea level; or
      - 3. When an applicant has satisfactorily demonstrated to the secretary that the required mitigation would render impracticable an activity proposed to be permitted and that such activity serves a clearly overriding public interest, and the provisions of R.S. 49:214.41(C) are met.
    - b. Projects exempt from the compensatory mitigation requirements may still be required to include other forms of mitigation or to mitigate for other types of impacts under regulations promulgated in accordance with R.S. 49:214.41, such as L.A.C. title 43, section 724(B)(1)(a) and (b).
  - (2) The local CZM Administrator shall implement mitigation activities in accordance with the directives of Louisiana's Coastal Resources Program (LCRP).

(3) Actions of the local administrator respecting mitigation - Actions by the local administrator respecting wetlands mitigation may include the following:

- a. Authorizing or making a continuing study of wetland areas and wetland mitigation programs;
- b. Consulting with, providing information to, and entering into an agreement with a federal agency, state agency, or private entity to identify and publish information about wetland areas;
- c. Cooperating with a federal or state agency in connection with a study or investigation regarding the adequacy of a local measure with respect to a federal or state wetland program;

## **SECTION 26-9. - APPEALS**

(a) Any person adversely affected by a permit decision, any landowner in, or resident of parish and any government authority may request an administrative appeal of the local CZM Administrator's decision by filing a written notice to the local CZM appeals panel within 15 days from the date the decision was issued. The party requesting any appeal shall provide:

(1) A copy of the notice shall be provided to all parties of record and to the local CZM Administrator by the party requesting any appeal.

(2) The party requesting an appeal shall include in the submission to the local CZM Administrator a copy of the permit decision being appealed and a copy of the permit application.

(b) Notice of appeal shall:

(1) Identify how the permit decision of the local CZM Administrator is contrary to law and any issues providing grounds for appeal;

(2) State sufficient facts regarding the proposed project to allow adequate analysis of whether or not the local administrator's decision was supported by fact;

(3) Include the name, address, and phone number of the party requesting review and, if applicable, the party's legal representative;

(4) Provide a short statement indicating how the party requesting the appeal would like the appeals panel to remedy the situation;

(5) Include a statement that the party requesting an appeal has read the notice and believes the contents to be true, followed by the party's signature and that of the party's representative, if any.

(6) Not include issues not raised during the application process constitute except for allegations of any of the following:

a. New evidence pertinent to the key issues upon which the permit decision was based that may not have been discovered before or during the application review process by using due diligence;

b. Fraud, as defined by state law, or corruption in the application process; or

c. Other good grounds for further consideration in the public interest. The term "good grounds" includes, but is not limited to a failure to consider pertinent issues or facts in the initial review process.

(c) Upon receipt of a completed appeals packet, containing proper notice as defined above, a copy of the decision and a copy of the application, the local CZM Administrator shall notify the appellant of its receipt by mail.

(d) A public appeal may be held upon the request of ten or more residents of parish or any parish in which impacts of the project may be realized or a combination thereof.

(1) The request for public appeal must be made in writing to the local CZM Administrator:

a. Within ten days of the notice for administrative appeal or within ten days of the local administrator's decision; and

- b. Contain the names, signatures, address of legal residence, and phone numbers of each resident requesting a public appeal and of their legal representative, if any.
- (2) The public appeal shall replace the form of the administrative appeal described in this article, when properly requested. All provisions applicable to the administrative appeal shall be equally applicable to the public appeal unless clearly contradictory, impossible, or specifically expected.
- (e) The local CZM administrator shall schedule an administrative appeal or public appeal within ten days of receiving a completed administrative appeals packet or proper request for a public appeal.
  - (1) The local CZM Administrator shall promptly send each party of record the date, time, and location of the administrative appeal by registered mail.
  - (2) The local CZM Administrator shall publish the date, time and location of any public appeal in a newspaper of general circulation in the parish of the proposed site for the project at issue.
  - (3) The local CZM Administrator shall require the applicant to post notification of the upcoming appeal on the proposed site of the activity at issue.
- (f) Interested parties may appear personally or be represented by counsel at the public appeal to produce any competent evidence on their behalf.
- (g) The panel may administer oaths, examine witnesses, and issue notices of hearings or subpoenas requiring the testimony of witnesses and production of books, records or other relevant documents.
  - (1) The appeals panel may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The appeals panel may exclude evidence they find incompetent, irrelevant, immaterial or unduly repetitive.
  - (2) The appeals panel shall give effect to the rules of privilege recognized by law.
  - (3) Objections may be made and considered, and shall be noted in the record.
  - (4) The appeals panel may take notice of judicially cognizable facts, as requested by interested parties. Such facts include, but are not limited to, recognized technical or scientific facts.
  - (5) Depositions may be taken in accordance with provisions governing the taking of depositions for civil court proceedings and admitted in the public appeal or administrative appeal.
  - (6) Discovery may occur in accordance with provisions governing discovery for civil court proceedings in the district court of parish.
- (h) A verbatim transcript of testimony at the public appeal shall be prepared and, in addition to exhibits and documents introduced, constitute the record.
- (i) The appeals panel shall make findings of fact and a decision based upon the record when a public appeal is held. When an administrative appeal is held, the findings of fact and decision shall be based upon the following:
  - (1) Written submissions from interested parties prepared for purposes of administrative appeal;
  - (2) The original permit application and associated documentation; and
  - (3) Any legislative facts (such as scientific studies) or documented communications the panel deems trenchant relative to material issues in the permit.
- (j) The appeals panel shall issue a written decision of a length and depth to enable a court to evaluate the rationale and fundamental facts underlying the decision. A copy of the appeals panel's decision shall be provided to each of the interested parties by the local administrator.
- (k) The appeals panel hearing appeals of permit decisions on applications for a CUP in parish shall be composed of three, unbiased members as follows:
  - (1) The parish council shall appoint three local representatives to an ad hoc hearing panel.

- (2) The parish council shall appoint a local representative from the committee to serve as an appeals officer for purposes of this section. This representative can be removed only for cause. Local representatives shall be available on a rotating basis to hear administrative appeals and public appeals.
- (3) In addition to definition by pertinent state law, bias may include, but is not limited to interest in the outcome of the appeal, prior commitment, or individual prejudice towards an interested party.
- (4) Each member of the appeals panel has an equal vote and decisions shall be determined by majority rule.
- (5) The three member composition shall be used for both administrative appeals and public appeals.
- (l) Members of the appeals panel shall have no outside contact with any interested party regarding a fact in issue without prior notice to the other interested parties.
- (m) Members of the appeals panel shall not communicate privately with anyone outside the department of natural resources regarding the merits of the appeal without documenting such communication.
- (1) Documentation shall include:
- a. The date, time, form and location of the communication;
  - b. The identity of the persons initiating and receiving the communication; and
  - c. A description of the content of the communication.
- (2) Interested parties may review the documentation upon written request to the appeals panel.
- (n) No appeals panel member shall make, participate in making, or attempt to use in any other way, the position of appeals panel member to influence a decision about which he has knowingly had communications required to be documented but that were not documented. In addition to any other applicable penalty, an appeals panel member who violates this provision shall be subject to a civil fine and be barred from participation in the current appeal and all future appeal decisions.
- (o) Any appeals panel member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration.
- (1) The parish president may request the disqualification of an appeals panel member based on the inability of the member to make a fair and impartial decision by filing an affidavit, upon discovery of the alleged grounds for disqualifications. The affidavit shall state with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.
- (2) The issue of disqualification shall be heard and determined promptly by the parish president or a designee.
- (3) Upon the disqualification of a member of the appeals panel, a substitute shall be obtained from the pool of local representatives in accord with the rotation schedule when the disqualified member is a local representative.
- (p) The party requesting an appeal bears the burden of presenting a prima facie case, as that standard is determined by state law for civil trials.
- (q) The standard for review of the local administrator's decision by the appeals panel is whether the decision on the permit application was supported by substantial evidence, as defined in state law. (See R.S. 49:964.)
- (r) Review of the decision of the appeals panel by a competent court shall be provided if the following criteria are met:
- (1) Written request is made;
  - (2) The request is filed within 15 days of the appeals panel's final decision in the district court in the parish of the proposed project location;
  - (3) The request is made by any interested party who participated in the process before the appeals panel.
- (s) Judicial review of the appeals panel's decision shall be based on the substantial evidence standard, as defined by state law. (See R.S. 49:964.)

- (t) Nothing in this provision shall impede other authorized means for review.
- (u) The local CZM Administrator may establish a fee system to cover administrative costs associated with implementing the appeals process, including, but not limited to reasonable charges for copies and postage.
- (v) Good faith efforts to reach a resolution through mediation or another alternative dispute resolution process recognized by the state shall stop the running of the timeline for filing a request for either an administrative appeal or a public appeal.
  - (1) Using an alternative dispute resolution process as a delay tactic constitutes bad faith and may subject that party to a penalty equal to five percent of the cost of the proposed project for each calendar day of delay.
  - (2) Any interested party who believes alternative dispute resolution processes are being used in bad faith, as defined above and in state law, may request a determination by the district court in which the proposed project site exists.
    - a. The court will determine whether bad faith exists and may issue penalties.
    - b. Finding of bad faith by a court begins the running of the time for filing a request for an administrative or a public appeal, among such other consequences defined by state law and that the judge may find appropriate.
- (w) Reconsiderations, judicial review
  - (1) A decision or determination shall be subject to reconsideration if a petition for reconsideration is filed in writing with the CZM Administrator within ten days following public notice of a final coastal use permit or receipt of written notice of a determination.
  - (2) Any person authorized by the 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.
  - (3) 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 reconsideration is requested, within thirty days after the decision thereon.
  - (4) Judicial review shall otherwise be pursuant to the Louisiana Administrative Procedure Act, provided that all such cases be tried with preference and priority. Trial de novo shall be held upon request of any party.

## **SECTION 26-10. - ENFORCEMENT IN GENERAL**

- (a) After a written request sent to the committee upon which no action is taken within 15 days, any person may commence a civil action on his own behalf to enforce this article:
  - (1) Against any person (including parish officials in their capacity as government agents and the parish government) who is alleged to be in violation of this article or an order issued pursuant to this article; or
  - (2) Against the local administrator where there is alleged a failure of the local CZM Administrator to perform any act or duty under this article which is not discretionary.
- (b) Upon a prima facie showing of a violation of this article, the person shall be granted preliminary equitable relief to restrain any further violation.
- (c) Each violation of an individually named condition of a permit or order and each day a violation continues shall constitute a separate violation. A fine of \$2,000.00 per offense per day may be assessed by the parish coastal zone management administrator, subject to coastal zone management committee approval. Such fines will be in addition to fines imposed by other government agencies.
- (d) Enforcement may be initiated in any of three ways:

- (1) Investigation and monitoring as a matter of course under R.S. 49:214.36(A);
  - (2) Referrals from other agencies; or
  - (3) Complaints from individuals or groups.
- (e) Every effort is made to use the investigation and monitoring to correct deficiencies in site compliance whenever possible.
- (1) The inspection shall include a routine check-list, examination of specialized provisions in the permit, photographs, and notes or other documentation developed during the permit process.
  - (2) Should compliance fail to be achieved or if the inspecting official deems a violation serious enough to warrant enforcement; considering the gravity of the violation and the actor's compliance history; the violation may be deemed either noncompliance or significant noncompliance:
    - a. Significant noncompliance exists when the violation poses an imminent threat to the public welfare, is egregious in nature or results from action by a person that has been in violation of this article within the preceding two years; in these instances, a cease and desist order shall be issued promptly by the local CZM Administrator.
    - b. Noncompliance exists when the violation is of a minor nature or can be remedied without significant hardship; in these instances, a letter of warning shall be issued promptly by the local CZM Administrator.
      1. letter of warning describes the observations of the inspector, identifies the corrective actions that may be taken to come into compliance, provides a date by which the actions must be made, identifies the provisions of this article in violation and is signed by the inspector.
      2. A letter of warning must be sent by certified mail to the permit applicant or record owner of the property when no permit exists.
  - (3) The inspector shall investigate the response. After examining the timeliness, completeness, documents, and any meetings or interviews necessary, the inspector determines whether or not compliance has been achieved.
  - (4) When compliance has not been achieved, the local CZM Administrator shall issue a cease and desist order or, when a cease and desist order has been issued previously, undertake proceedings to enforce the cease and desist order.

#### **SECTION 26-11. – REFERRALS FROM OTHER AGENCY OFFICIALS**

- (a) When state or local officials become aware of a possible violation of this article, they are to contact the local CZM administrator.
- (b) After receiving a referral, the local CZM Administrator shall promptly take whatever investigatory actions are necessary in order to ascertain whether or not a violation does in fact exist.
- (c) When a violation does not exist, the local administrator informs the agency official who made the referral of such in writing.
- (d) If the inspecting official deems a violation serious enough to warrant enforcement considering the gravity of the violation and the actor's compliance history, the violation may be deemed either noncompliance or significant noncompliance.
  - (1) Significant noncompliance exists when the violation poses an imminent threat to the public welfare, is egregious in nature or results from action by a person that has been in violation of this article within the preceding two years; in these instances, a cease and desist order shall be issued promptly by the local administrator.
  - (2) Noncompliance exists when the violation is of a minor nature or can be remedied without significant hardship; in these instances, a letter of warning shall be issued promptly by the local administrator.
    - a. A letter of warning describes the observations of the inspector, identifies the corrective actions that may be taken to come into compliance, provides a date by which the actions must be made, identifies the provisions of this article in violation, and is signed by the inspector.

b. A letter of warning must be sent by certified mail to the permit applicant or record owner of the property when no permit exists.

(e) The inspector shall investigate the response to any notice of violation. After examining the timeliness, completeness, documents, and any meetings or interviews necessary, the inspector determines whether or not compliance exists.

(f) When compliance does not exist, the local CZM Administrator shall issue a cease and desist order. If a cease and desist order has already been issued, the local administrator may suspend, revoke, or modify a coastal use permit or bring injunctive, declaratory or other actions necessary to enforce the ordinance.

#### **SECTION 26-12. – COMPLAINTS FROM CONCERNED CITIZENS OR OTHERS**

(a) All complaints will be directed to a parish official to determine whether or not a violation exists or make a referral.

(b) If the inspecting official deems a violation serious enough to warrant enforcement; considering the gravity of the violation and the actor's compliance history, the violation may be deemed either noncompliance or significant noncompliance:

(1) Significant noncompliance exists when the violation poses an imminent threat to the public welfare, is egregious in or results from action by a person that has been in violation of this article within the preceding two years; in these instances, a cease and desist order shall be issued promptly by the local administrator.

(2) Noncompliance exists when the violation is of a minor nature or can be remedied without significant hardship; in these instances, a letter of warning shall be issued promptly by the local administrator.

a. A letter of warning describes the observations of the inspector, identifies the corrective actions that may be taken to come into compliance, provides a date by which the actions must be made, identifies the provisions of this article in violation, and is signed by the inspector.

b. A letter of warning must be sent by certified mail to the permit applicant or record owner of the property when no permit exists.

(c) The inspector shall investigate the response. After examining the timeliness, completeness, documents, and any meetings or interviews necessary, the inspector determines whether or not compliance exists.

(d) When compliance does not exist, the local administrator shall issue a cease and desist order. If a cease and desist order has already been issued, the local administrator may suspend, revoke, or modify a coastal use permit or bring injunctive, declaratory or other actions necessary to enforce the ordinance.

#### **SECTION 26-13. – CONTENTS OF CEASE AND DESIST ORDER**

(a) In addition to any other information required by parish or state law, a cease and desist order shall contain the following:

(1) A concise statement of the facts alleged to constitute a violation;

(2) A statement of the amount of the potential penalties for violating the cease and desist order;

(3) A copy of the regulation, permit, order, statute or other legal provision applicable;

(4) Information enabling the recipient to contact the local administrator; and

(5) Information on how the recipient may obtain a hearing to contest the cease and desist order.

(b) A recipient of a cease and desist order may challenge the validity of the order in the parish district court.

**SECTION 26-14. – CONDITIONS FOR ENTERING PROPERTY FOR EXAMINATION**

- (a) To perform the duties required under this article, parish personnel may enter upon any land and make examinations in accordance with R.S. 49:214.36(A) and SECTION 19-60 et. Seq. provided that:
- (1) A warrant is obtained or the examinations do not interfere with the use of the land by its owners or possessors; and
  - (2) Prior to inspection, the owner or possessor of the land is informed that an inspection is to take place and allowed to accompany the inspector if he so desires.

**SECTION 26-15. – USE OF FUNDS**

- (a) Funds collected for violations in parish shall be maintained in a coastal monitoring enforcement fund. These monies, including interest accruing thereon, shall be used by parish for the cost of providing aircraft over-flights or boat use for coastal monitoring and similar surveillance and enforcement activities conducted by parish.

**SECTION 26-16. – MITIGATION TRUST FUND**

- (a) A mitigation trust fund is hereby created as the depository of monies collected in accordance with R.S. 49:214.36(J), which states that 25 percent of the monies collected for violations relating to minimal wetland impacts shall be forwarded to local government whereby 100 percent of the monies received shall be placed in local government mitigation bank and can only be used for mitigation projects. All monies to be spent on mitigation projects will be for coastal restoration projects as approved by the governing authority.
- (b). If the coastal parishes do not have a local mitigation bank, the 25 percent of the monies collected are placed into the Wetland Conservation and Restoration Fund (WCRF).

(Revised Version submitted by Earl Matherne, CZM Administrator on January 15, 2016)

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

And the ordinance was declared adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: \_\_\_\_\_  
SECRETARY: \_\_\_\_\_  
DLVD/PARISH PRESIDENT: \_\_\_\_\_  
APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_  
  
PARISH PRESIDENT: \_\_\_\_\_  
RETD/SECRETARY: \_\_\_\_\_  
AT: \_\_\_\_\_ RECD BY: \_\_\_\_\_

**15. SECTION 19-65 – USE OF FUNDS**

15.1. Funds collected for violations in parish shall be maintained in a coastal monitoring enforcement fund. These monies, including interest accruing thereon, shall be used by parish for the cost of providing aircraft overflights or boat use for coastal monitoring and similar surveillance and enforcement activities conducted by parish.

**16. SECTION 19-66 – MITIGATION TRUST FUND**

16.1. A mitigation trust fund is hereby created as the depository of monies collected in accordance with R.S. 49:214.36(J), which states that 25 percent of the monies collected for violations relating to minimal wetland impacts shall be forwarded to local government whereby 100 percent of the monies received shall be placed in local government mitigation bank and can only be used for mitigation projects. All monies to be spent on mitigation projects will be for coastal restoration projects as approved by the governing authority.

16.2. If the coastal parishes do not have a local mitigation bank, the 25 percent of the monies collected are placed into the wetland conservation and restoration fund (WCRF).

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: SCHEXNAYDRE, LEWIS, WILSON, TASTET, HOGAN, COCHRAN,  
FLETCHER, FISHER-PERRIER  
NAYS: NONE  
ABSENT: BENEDETTO

And the ordinance was declared adopted this 19th day of October, 2015, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: \_\_\_\_\_  
SECRETARY: \_\_\_\_\_  
DLVD/PARISH PRESIDENT: 10/21/15  
APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_  
PARISH PRESIDENT: 10/21/15  
RETD/SECRETARY: 10/21/15  
AT: 1055a RECD BY: 10/21/15

RECORDED IN THE ST. CHARLES PARISH  
CLERK OF COURT OFFICE  
ON Jan. 15, 2016  
AS ENTRY NO. 412009  
IN MORTGAGE/CONVEYANCE BOOK  
NO. 1650 FOLIO 745