

CHAPTER 10

BEACHFRONT MANAGEMENT AND CONSTRUCTION

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Notes:

1. Appendices I–XIII, referenced throughout this chapter are not published in the Code of Ordinances, but are on file in the offices of the City and have been included in this publication.

2. The designation of subdivisions within sections differs from the designations in Ordinance 22165 as adopted on February 28, 1995. Municipal Code Corporation, the publisher and editor of the City of Corpus Christi Code of Ordinances redesignated the subsections. The codifier is authorized to assign numbers to sections and other subsections by § 1-4(c)(3) of the Code of Ordinances.

ARTICLE I. DEFINITIONS

Sec. 10-1. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise.

Affect as used in these regulations regarding dunes, dune vegetation, and the public beach, "affect" means to produce an effect upon dunes, dune vegetation, or public beach use and access.

Amenities means any nonhabitable major structures including swimming pools, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, artificial runoff channels and other water retention structures, roads, streets, highways, parking areas and other paved areas (exceeding one hundred forty-four (144) square feet in area), underground storage tanks, and similar structures.

Applicant means any person applying to the City of Corpus Christi for a permit and/or certificate for any construction or development plan.

Backdunes means the dunes located landward of the foredune ridge which are usually well vegetated but may also be unvegetated and migratory. These dunes supply sediment to the beach after the foredunes and the foredune ridge have been destroyed by natural or human activities.

Beach access means the right to use and enjoy the public beach, including the right of free and unrestricted ingress and egress to and from the public beach.

Beach/Dune Rules means 31 TAC §§ 15.1 - 15.10.

Beach/dune system means the land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

Beachfront construction certificate or *certificate* means the document issued by the City of Corpus Christi that certifies that the proposed construction either is consistent with the city's dune

protection and beach access regulations or is inconsistent with the city's dune protection and beach access regulations. In the latter case, the city must specify how the construction is inconsistent with the regulations, as required by the Open Beaches Act, § 61.015.

Beach maintenance means the cleaning or removal of debris from the beach by handpicking, raking, or mechanical means.

Beach profile means the shape and elevation of the beach as determined by surveying a cross section of the beach.

Beach-related services means reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment, rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.

Beach user fee means a fee collected by the city or its designee in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public.

Blowout means a breach in the dunes caused by wind erosion.

Breach means a break or gap in the continuity of a dune caused by wind or water.

Bulkhead means a structure or partition built to retain or prevent the sliding of land. A secondary purpose is to protect the upland against damage from wave action.

City Council means the City Council of the City of Corpus Christi, Texas.

Coastal and shore protection project means a project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach nourishment, sediment bypassing, construction of man-made vegetated mounds, and dune revegetation.

Commercial facility means any structure used for providing, distributing, and selling goods or services in commerce including, but not limited to, hotels, restaurants, bars, rental operations, and rental properties.

Commission means the City of Corpus Christi Planning Commission.

Committee means the Concurrent Beach/Dune Committee.

Concurrent Beach/Dune Committee means the City of Corpus Christi Planning Commission.

Construction means causing or carrying out any building, bulkheading, filling, clearing, excavation, or substantial improvement to land or the size of any structure. "Building" includes, but is not limited to, all related site work and placement of construction materials on the site. "Filling" includes, but is not limited to, disposal of dredged materials. "Excavation" includes, but is not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. "Substantial improvements to land or the size of any structure" include, but are

not limited to, creation of vehicular or pedestrian trails, landscape work that adversely affects dunes or dune vegetation, and increasing the size of any structure.

Coppice mounds means the initial stages of dune growth formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach seaward of the foredunes. Coppice mounds may be unvegetated.

County means Nueces or Kleberg County, Texas, depending on context.

Critical dune areas means those portions of the beach/dune system as designated by the General Land Office that are located within one thousand (1,000) feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas include, but are not limited to, the dunes that store sand in the beach/dune system to replenish eroding public beaches.

Cumulative impact means the effect on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

Dedication includes but is not limited to, a permanent easement or a fee simple donation.

Department means the Department of Development Services of the City of Corpus Christi, Texas.

Dune means an emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be created via man-made vegetated mounds. Natural dunes are usually found adjacent to the uppermost limit of wave action and are marked by an abrupt change in slope landward of the dry beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, backdunes, swales, and man-made vegetated mounds.

Dune complex or dune area means any emergent area adjacent to the waters of the Gulf of Mexico in which several types of dunes are found or in which dunes have been established by proper management of the area. In some portions of the Texas coast, dune complexes contain depressions known as swales.

Dune Protection Act means Texas Natural Resources Code, § 63.001 et seq.

Dune protection and beach access regulations or regulations means the City of Corpus Christi's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and for preserving and enhancing use of and access to and from public beaches, as required by the Dune Protection Act and the Open Beaches Act.

Dune protection line means a line established by a county commissioner's court or the governing body of a municipality for the purpose of preserving, at a minimum, all critical dune areas identified by the General Land Office pursuant to the Dune Protection Act, Texas Natural Resources Code, § 63.011, and 31 TAC § 15.3(f). The city is not authorized to establish a dune protection line unless the authority to do so has been delegated to the city by the county in which the city and its extraterritorial jurisdiction is located. Such lines will be located no farther than one thousand (1,000) feet landward of the mean high tide of the Gulf of Mexico.

Dune protection permit or permit means the document issued by the city to authorize construction or other regulated activities in a specified location seaward of a dune protection line or within a critical dune area, as provided in the Texas Natural Resources Code, § 63.051.

Dune vegetation means flora indigenous to and growing on critical dunes. Dune vegetation can include coastal grasses and herbaceous and woody plants.

Effect or effects means and includes: direct effects - those impacts on public beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by the action and occur at the same time and place; and indirect effects - those impacts on beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and are later in time or farther removed in distance than a direct effect, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems. "Effects" and "impacts" as used in these regulations are synonymous. "Effects" may be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

Eroding area means a portion of the shoreline which is experiencing an historical erosion rate of greater than two (2) feet per year based on published data of the University of Texas at Austin, Bureau of Economic Geology.

Erosion area line means an imaginary line projected landward from the vegetation line into the future for a period of fifty (50) years determined by multiplying 50 years by annual historical erosion rates (based on the University of Texas, Bureau of Economic Geology) or two hundred (200) feet, whichever is greater. The erosion area line is synonymous with the 'eroding area boundary' authorized in the definition of 'eroding area' in 31 TAC 15.2(31) and as used in the City of Corpus Christi Dune Protection and Beach Access Plan.

Erosion area restriction line means an imaginary line which coincides with the concrete and wooden portions of the North Padre Island Seawall.

Erosion means the wearing away of land or the removal of beach and/or dune sediments by wave action, tidal currents, wave currents, drainage, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

Erosion response structure means a hard or rigid structure built for shoreline stabilization which includes, but is not limited to, a jetty, retaining wall, groin, breakwater, bulkhead, seawall, riprap, rubble mound, revetment, or the foundation of a structure which is the functional equivalent of these specified structures.

Exempt pipeline. A pipeline associated with exploration for, production, and gathering of oil and gas, which serves wells located outside of a critical dune area, provided that the pipeline is located no farther than two miles from the well being served.

FEMA means the United States Federal Emergency Management Agency. This agency administers the national flood insurance program and publishes the official flood insurance rate maps.

Foredunes means the first clearly distinguishable, usually vegetated, stabilized large dunes encountered landward of the Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be large and continuous, foredunes are typically hummocky and discontinuous and may be interrupted by

breaks and washover areas. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

Foredune ridge means the high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

Habitable structure perimeter or footprint means the area of a lot covered by a structure used or usable for habitation. The habitable structure perimeter or footprint does not include incidental projecting eaves, balconies, ground-level paving, landscaping, open recreational facilities (for example, pools and tennis courts), or other similar features.

Habitable structures means structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

Industrial facilities includes, but are not limited to, those establishments listed in Part 1, Division D, Major Groups 20–39 and Part 1, Division E, Major Group 49 of the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.). However, for the purposes of these regulations, the establishments listed in Part 1, Division D, Major Group 20, Industry Group Number 209, Industry Numbers 2091 and 2092 are not considered "industrial facilities." These establishments are listed in Appendix I attached to these regulations.

Large-scale construction means construction activity greater than five thousand (5,000) square feet in ground area and structures greater than two (2) habitable stories in height. Multiple-family habitable structures are typical of this type of construction.

Local government means a municipality, county, any special purpose district, any unit of government, or any other political subdivision of the state.

Main-traveled roadway means that portion of the public beach in the street right-of-way, between a point fifty (50) feet from the water's edge and the vegetation line, as herein defined, ordinarily used by the majority of vehicles for vehicular traffic at the time and place in question, unless otherwise defined by traffic control devices.

Man-made vegetated mound means a mound, hill, or ridge of sand created by the deliberate placement of sand or sand trapping devices including sand fences, trees, or brush and planted with dune vegetation.

Master plan means a plan developed by the applicant in consultation with the General Land Office, the Office of the Attorney General, and the local government, for the development of an area subject to the beach/dune rules, as identified in 31 TAC 15.3 (relating to Administration). The master plan shall fully describe in narrative form the proposed development and all proposed land and water uses, and shall include maps, drawings, and tables, and other information, as needed. The master plan must, at a minimum, fully describe the general geology and geography of the site, land and water use intensities, size and location of all buildings, structures, and improvements, all vehicular and pedestrian access ways, and parking or storage facilities, location and design of utility systems, location and design of any erosion response structures,

retaining walls, or storm water treatment management systems, and the schedule for all construction activities described in the master plan. The master plan shall comply with the Open Beaches Act and the Dune Protection Act. The master plan shall provide for overall compliance with the beach/dune rules, but may vary from the specific standards, means and methods provided in the beach/dune rules if the degree of dune protection and the public's right to safe and healthy use of and access to and from the public beach are preserved.

Master planned development means proposed development for which approval is requested by submission of a master plan containing maps, drawings, narrative, tables, and other information about the proposed use of specific land and/or water including descriptions of uses and use intensities, building and/or site improvement locations and sizes, relationships between buildings and improvements, vehicular and pedestrian access and circulation systems, parking, utility systems, storm water management and treatment systems, geography, geology, impact assessments, regulatory-approved checklist, and phasing. Information in the master plan may be conceptual or detailed depending on the status of its regulatory approval.

Material changes means changes in project design, construction materials, or construction methods or in the condition of the construction site which occur after an application is submitted to the City or after the City issues a permit or certificate. Material changes are those additional or unanticipated changes, which have caused or will cause adverse effects on dunes, dune vegetation, or beach access and use, or exacerbation of erosion on or adjacent to the construction site.

Mitigation sequence means the series of steps which must be taken if dunes and dune vegetation will be adversely affected. First, such adverse effects shall be avoided. Second, adverse effects shall be minimized. Third, the dunes and dune vegetation adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

Motor vehicle or vehicle means a vehicle as defined by the Texas Uniform Traffic Act, Art. 6701d, Texas Revised Civil Statutes Annotated.

National Flood Insurance Act means 42 United States Code, § 4001 et seq.

Natural resources means land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

Nonexempt pipelines means pipelines other than those subject to the exemption in state law and the beach/dune rules.

Open Beaches Act means Texas Natural Resources Code, § 61.001 et seq.

Owner or operator means any person owning, operating, or responsible for operating commercial or industrial facilities.

Permit or certificate condition means a requirement or restriction in a permit or certificate necessary to assure protection of life, natural resources, property, and adequate beach use and access rights (consistent with the Dune Protection Act) which a permittee must satisfy in order to be in compliance with the permit or certificate.

Permittee means any person authorized to act under a permit or a certificate issued by the city.

Person means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the United States government, a state, a municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

Pipeline means a tube or system of tubes used for the transportation of oil, gas, chemicals, fuels, water, sewerage, or other liquid, semi-liquid, or gaseous substances.

Planning Director means the Assistant Director of Development Services, who has also been designated as Planning Director of the City of Corpus Christi, or the Planning Director's designee.

Practicable. In determining what is practicable, the City Council shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. The City Council shall also consider the cost of the technology or technique.

Production and gathering facilities means the equipment used to recover and move oil or gas from a well to a main pipeline, or other point of delivery such as a tank battery, and to place such oil or gas into marketable condition. Included are pipelines used as gathering lines, pumps, tanks, separators, compressors, and associated equipment and roads.

Public beach means any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach that is not accessible by a public road or ferry as provided in § 61.021 of the Texas Natural Resources Code.

Recreational activity includes, but is not limited to, hiking, sunbathing, and camping for less than twenty-one (21) days. For purposes of permits, recreational activities are limited to the private activities of the person owning the land and the social guests of the owner. Operation of recreational vehicles is not considered a recreational activity, whether private or public.

Recreational vehicle means a dune buggy, marsh buggy, mini-bike, trail bike, jeep, or any other mechanized vehicle used for recreational purposes.

Restoration means the process of constructing man-made vegetated mounds, repairing damaged dunes, or vegetating existing dunes.

Retaining wall means a structure designed to contain or which primarily contains material or prevent the sliding of land. Retaining walls may collapse under the forces of normal wave activity.

Sand budget means the amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

Seawall means an erosion response structure that is specifically designed to withstand wave forces.

Seaward of a dune protection line means the area between a dune protection line and the line of mean high tide.

Small-scale construction means construction activity less than or equal to five thousand (5,000) square feet in ground area and structures less than or equal to two (2) habitable stories in height. Single-family habitable structures are typical of this type of construction.

Street means the entire width between the boundary line of the street right-of-way which is open to the use of the public for purposes of vehicular travel.

Street right-of-way means roadways and the public beach.

Structure includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

Swales means low areas within a dune complex located in some portions of the Texas coast which function as natural rainwater collection areas and are an integral part of the dune complex.

Vegetation line means the extreme seaward boundary of natural vegetation which spreads continuously inland typically used to determine the landward extent of the public beach. Where there is no natural vegetation line, the landward extent of the public beach may be determined as provided by § 61.016 and § 61.017, Texas Natural Resources Code.

Washover areas means low areas that are adjacent to beaches and are inundated by waves and storm tides from the Gulf of Mexico. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or breached by storm tides and wind erosion.

Waters edge means an imaginary line running parallel to the beach the point of gulf water reaching most landward at the time and place in question.

Secs. 10-2 – 10-10. Reserved.

ARTICLE II. ADMINISTRATION

Sec. 10-11. Purpose, adoption, compliance, and amendment.

(a) These regulations are adopted pursuant to the authority granted local governments under the Open Beaches Act, Chapter 61, Texas Natural Resources Code, the Dune Protection Act, Chapter 63, Texas Natural Resources Code, Subchapter I of Chapter 16, Texas Water Code, V.T.C.A. Local Government Code, Chapters 211 and 212, V.T.C.S art. 6701d (Motor Vehicles), the City of Corpus Christi's Comprehensive Plan and Flood Hazard Prevention Code and other statutes of general applicability.

(b) All persons shall comply with these regulations in authorizing or undertaking any activity affecting dunes seaward of the dune protection line or any activity affecting public use of the public beach or any activity affecting public access to and from the public beach. A dune protection permit application is required if the site is located seaward of the dune protection line and a beachfront construction certificate is required if the site is located seaward of the beachfront construction line.

(c) Amendments to these regulations shall be effective only after approval by the City Council and the State of Texas. These regulations are adopted, in part, to implement the comprehensive plan of the city.

Sec. 10-12. Areas exempt.

(a) These regulations apply to all private and public land within the city's corporate limits and extraterritorial jurisdiction that lies seaward of the dune protection line and the beachfront construction line except state or national parks, wildlife refuges, preserves, or other designated state or national natural areas.

(b) Other than state or national parks, wildlife refuges, preserves, and similar areas, these regulations apply to land owned by the State, subject to the provisions of the Texas Natural Resources Code, § 31.161 et seq.

Sec. 10-13. Dune protection line and beachfront construction line.

(a) *Dune protection line.* The following provisions shall apply relative to dune protection. The land area seaward of this line is subject to the Dune Protection Act and associated state and local regulations. The following line is hereby established as the Dune Protection Line for Kleberg County and is established for Nueces County upon delegation of dune protection authority for the purpose of protecting critical dune areas:

A line running parallel to the beach one thousand (1,000) feet landward of mean high tide, except in the area landward of the seawall in North Padre Island, such line being depicted by map in Appendix II.

(b) *Beachfront construction line.* The land area seaward of this line is subject to the Open Beaches Act and associated state and local regulations. The following line is hereby established as the beachfront construction line for the purpose of delineating areas in which construction is likely to affect beach access and use:

A line running parallel to the beach either one thousand (1,000) feet landward of mean high tide, or along the seaward boundary of the right-of-way of the first public road generally parallel to the beach or any closer road not parallel to the beach, whichever is greater, or along the seaward shore of Packery Channel or one thousand (1,000) feet landward of mean high tide, whichever is greater.

(c) *Maps.* The dune protection line is depicted on the map attached to these regulations as Appendix II. The beachfront construction line is depicted on the map attached to these regulations as Appendix III.

(d) *Review.* The location of the dune protection line and beachfront construction line shall be reviewed by the Concurrent Beach/Dune Committee (section 10-17) at least once every five (5) years to determine whether the lines are adequately located to achieve their stated purposes. In addition, the adequacy of the location of the lines shall be reviewed by the committee within ninety (90) days after a tropical storm or hurricane affects the portion of the coast lying within the city's jurisdiction.

(e) *Public hearing.* Should the Concurrent Beach/Dune Committee determine that either the dune protection or beachfront construction line should be adjusted, the committee shall hold a public hearing to consider adjustments to the lines no sooner than fifteen (15) days after public notice in the newspaper with the largest circulation in the county. The committee shall forward its recommendation and reasons for the recommended adjustment to the City of Corpus Christi City Council. Subsequent to receiving the committee's recommendation, the City Council shall hold a public hearing to consider the modifications. Not less than one (1) week nor more than three (3) weeks before the date of the hearing, the city will publish notice of the hearing at least three (3) times in the newspaper with the largest circulation in the county. Written notice will be given the General Land Office in writing no less than one (1) week nor more than three (3) weeks before the date of the hearing. The notice to the General Land Office shall include a map or drawing of the proposed line, a written description of the line, or both (including Texas State Plane Coordinates).

Sec. 10-14. Alteration of dunes prohibited without permit.

(a) No person may damage, destroy, or remove a sand dune or a portion of a sand dune seaward of the dune protection line, or kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of the dune protection line, unless the Concurrent Beach/Dune Committee properly issues a dune protection permit authorizing the conduct, provided however, landward of the dune protection line, development within five hundred (500) feet of the existing concrete seawall is required to retain any displaced sand on site or place it on the beach immediately seaward of the concrete seawall. Such development does not require a dune protection permit.

(b) Pursuant to the Dune Protection Act, § 63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act, and may include a beachfront construction certificate or a permit pursuant to other city ordinances:

- (1) Exploration for and production of oil and gas and reasonable and necessary activities directly related to such exploration and production, including construction and maintenance of production and gathering facilities seaward of the dune protection line which serve wells located outside the dune protection line, provided that such facilities are located no farther than two (2) miles from the well being served;
- (2) Grazing livestock and reasonable and necessary activities directly related to grazing; and
- (3) Recreational activities other than operation of a recreational vehicle.

Sec. 10-15. Acts prohibited without a beachfront construction certificate.

No person shall cause, engage in, or allow construction on land adjacent to and landward of public beaches within the area seaward of the beachfront construction line without a beachfront construction certificate. Construction not affecting public beach access and use may nevertheless require a dune protection permit or a permit pursuant to other city ordinances.

Sec. 10-16. Master planned developments.

(a) Master planned development is authorized within the city's incorporated area and extraterritorial jurisdiction (E.T.J).

(1) Master planned developments will be authorized in accordance with the city's zoning and platting ordinances, the Open Beaches Act, Chapter 61, Texas Natural Resources Code, the Dune Protection Act, Chapter 63, Texas Natural Resources Code, Subchapter I of Chapter 16, Texas Water Code, and the General Land Office's beach and dune rules, 31 TAC §§ 15.1 – 15.10.

(2) Master planned developments are approved by City Council ordinance. City council may impose requirements more stringent than zoning and platting requirements, and there are no time limitations on the city's part in administering master planned developments.

(3) Master plans are adopted by the General Land Office as rules.

a. The City's ordinances authorizing a master planned development are subject to review and comment by the General Land Office and Attorney General under 31 TAC 15.3(s)(5), and certification by the General Land Office under 31 TAC 15.3(t)(2).

b. Before the General Land Office can certify the ordinances authorizing a master planned development, the General Land Office will publish notice of its proposed certification in the Texas Register, accept public comment, and publish its final action in the Texas Register.

(b) Applications for master planned development ordinances shall be submitted to the department.

(1) Minimum application requirements are the same as those required for a concurrent dune protection permit/beachfront construction certificate application (§ 15.3.s.(4) of the General Land Office Rules for Management of the Beach/Dune System, 31 TAC §§ 15.1–15.10).

(2) Within twenty (20) working days, the Planning Director shall review the application for completeness. Any additional information needed to complete the application shall be provided by the applicant before the Planning Director forwards the application to the General Land Office and the Attorney General's Office.

(3) Once the Planning Director determines that the application is complete, the Planning Director shall so advise the applicant and notify the applicant of the scheduled Concurrent Beach/Dune Committee meeting.

(4) Within ten (10) days of determining that the application is complete the Planning Director shall forward the completed application to the General Land Office and the Attorney General's Office for review.

(5) Within fifteen (15) working days of receiving the state's comments, if any, or in any case no later than twenty-four (24) working days after forwarding the application to the State, the Planning Director shall forward copies of the completed application, the State's comments, and City staff's recommendation to the Concurrent Beach/Dune Committee.

(6) The application will be scheduled at the next available regularly scheduled Concurrent Beach/Dune Committee meeting (five (5) to ten (10) working days).

(7) The Concurrent Beach/Dune Committee shall submit its recommendation on the application to the City Council.

(8) Within twenty (20) to twenty-five (25) working days the City Council shall approve or deny the application for master planned development ordinance, unless additional information is requested by the City Council.

(9) A flow chart of this application process is illustrated in Appendix IV.

(c) Within five (5) working days of the passage of the ordinance, the Planning Director shall submit the approved ordinance to the General Land Office and the Attorney General's Office. The General Land Office and Attorney General's Office will approve or deny the master planned development within sixty (60) days of receipt of the ordinance.

(d) When acting on a request for approval of a master planned development, the Concurrent Beach/Dune Committee and the City Council will consider:

(1) The development's potential effects on dunes, dune vegetation, public beach use and access, and the applicant's proposal to mitigate for such effects throughout the construction;

(2) The contents of the plan; and

(3) Whether any component of the development, such as installation of roads or utilities, or construction of structures seaward of a dune protection line, will subsequently require a permit or a certificate.

(e) An individual permit and/or certificate is not required, for individual lots or parcels within approved master planned developments after adoption of master planned developments, provided the individual development complies with the adopted master planned development.

(f) If the master planned development does not comply with the requirements of these regulations, the application shall not be approved.

Sec. 10-17. Concurrent beach/dune committee.

The Concurrent Beach/Dune Committee is the City of Corpus Christi Planning Commission.

Sec. 10-18. Application process for beachfront construction certificates and concurrent dune protection permit/beachfront construction certificates.

(a) Prior to submission of any beachfront construction certificate or concurrent dune protection permit/beachfront construction certificates application, the applicant is encouraged to confer with the Planning Director's staff on an informal basis to discuss the proposed application and its conformity with the comprehensive plan, the dune protection and beach access plan, dune protection and beach access regulations, state law and regulations, and the proposed development's relationship to surrounding property, streets, existing drainage patterns, existing and proposed utilities, etc.

(b) In order to obtain a beachfront construction certificate, the applicant shall make a beachfront construction certificate application, as outlined in Section 10-19(c) and Appendices V.A. and V.B, if the proposed construction (including a dune walkover) and the following three conditions are met:

(1) Is seaward of the Beachfront Construction line.

(2) The City is not authorized to issue a Dune Protection Permit at the site of the proposed construction.

(3) The City is authorized to issue a Dune Protection Permit at the site of the proposed construction, but a dune protection permit is not required. (c) Potential applicants proposing construction seaward of the dune protection line may submit descriptions of proposed construction to the Planning Director as outlined in Appendix V.C.

(1) If the potential applicant seeks to establish that no permit is required the description shall explain why.

(2) The Planning Director shall determine whether the construction requires a dune protection permit under these regulations or the Planning Director may refer the application to the Concurrent Beach/Dune Committee for such determination.

(3) Upon determination that a project does or does not require a dune protection permit or that the application has been forwarded to the Concurrent Beach/Dune Committee under these regulations, the Planning Director shall notify the potential applicant in writing of such action. The applicant shall also be notified in writing of the final action of the Committee.

(d) If subsections (b) and (c) above are not applicable, an application for a concurrent dune protection permit/beachfront construction certificate, as outlined in Section 10-19(d) and Appendices V.D. and V.E, shall be submitted by the person proposing to conduct an activity for which a permit or certificate is required to the Planning Director. A flow chart of this application process is illustrated in Appendix V.D.

(e) Within three (3) working days of receipt of a beachfront construction certificate application or concurrent dune protection permit/beachfront construction application, the Planning Director shall review the application for completeness.

(1) If an application is incomplete, the Planning Director will notify the applicant of the deficiencies and offer the applicant the opportunity to provide all required information and drawings.

(2) An application for a permit or certificate shall be deemed to have been abandoned two (2) months from the date of filing for the permit, unless all required information and drawings are provided before then.

(f) An application shall be considered complete when information requested by Planning Director has been provided.(g) Within five (5) days of determining that the application is complete the Planning Director shall forward the completed application and associated information to the General Land Office and the Attorney General's Office for review.

(h) Upon receipt of the State's comments on a beachfront construction certificate application submitted under subsection (1) of this section, if any, or in any case not sooner than eleven (11) working days after the beachfront construction certificate application was sent to the General Land Office and Attorney General's Office for review, the Planning Director shall review the completed application, the State's comments.

(1) The Planning Director may issue the beachfront construction certificate, if the Planning Director determines that the proposed construction, other than a dune walkover (which is constructed under the dune walkover construction standards in the Texas General Land Office's Dune Protection and Improvement Manual for the Texas Gulf Coast):

- a. Is not seaward of the Erosion Area Line, Erosion Area Restriction Line.
- b. Is not located on an existing beach access or future beach access as shown in an element of the City's Comprehensive Plan, such as the Transportation Plan or an applicable area development plan.
- c. Does not functionally support or depend on, or otherwise relate to, proposed or existing structures that encroach on the public beach.
- d. Does not include a retaining wall or impervious surface (if the proposed construction is within 200 feet landward of the vegetation line).

(2) However, the Planning Director shall forward the application, the State's comments, and the City staff's recommendation to the Concurrent Beach/Dune Committee, if the Planning Director finds that the proposed construction;

- a. May be seaward of the Erosion Area Line, Erosion Area Restriction Line.
- b. May be located on an existing beach access or future beach access as shown in an element of the City's Comprehensive Plan, such as the Transportation Plan or an applicable area development plan.
- c. May functionally support or depend on, or otherwise relate to a proposed or existing structures that encroach on the public beach.
- d. Includes a retaining wall or impervious surface and is within 200 feet landward of the vegetation line.
- e. Includes a dune walkover which will not be constructed under the dune walkover construction standards in the Texas General Land Office's Dune Protection and Improvement Manual for the Texas Gulf Coast):

(i) Within fifteen (15) working days of receiving the State's comments on an application for a concurrent dune protection permit/beachfront construction certificate, if any, or in any case not sooner than eleven (11) working days after the full application was received by the General Land Office and Attorney General's Office for review nor later than twenty-four (24) working days after forwarding the application to the State, the Planning Director shall forward copies of the completed full application for a concurrent dune protection permit/beachfront construction certificate, the State's comments, and City staff's recommendation to the Concurrent Beach/Dune Committee.

(j) Upon receipt of the completed application, State's comments, and the staff's comments, the Concurrent Beach/Dune Committee shall approve or deny the application a concurrent dune protection permit/beachfront construction certificate or beachfront construction certificate, unless additional information is requested by the Committee. A flow chart of this application process is illustrated in Appendix V.C.

(k) Within three (3) working days of the date the Planning Director or Concurrent Beach/Dune Committee takes final action on an application, the Planning Director shall notify the applicant whether the concurrent dune protection permit/beachfront construction certificate or beachfront construction certificate was approved or denied and what conditions, if any, were required by the Committee.

(l) Notice of public hearings for concurrent dune protection permits/beachfront construction certificates or beachfront construction certificates applications before the Concurrent Beach/Dune Committee shall be given by sending written notice to all owners of property rendering the same for Nueces or Kleberg County taxes, whichever is appropriate, located within two hundred (200) feet, within not less than ten (10) days before any such hearing is held. Such notice may be served by depositing the same, properly addressed and postage paid, in the United States Post Office.

Sec. 10-19. Contents of applications.

(a) Application forms may be obtained from the Planning Director.

(b) All of the required information shall be submitted with the application before the application is considered submitted for approval. Incomplete applications shall be returned to the applicant without action by the Planning Director or Concurrent Beach/Dune Committee.

(c) For a beachfront construction certificate application under Section 10-18(b), the applicant shall submit five (5) copies of the beachfront construction certificate application. The beachfront construction certificate application shall consist of:

- (1) The name, address, phone number, and, if applicable, fax number of the applicant, and the name of the property owner, if different from the applicant;
- (2) A complete legal description of the tract and a statement of its size in acres or square feet;
- (3) A description of the proposed construction, including the number of proposed structures and whether the structures are amenities or habitable structures;
- (4) Whether the proposed construction will include a dune walkover and whether the dune walkover will be constructed under the dune walkover construction standards in the Texas General Land Office's Dune Protection and Improvement Manual for the Texas Gulf Coast.
- (5) The height of the lowest habitable floor of the proposed structures and whether it is at or above the FEMA base flood elevation.
- (6) A scalable site plan that includes the following:
 - a. Legal description of the tract, including, where applicable, the subdivision, block, and lot designations.
 - b. Location of the property lines and a notation of the legal description of adjoining tracts.
 - c. Location, footprint, and perimeter of the existing and proposed structures on the tract (the location, footprint, or perimeter of a proposed structure is not required for proposed structures located landward of the Dune Protection Line or Erosion Area Restriction Line,

unless the structure will be built within the right-of-way or easement that supports a beach access way).

d. Location of proposed roadways and driveways on the tract (the location of proposed roadways and driveways is not required for proposed structures located landward of Dune Protection Line or Erosion Area Restriction Line).

e. Location of any seawalls or any other erosion response structures on the tract or any seawalls or other erosion response structures within 200 feet of the tract, which are located on the properties adjoining the tract.

f. Location of the Beachfront Construction Line, Dune Protection Line, Vegetation Line, Erosion Area Line or Erosion Area Restriction Line, mean high tide line, and mean low tide line.

g. Location of any existing beach access ways that are located either on the property or adjacent to the tract.

h. Location of any future beach access ways, based on elements of the City's Comprehensive Plan, including the Transportation Plan or applicable area development plan, that are located either on the property or adjacent to the tract.

i. Location of any existing or proposed dune walkovers on the tract.

(d) For a concurrent dune protection permit/beachfront construction certificate, the applicant shall submit ten (10) copies of the concurrent dune protection permit/beachfront construction certificate application. The application shall consist of:

(1) The name, address, phone number, and, if applicable, fax number of the applicant, and the name of the property owner, if different from the applicant;

(2) A complete legal description of the tract and a statement of its size in acres or square feet;

(3) The number of proposed structures and whether the structures are amenities or habitable structures;

(4) The number of parking spaces;

(5) The approximate percentage of existing and finished open spaces (those areas completely free of structures);

(6) The floor plan and elevation view of the structure proposed to be constructed or expanded;

(7) The approximate duration of the construction;

(8) A description (including location) of any existing or proposed walkways or dune walkovers on the tract;

(9) A grading and layout plan identifying all existing and proposed structures and paved areas, all elevations (in reference to the National Oceanic and Atmospheric Administration datum), existing contours of the project area (including the location of dunes and swales), and proposed contours for the final grade;

(10) Photographs of the site which clearly show the current location of the vegetation line and the existing dunes on the tract;

(11) The effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes in dune hydrology;

(12) A comprehensive mitigation plan which includes a detailed description of the methods which will be used to avoid, minimize, mitigate and/or compensate for any adverse effects on dunes or dune vegetation; and

(13) An accurate map, site plan, or plat of the site identifying:

- a. The site by its legal description, including, where applicable, the subdivision, block, and lot;
- b. The location of the property lines and a notation of the legal description of adjoining tracts;
- c. The location of the structures, the footprint or perimeter of the proposed construction on the tract;
- d. Proposed roadways and driveways and proposed landscaping activities on the tract;
- e. The location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;
- f. If known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract;
- g. If development is proposed to be located seaward of the dune protection line, the erosion area line located on the grading and layout plan; and
- h. The location and extent of wetlands as requested by the City.

(14) For all proposed construction (large- and small-scale), if applicant already has the following items and information, the applicant shall, in addition, submit a copy of a topographical survey (two-foot contour intervals) of the site;

(e) For all proposed large-scale construction, the applicant for either a beachfront construction certificate or a concurrent dune protection permit/beachfront construction certificate shall submit the following additional items and information:

- (1) If the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, a certified copy of the recorded plat of the subdivision, or, if not a recorded subdivision, a preliminary plat of the subdivision certified by a licensed surveyor, and a statement of the total area of the subdivision in acres or square feet;**
- (2) In the case of multiple-unit dwellings, the number of units proposed;**
- (3) Alternatives to the proposed location of construction on the tract or to the proposed methods of construction which would cause fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access; and**
- (4) The proposed activity's impact on the natural drainage pattern of the site and the adjacent lots.**

(f) For all proposed construction (large- and small-scale), if applicant for either a beachfront construction certificate or a concurrent dune protection permit/beachfront construction certificate already have the following items and information, the applicant shall, in addition, submit with the other information required above:

- (1) The most recent local historical erosion rate data (as determined by the University of Texas at Austin, Bureau of Economic Geology) (usually located in the Department) and the activity's potential impact on coastal erosion; and
- (2) A copy of the FEMA "elevation certificate."

(g) For all proposed construction (large- and small-scale), the Planning Director shall provide to the State the following information with applications for permits and certificates:

- (1) A copy of the community's most recent flood insurance rate map identifying the site of the proposed construction;
- (2) A preliminary determination as to whether the proposed construction complies with all aspects of the local government's dune protection and beach access regulations;
- (3) The activity's potential impact on the community's natural flood protection and protection from storm surge; and
- (4) How the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly, the dune protection and beach access regulation's provisions relating to public beach ingress/egress, off-beach parking, and avoidance of reduction in the size of the public beach due to erosion.

Sec. 10-20. State Agency Comments.

Under §61.015(c) Texas Natural Resources Code and 31TAC 15.3(s)(6)(A), the General Land Office and Attorney General's Office have 10 working days to comment on a proposed application before a local government is authorized to act on an application. The Planning Director shall forward the complete application, including any associated materials, to the General Land Office and the Attorney General's Office. The Concurrent Beach/Dune Committee may not act on the application sooner than 10 working days after receipt by the state agencies. Thereafter, the permit or certificate may be issued or denied regardless of whether the state agencies submit comments on the application.

Sec. 10-21. Issuance or denial of permit/certificate.

(a) To determine whether to issue or deny a permit or certificate, the Concurrent Beach/Dune Committee shall review and consider:

- (1) The information in the permit or certificate application;
- (2) The proposed activity's consistency with these regulations, state law, and the beach/dune rules;
- (3) Any other law relevant to dune protection and public beach use and access which affects the activity under review;
- (4) The comments of the City of Corpus Christi staff, the General Land Office, and the Attorney General's Office;

(5) With respect to dunes and dune vegetation and dune permits and beach access and beachfront construction certificates:

- a. Cumulative, direct and indirect effects of the proposed construction on all dunes and dune vegetation seaward of the dune protection line;
- b. Cumulative, direct and indirect effects of other activities on dunes and dune vegetation located seaward of the dune protection line;
- c. The pre-construction type, height, width, slope, volume, and continuity of the dunes, the pre-construction condition of the dunes, the type of dune vegetation, and percent of vegetative cover on the site;
- d. The local historical erosion rate as determined by the University of Texas at Austin, Bureau of Economic Geology, and whether the proposed construction may alter dunes and dune vegetation in a manner that may aggravate erosion;
- e. All practicable alternatives to the proposed activity, proposed site, or proposed methods of construction;
- f. The applicant's mitigation plan for any unavoidable adverse effects on dunes and dune vegetation and the effectiveness, feasibility, and desirability of any proposed dune reconstruction and revegetation;
- g. The impacts on the natural drainage patterns of the site and adjacent property;
- h. Any significant environmental features of the potentially affected dunes and dune vegetation such as their value and function as floral or faunal habitat or any other benefits the dunes and dune vegetation provide to other natural resources;
- i. Wind and storm patterns including a history of washover patterns;
- j. Location of the site on the flood insurance rate map;
- k. Success rates of dune stabilization projects in the area; and

(6) Any other information the Concurrent Beach/Dune Committee considers useful, including resource information made available to them by federal and state natural resource entities.

(b) A permit or certificate that is inconsistent with these regulations, General Land Office rules for Management of the Beach/Dune System (31 TAC §§ 15.1-15.10), the Open Beaches Act (Chapter 61, Texas Natural Resources Code), the Dune Protection Act (Chapter 63, Texas Natural Resources Code), and other state, local, and federal laws related to the requirements of the Dune Protection Act and the Open Beaches Act, the requirements of which are incorporated into these regulations by reference, shall not be issued.

Sec. 10-22. Terms and Renewal of Permits/Certificates.

(a) Permits or certificates shall be valid for the following periods:

(1) Permits or certificates involving small-scale construction project, if the property on which the project will be constructed does not need to be platted and a building, electrical, gas, mechanical, or plumbing permit is not required under §13-1 of the Code of Ordinances -- one year from the date of issuance of the permit or certificate.

(2) Permits or certificates involving small-scale construction project, if the property on which the project will be constructed needs to be platted or a building, electrical, gas, mechanical, or plumbing permit is required under §13-1 of the Code of Ordinances -- one year from the later of the date of issuance of the permit or certificate, the date of filing of the approved plat with the County Clerk, or the date of issuance of the first building, electrical, gas, mechanical, or plumbing permit by the Building Official.

(3) Permits or certificates involving large-scale construction project, if the property on which the project will be constructed does not need to be platted and a building, electrical, gas, mechanical, or plumbing permit is not required under §13-1 of the Code of Ordinances -- two years from the date of issuance of the permit or certificate.

(4) Permits or certificates involving large-scale construction project, if the property on which the project will be constructed needs to be platted or a building, electrical, gas, mechanical, or plumbing permit is required under §13-1 of the Code of Ordinances -- two years from the later of the date of issuance of the permit or certificate, the date of filing of the approved plat with the County Clerk, or the date of issuance of the first building, electrical, gas, mechanical, or plumbing permit by the Building Official.

(5) Permits or certificates involving master planned development project, if the property on which the project will be constructed does not need to be platted and a building, electrical, gas, mechanical, or plumbing permit is not required under §13-1 of the Code of Ordinances -- ten years from the effective date of ordinance adopting the master plan.

(6) Permits or certificates involving large-scale construction project, if the property on which the project will be constructed needs to be platted or a building, electrical, gas, mechanical, or plumbing permit is required under §13-1 of the Code of Ordinances -- three years from the later of the date of issuance of the permit or certificate, the date of filing of the approved plat with the County Clerk, or the date of issuance of the first building, electrical, gas, mechanical, or plumbing permit by the Building Official.

(b) The Concurrent Beach/Dune Committee may renew a permit or certificate for a period not exceeding 90 days if the activity as proposed in the application for renewal complies with these regulations and the permittee supplements the original application materials with additional information indicating any changes to the activity or information. Only two renewals shall be issued for each permit or certificate. Thereafter, the permittee must apply for a new permit or certificate.

(c) If the proposed construction is changed in any manner which causes or increases adverse effects on dunes, dune vegetation, and public beach use and access, the permittee shall not be eligible for a renewal but must apply for a new permit or certificate.

(d) For the purposes of this section, a plat is required for property located with the extraterritorial jurisdiction of the City, if the property on which the project will be developed is a portion of a tract of land that has been subdivided since the tract was last platted or replatted, if the owner of the tract of land, at the time the property was subdivided was required to file a plat under an applicable State law.

(e) For the purposes of this section, a plat is required for property located within the city limits, if the property on which the project will be developed is a portion of a tract of land that has been subdivided since the tract was last platted or replatted.

Sec. 10-23. Termination of permits/certificates.

(a) A permit or certificate is voidable if the Concurrent Beach/Dune Committee finds that:

(1) The permit or certificate is inconsistent with state law, the beach/dune rules, this subchapter or the city's comprehensive plan at the time the permit or certificate was issued.

(2) A material change occurs after the permit or certificate is issued; or

(3) A permittee fails to disclose any material fact in the application.

(b) "Material change" includes, in the opinion of the Concurrent Beach/Dune Committee, human or natural conditions which have adversely affected dunes, dune vegetation, or beach access and use that either did not exist at the time of the original application, or were not considered by the committee in making the permitting decision because the permittee did not provide information regarding the site condition in the original application.

(c) A permit or certificate automatically terminates if construction comes to lie within the boundaries of the public beach by artificial means or by natural causes.

(d) Every permit or certificate, which does not require the platting of property or issuance of a building, electrical, gas, mechanical, or plumbing permit, becomes invalid if the work authorized by the permit or certificate is not commenced within two (2) months after the issuance of the permit or certificate.

(e) Except for a master planned development project, every permit or certificate, which requires the platting of property or issuance of a building, electrical, gas, mechanical, or plumbing permit, becomes invalid unless the plat, if required, is filed and any required building, electrical, gas, mechanical, or plumbing permit obtained within six (6) months of the issuance of the permit or certificate.

(f) Every permit or certificate for a master planned development project, which requires the platting of property becomes invalid unless the plat is filed within six (6) months of approval of the permit or certificate.

(g) Except for a master planned development project, any permit or certificate becomes invalid if the work authorized by the permit or certificate is suspended or abandoned for a period of six (6) months after the time the work is commenced.

(h) Any permit or certificate for a master planned development project becomes invalid if the work authorized by the permit or certificate is suspended or abandoned for a period of two (2) years after the time the work is commenced.

Sec. 10-24. Administrative record.

(a) The Planning Director shall compile and maintain an administrative record which demonstrates the basis for each final decision regarding issuance or denial of a permit or certificate. The administrative record shall include copies of the following:

(1) All materials received from the applicant as part of or regarding the permit or certificate application;

(2) The transcripts, if any, or the minutes and/or tape of all meetings during which the permit or certificate was considered; and

(3) All comments received regarding the permit or certificate.

(b) The Planning Director shall keep the administrative record for three (3) years from the date of a final decision on a permit or certificate. The Planning Director shall send to the General Land Office or the Attorney General's Office, upon request by either agency, a copy of those portions of the administrative record that were not originally sent to those agencies for review and comment. The Planning Director

shall provide to the permittee upon request copies of any materials in the administrative record regarding the permit or certificate not submitted to the Department by the permittee in the application.

Sec. 10-25. Reserved.

ARTICLE III. REQUIREMENTS FOR DUNE PROTECTION PERMITS

Sec. 10-26. Required findings.

Before issuing a permit, the Concurrent Beach/Dune Committee must find that:

- (1) The proposed activity is not a prohibited activity as defined in section 10-27 of this article (prohibited activities);
- (2) The proposed activity will not materially weaken dunes or materially damage dune vegetation seaward of the dune protection line based on substantive findings under section 10-28 of this article (material weakening);
- (3) There are no practicable alternatives to the proposed activity and adverse effects cannot be avoided as provided in section 10-29 of this article (mitigation of other adverse effects);
- (4) The applicant's mitigation plan will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects, as provided in section 10-29 of this article (mitigation of other adverse effects); and
- (5) The proposed activity complies with any applicable requirements of article IV (requirements for beachfront construction certificates), article V (concurrent requirements for both dune protection permits and beachfront construction certificates), and article VI (management of the public beach) of these regulations.

Sec. 10-27. Prohibited activities.

Permits authorizing the following actions seaward of the dune protection line shall not be issued for:

- (1) Activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:
 - a. Moving sand to a location landward of the dune protection line; and
 - b. Temporarily or permanently moving sand off the site, except for purposes of permitted mitigation, compensation, or an approved dune restoration or beach nourishment project and then only from areas where the historical accretion rate is greater than one (1) foot per year, and the project does not cause any adverse effects on the sediment budget;
- (2) Depositing sand, soil, sediment, or dredged spoil which contains any of the toxic materials listed in Title 40 of the Code of Federal Regulations, § 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;
- (3) Depositing sand, soil, sediment, or dredged spoil which is of an unacceptable mineralogy or grain size when compared to the sediments found on the site (this prohibition does not apply to materials related to the installation or maintenance of public beach access roads running generally perpendicular to the public beach);

- (4) Creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits;
- (5) Constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of these regulations;
- (6) Operating recreational vehicles;
- (7) Mining dunes;
- (8) Constructing concrete slabs or other impervious surfaces within two hundred (200) feet landward of the natural vegetation line, except for such a surface that (1) supports and does not extend beyond the perimeter of a habitable structure elevated on pilings, provided no walls are erected that prohibit the natural transfer of sand, or (2) does not exceed five (5) percent of the footprint of the permitted habitable structure it serves;
- (9) Depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction;
- (10) Constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields; and
- (11) Detonating bombs or explosives.

Sec. 10-28. No material weakening.

The Concurrent Beach/Dune Committee may issue a permit only if it finds as a fact, after a full investigation, that the particular conduct proposed will not materially weaken any dune or materially damage dune vegetation or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water. In making the finding as to whether such material weakening or damage will occur, the committee shall use the following technical standards. Failure to meet any one of these standards will result in a denial of the application:

- (1) The activity will not result in the potential for increased flood damage to the proposed construction site or adjacent property;
- (2) The activity will not result in runoff or drainage patterns that aggravate shoreline erosion;
- (3) The activity will not result in significant changes to the natural permeability of a dune or its ability to transmit rainwater to the water table;
- (4) The activity will not adversely effect unique flora or fauna or result in significant adverse effects on dune complexes or dune vegetation; and
- (5) The activity will not significantly increase the potential for washovers or blowouts to occur.

Sec. 10-29. Mitigation of other adverse effects.

(a) The applicant bears the burden of proving no material weakening or damage of dunes. If the Concurrent Beach/Dune Committee finds that no material weakening of dunes or material damage to dunes will occur, as demonstrated by the applicant, the committee shall then determine whether any adverse effects will result from the activity. If the committee finds there will be adverse effects on dunes or dune vegetation seaward of the dune protection line or in critical dune areas, the committee may issue a permit only if the applicant demonstrates that adverse effects can be mitigated as required by the

mitigation sequence. If the committee issues a permit, it shall include appropriate permit conditions incorporating the requirements of this article.

(b) The mitigation sequence consists of the following requirements.

(1) Avoidance.

a. Avoidance means avoiding adverse effects altogether by not taking a certain action or parts of an action. A permit shall not be issued allowing any adverse effects on dunes or dune vegetation seaward of the Dune Protection Line unless the applicant proves there is no practicable alternative to the proposed activity, proposed site, or proposed methods for conducting the activity, and the activity will not materially weaken the dunes or dune vegetation. The permittee shall include information as to practicable alternatives in the permit application.

b. To avoid adverse effects on dunes and dune vegetation seaward of the dune protection line as required by subsection (b)(1)a. of this subsection, permittees shall not:

1. Construct pipelines, except those that are exempt, seaward of the dune protection line unless there is no practicable alternative;
2. Engage in any construction unless it is located as far landward of dunes as practicable, except construction providing access to and from a public beach;
3. Construct any road parallel to the beach within two hundred (200) feet landward of the vegetation line, nor construct any other road parallel to the beach unless it is located as far landward of dunes as practicable;
4. Construct new artificial channels, including storm water runoff channels, unless there is no practicable alternative; or
5. Cause any such adverse effects for which the Concurrent Beach/Dune Committee determines there is a practicable alternative that would avoid such adverse effects.

(2) Minimization.

a. Minimization means minimizing effects on dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. Permittees shall minimize adverse impacts to dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If the Concurrent Beach/Dune Committee determines that adverse effects on dunes or dune vegetation seaward of the dune protection line cannot be avoided, it may issue a permit allowing the proposed alteration, provided that the permit contains a condition requiring the permittee to minimize such adverse effects to the greatest extent practicable.

b. To minimize unavoidable adverse effects as required by subsection (b)(2)a. of this section, permittees shall:

1. Locate non-exempt pipelines across previously disturbed areas, such as blowout areas, and minimize disturbance of dune surfaces where use of previously disturbed areas is not practicable;

2. Minimize construction and pedestrian traffic on or across dune areas to the greatest extent practicable, accounting for trends of dune movement and beach erosion in that area;
3. Route all pedestrian access to and from beaches through washover areas or over elevated walkways, and conspicuously mark all such access that is public with permanent signs so indicating;
4. Minimize the number of private access ways from any proposed subdivision, multiple dwelling, or commercial facility. In some cases, the minimum beach access may be only one (1) access way. In determining the appropriate grouping of access ways, the Concurrent Beach/Dune Committee shall consider the size and scope of the development;
5. Post signs in areas where pedestrian traffic is high explaining the functions of dunes and the importance of vegetation in preserving dunes;
6. Where practicable, provide vehicular access to and from beaches by using existing roads or from roads constructed in accordance with subsection (b)(1)b.3. of this section, unless public beach access is restricted, and where possible, improve existing access roads with elevated berms near the beach that prevent channelization of floodwaters;
7. Where practicable, locate new beach access roads in washover areas, blowout areas or other areas where dune vegetation has already been disturbed, construct such roads along the natural land contours, and minimize their width;
8. Where practicable, locate new beach access roads at an oblique angle to the prevailing wind direction;
9. Prohibit persons from using or parking any motor vehicle on, through, or across dunes outside designated access ways;
10. Maximize use of natural or existing drainage patterns when providing for storm water runoff and retention; and
11. Locate and construct new artificial storm water runoff channels and retention basins so as to avoid erosion and unnecessary construction of additional channels and to direct all runoff inland and not to the Gulf of Mexico through dune areas.

(3) Mitigation.

- a. Mitigation means repairing, rehabilitating, or restoring affected dunes and dune vegetation. Where adverse effects on dunes and dune vegetation can not be avoided or minimized, the Concurrent Beach/Dune Committee shall set appropriate permit conditions requiring that permittees repair, rehabilitate, or restore affected dunes to the same volume as the pre-existing dunes and dune vegetation so that affected dunes will be superior or equal to the pre-existing dunes in their ability to protect adjacent public and private property from potential flood damage, nuisance, and erosion and to protect natural resources. The committee shall consider the comments of the General Land Office, federal and state natural resource agencies, and dune vegetation experts in determining the appropriate mitigation method.

b. Permittees may mitigate adverse effects on dunes using vegetative or mechanical means. Permittees shall:

1. Restore dunes to approximate the naturally formed dune position or location, contour, volume, elevation, vegetative cover, and sediment content in the area;
2. Allow for the natural dynamics and migration of dunes;
3. Use discontinuous or continuous temporary sand fences or a Concurrent Beach/Dune Committee approved method of dune restoration, where appropriate, considering the characteristics of the site; and
4. Restore or repair dunes using indigenous vegetation that will achieve the same protective capability as or greater capability than the surrounding natural dunes.

c. In authorizing or requiring restoration of dunes, the Concurrent Beach/Dune Committee shall give priority to stabilization of blowouts and breaches. Before permitting stabilization of washover areas, the committee shall:

1. Assess the overall impact of the project on the beach/dune system;
2. Consider any adverse effects on hydrology and drainage which will result from the project; and
3. Require that equal or better public beach access be provided to compensate for impairment of any public beach access previously provided by the washover area.

(4) Compensation.

a. Compensation means compensating for effects on dunes and dune vegetation by replacing or providing substitute dunes and dune vegetation. Compensation consists of replacement of the affected dunes or dune vegetation on the site where the dunes and dune vegetation were originally located. The Concurrent Beach/Dune Committee shall set appropriate permit conditions requiring permittees to compensate for all adverse effects on dunes and dune vegetation that can not be avoided, minimized, or otherwise mitigated. In setting appropriate conditions, the committee shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts. Preference shall be given to stabilization of blowouts and breaches.

b. Permittees shall follow the requirements of subsections (3)b.--c. and (4)e.3.--5. of this subsection when replacing dunes or dune vegetation.

c. On-site compensation consists of replacement of the affected dunes or dune vegetation on the site where the dunes and dune vegetation were originally located. Permittees shall locate compensation efforts on the construction site, where practicable.

d. A permittee may locate compensation efforts off the construction site if the permittee demonstrates that:

1. On-site compensation is not practicable;

2. The off-site compensation will be located as close to the construction site as practicable;
3. The off-site compensation has achieved a 1:1 ratio of proposed adverse effects on successful, completed, and stabilized restoration prior to beginning construction; and
4. The permittee has notified FEMA, Region 6, of the proposed off-site compensation.

e. Permittees shall provide the following information when proposing off-site compensation:

1. The name, address, phone number, and fax number, if applicable, of the owner of the property where the off-site compensation will be located;
2. A legal description of property intended to be used for the proposed off-site compensation;
3. The source of the sand and dune vegetation to be used;
4. All information regarding permits and certificates issued for the restoration of dunes and dune vegetation on the compensation site;
5. All relevant information regarding the success, current status, and stabilization of the dune restoration efforts on the compensation site;
6. Any increase in potential flood damage to the site where the adverse effects on dunes and dune vegetation will occur and to the public and private property adjacent to that site; and
7. The proposed date of initiation of the compensation.

f. Permittees shall compensate for adverse effects on dune vegetation by planting indigenous vegetation on the affected dunes. Permittees may not remove existing vegetation from property not owned by the permittee unless the permittee includes in the permit application written permission from the property owner. The permit application must identify the source of any sand and vegetation which will be used in compensation.

g. Permittees shall begin compensation prior to or concurrently with the commencement of construction. If compensation is not to be completed prior to commencement of construction, the permittee shall provide proof of financial responsibility in an amount necessary to complete the compensation, in the form of an irrevocable letter of credit, performance bond, or any other instrument acceptable to the city.

h. Permittees shall notify the Department in writing of the actual date of initiation within ten (10) working days after compensation is initiated. If the permittee fails to begin compensation on the date proposed in the application, the permittee shall state the reason for the delay. The Concurrent Beach/Dune Committee shall take this reason into account when determining whether a permittee has violated the compensation deadline.

i. Permittees shall conduct compensation efforts continuously until the repaired, rehabilitated, and restored dunes and dune vegetation are equal or superior to the pre-existing dunes and dune vegetation. These efforts shall include preservation and maintenance pending completion of compensation.

j. A compensation project is deemed complete when the position, contour, volume, elevation, and vegetative cover of the restored dunes are equal or superior to the pre-existing dunes and dune vegetation.

k. The Planning Director shall provide written notification to the General Land Office upon determining that the compensation is complete. If the Planning Director does not receive an objection from the General Land Office regarding the completion of compensation within thirty (30) days after the General Land Office is notified in writing, the Planning Director may certify to the permittee that the compensation is complete.

l. The permittee shall be deemed to have failed to achieve compensation if a 1:1 ratio has not been achieved within three (3) years after the beginning of compensation efforts.

Sec. 10-30. Application Fees.

(a) The application fees for a dune protection permit are as follows:

- (1) Small-scale construction project -- \$200.
- (2) Large-scale construction project -- \$400
- (3) Master planned development project -- \$800.

(b) The application fees must be paid before an application is accepted for review.

Secs. 10-31 - 10-35. Reserved.

ARTICLE IV. REQUIREMENTS FOR BEACHFRONT CONSTRUCTION CERTIFICATES

Sec. 10-36. Required findings.

Before issuing a certificate authorizing proposed construction, the Concurrent Beach/Dune Committee must find that the construction is consistent with these regulations. Construction is inconsistent with these regulations if it:

- (1) Reduces the size of the public beach in any manner, except for man-made vegetated mounds and dune walkovers constructed in compliance with the requirements of these regulations;
- (2) Closes any existing public beach access or public parking area, unless equivalent or better public access or public parking is established as required in section 10-37 of this article (dedication of equivalent or better access);
- (3) Cumulatively, directly or indirectly impairs or adversely affects public use of or access to and from a public beach, including failure to comply with any requirements of article VI of these regulations (management of the public beach) unless equivalent or better public access or parking is established as required in section 10-37 of this article (dedication of equivalent or better access); or
- (4) Fails to comply with any requirements of article III of these regulations (requirements for dune protection permits) or article V of these regulations (concurrent requirements for dune protection permits and beachfront construction certificates).
- (5) Functionally supports or depends on or is otherwise related to proposed or existing structures that encroach on the public beach, regardless of whether the encroaching structure is on land that was previously landward of the public beach. This provision shall not be construed to prevent

construction or reconstruction of structures or facilities landward of the concrete seawall nor those structures or facilities that are functionally dependent on the concrete seawall or are associated with the concrete seawall nor shall this provision be construed to prevent repair or maintenance of the concrete seawall.

(Ord. No. 22165, §§ 1, 2, 2-28-95; Ord. No. 22226, § 1, 5-9-95)

Sec. 10-37. Dedication of equivalent or better access.

(a) As required by General Land Office regulations, 31 TAC §§ 15.1 et seq., implementing the Open Beaches Act, a permittee shall dedicate to the public new public beach access or parking areas or roadways if the permittee's activities will:

- (1) Close any existing public beach access or public parking area;
- (2) Impair public use of or the public's right of access to and from the beach in any manner except for duly recorded temporary easements which may be terminated according to the temporary easement's own terms; or
- (3) Prohibit vehicular traffic on the public beach and dedication is necessary to comply with any requirements of article VI of these regulations.

(b) The area dedicated shall provide access or parking equivalent to or better than the access or parking impaired and shall be consistent with the provisions of these regulations regarding beach access and use, vehicular controls, and beach user fees. Dedication shall be by permanent easement or fee simple conveyance.

(c) Since the assurance of adequate public beach access and public off-beach parking for the future are of the highest priorities of the comprehensive plan of the city, public parking and beach access shall be dedicated consistent with the city's comprehensive plan and platting ordinance park dedication requirements, in addition to any dedication that may be required in paragraphs (a) and (b) above.

Sec. 10-38. Application Fees.

(a) The application fees for a beachfront construction certificate are as follows:

- (1) Small-scale construction project -- \$200.
- (2) Large-scale construction project, including any oil and gas exploration, production, and pipeline -- \$300
- (3) Master planned development project -- \$600.

(b) The application fees must be paid before an application is accepted for review.

Secs. 10-39 - 10-40. Reserved.

ARTICLE V. CONCURRENT REQUIREMENTS FOR BOTH DUNE PROTECTION PERMITS AND BEACHFRONT CONSTRUCTION CERTIFICATES

Sec. 10-41. General erosion protection requirements.

Permittees shall:

- (1) Locate all construction sufficiently landward so as not to become an encroachment on the public beach;
- (2) Not engage in any construction which may aggravate erosion;
- (3) Not construct any new erosion response structure, except a retaining wall located greater than two hundred (200) feet landward of the line of vegetation;
- (4) Not maintain or repair an existing erosion response structure located on the public beach;
- (5) Not maintain or repair an existing erosion response structure located less than two hundred (200) feet landward of the vegetation line that is more than fifty (50) percent damaged, except:
 - a. When failure to repair the damaged structure will cause unreasonable hazard to a public building, public road, public water supply, public sewer system, or other public facility immediately landward of the structure; or
 - b. When failure to repair the damaged structure will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure; and
- (6) Not enlarge or improve an existing erosion response structure located less than two hundred (200) feet landward of the vegetation line.

Sec. 10-42. General flood protection requirements.

Permittees shall:

- (1) Not engage in construction that does not comply with FEMA's regulations governing construction in flood hazard areas; and
- (2) Design construction so as to minimize impacts on natural hydrology. Construction shall not cause erosion to adjacent properties, critical dune areas, or the public beach.

Sec. 10-43. Variances from federal requirements.

The city shall inform the General Land Office and FEMA Region 6 before it issues any variance from FEMA's regulations found in Title 44 of the Code of Federal Regulations, Parts 59--77.

Sec. 10-44. Special requirements for eroding areas.

(a) "Eroding areas" are portions of the shoreline seaward of the erosion area line and the erosion area restriction line (appendix III) experiencing an historical erosion rate greater than two (2) feet per year based on published data of the University of Texas at Austin, Bureau of Economic Geology.

(b) In addition to the other requirements of these regulations, in eroding areas, permittees shall:

- (1) Construct structures in eroding areas in accordance with FEMA minimum standards and elevations;
- (2) Design structures located on property adjacent to the public beach so that the structures can be relocated; and

(c) A permittee may alter or pave the ground within the footprint of the habitable structure (however, brick pavers, gravel or crushed limestone may be used to stabilize driveways), if the alteration or paving is

entirely undertaken, constructed, and located landward of 200 feet from the line of vegetation or landward of the Erosion Area Line, whichever distance is greater

(d) If there is any conflict between the requirements of this section and the requirements of any other provision of these regulations, this section controls.

Secs. 10-45. Application Fees.

(a) The application fees for a concurrent dune protection permit/beachfront construction certificate are as follows:

- (1) Small-scale construction project -- \$300.
- (2) Large-scale construction project, including any oil and gas exploration, production, and pipeline -- \$500
- (3) Master planned development project -- \$1,000.

(b) The application fees must be paid before an application is accepted for review.

Secs. 10-46 - 10-50. Reserved.

ARTICLE VI. MANAGEMENT OF THE PUBLIC BEACH

Sec. 10-51. General access policies.

For the purposes of these regulations, beach access and use is presumed to be preserved if the following criteria are met. The Concurrent Beach/Dune Committee shall use the following policies when authorizing activities affecting or relating to public beach access and use.

- (1) Parking on or adjacent to the beach is adequate to accommodate one (1) car for each fifteen (15) linear feet of beach.
- (2) Where vehicles are prohibited from driving on and along the beach, ingress/egress access ways are no farther apart than one-half (1/2) mile.
- (3) Signs are posted which conspicuously explain the nature and extent of vehicular controls, parking areas, and access points.

Sec. 10-52. Designation of Access Ways, Parking Areas, and Beaches Closed to Motor Vehicles.

(a) The following areas are designated as public vehicular access ways to and from the public beaches within the jurisdiction of the City of Corpus Christi. Several beach accessways are on property owned and operated as parks and nature areas Nueces County or have been constructed on State or Federal lands. All beach accessways are located within the City of Corpus Christi, except Beach Access Road #1, which is within the City of Port Aransas.

- (1) Beach Access Road # 1 (Maintained by City of Port Aransas)
- (2) Beach Access Road # 2 (Maintained by City of Corpus Christi)
- (3) Mustang Island State Park Entrance Road - (Located within Mustang Island State Park – entrance fee required - exempt area)

(4) Beach Access Road # 3 - (Located within Mustang Island State Park – No entrance fee required - exempt area)

(5) Newport Pass Beach Access Road (Owned and maintained by Nueces County)

(6) Zahn Road (Maintained by City of Corpus Christi)

(7) Beach Access Road # 3-A via Windward Drive (Maintained by City of Corpus Christi)

(8) Whitecap Boulevard (Maintained by City of Corpus Christi)

(9) Beach Access Road # 4 (Owned and maintained by Nueces County)

(10) Beach Access Road # 5 (Owned and maintained by Nueces County)

(11) Padre Balli Park Entrance Road (Owned and maintained by Nueces County)

(12) Beach Access Road # 6 (Owned and maintained by Nueces County)

(13) Beach Access Road "North" - (Located within Padre Island National Seashore – No entrance fee required - exempt area).

(b) North Padre Island Storm Damage Reduction and Environmental Restoration (Packery Channel) Project.

(1) The City will pursue reopening and improvement of "Packery Channel" for the purpose of providing a recreational boat pass and enhanced water exchange to the Laguna Madre from the Gulf of Mexico (See Appendices XV and XVI). The project will provide greatly improved recreational facilities, economic development potential on adjacent public and private lands and will renourish adjacent Gulf Beaches. The Packery Channel Project, when completed, will provide a world-class multipurpose development unique to the Texas Coast that will provide significant recreational opportunities to citizens of the Coastal Bend, as well as the residents of the State of Texas. In addition, the project has the potential to attract tourists from all over the state and nation. The project is consistent with John F. Kennedy Causeway Recreation Area Master Plan Study adopted by the Texas General Land Office in 1990.

(2) Public Access Objectives for this project include:

a. While the Channel construction will eliminate approximately 2.9 acres of existing public beach between the outside of the jetties, approximately 34 to 40 acres of new beach will be created south of the channel in an area 1.4 miles (7,400 feet) long by a minimum 200 feet wide that will become accessible to the public.

b. Providing equivalent or enhanced public access to the Gulf beach as required by 31 TAC15.

1. All existing public beach access roads will remain available for public use after construction. Temporary closure of portions of these roads and portions of the public beach may be necessary for public safety purposes during the construction process (see Section 10-56). While temporary closures of small sections of the beach will be required during the initial restoration and periodic renourishment of the restored beach, the temporary closures will only effect the areas under active renourishment.

2. Enhanced public access will be accomplished by constructing a 140-foot wide navigable channel from the Intracoastal Waterway in the Laguna Madre to the Gulf of Mexico, a distance of approximately 3 miles. The channel will offer significantly enhanced public access to over 2 miles (12,700 feet) of new publicly accessible shoreline through the provision of public walkways along bulkheads and jetties. These shoreline areas will provide outstanding opportunities for recreational fishing and public viewing. Packery Channel will also improve access to the Gulf beaches by vessels. It should be noted that most of the new access for recreational fishing and public viewing will be barrier free.

A. North of Channel - A total of 6,600 linear feet of new publicly accessible shoreline created by construction of the channel.

i. Vehicular and pedestrian access will be provided along the north side of the channel via a new 4,500 foot long public loop road extending to the north side of the channel from two points on Zahn Road.

ii. Three new public parking areas will be provided on the north side of the channel.

a) A minimum of 47 public parking spaces on the public beach to the south of the easterly terminus of Zahn Road.

b) Approximately 250 public parking spaces along the north shoreline of the bulkheaded portion of the channel between the loop access road between the legs of the loop road.

c) A new recreational boat ramp with a minimum four (4) bays and approximately 130 public parking spaces including boat and trailer parking.

iii. A public bathhouse on the north side of the channel will be provided along the northern shore including handicapped ramps.

iv. A minimum of 6,500 linear feet of new publicly accessible shoreline for recreational fishing and viewing on the northside of the channel.

B. South of Channel - A total of 6,100 linear feet of new publicly accessible shoreline created by construction of the channel.

i. The eroded public beach will be restored and widened to a minimum of 200 feet of additional beach. The source of the sand used for the restored beach is the digging/dredging of the channel between State Highway 361 and the Gulf of Mexico.

ii. Minimum of 140 public parking spaces on the public beach immediately south of the channel

iii. A minimum of 2,700 linear feet of new publicly accessible bulkhead on the south side of the channel for recreational fishing and public viewing

iv. A minimum of 3,400 linear feet of new public shoreline provided along both sides of the south jetty for recreational fishing and public viewing

v. A public bathhouse on the south side of the channel will be provided along the southern shore including handicapped ramps.

3. Long term beach access improvements will include a minimum 300 paved public parking spaces provided landward in the middle of the North Padre Island Seawall.

4. The project will provide leasing opportunities for vendors on a portion of the northside of the channel on state lands. Significant revenue may be generated to support the State School Land Fund.

(c) In accordance with Natural Resources Code § 61.022, the city may prohibit vehicular traffic on any portion or all of the public beach within its jurisdiction for public safety purposes.

(d) To the degree the city has such authority, the following areas shall be maintained as public beach access parking areas:

(1) Nueces County's Padre Balli Park parking areas.

(2) Bob Hall Pier on-beach parking area.

(e) To the degree the city has such authority, provisions facilitating access to the beach for disabled persons shall be maintained at each of the above areas in compliance with the Americans with Disabilities Act of 1990, as amended.

(f) The City has acquired acres of land adjoining and landward of the seawall for construction of a public parking lot for at least 300 parking spaces.

(g) The areas described in this section are shown on appendix VI attached to these regulations.

(h) Nothing in this article shall serve to limit the authority of a police or peace officer to temporarily limit pedestrian or vehicular access due to special occasions that may occur on the Gulf Beach. These special occasions may include, but will not be limited to the following:

(1) Large crowds (anticipated or existing).

(2) Environmental emergencies.

(3) Public safety emergencies.

(4) Traffic control emergencies.

Sec. 10-53. Abandonments of public access or parking areas prohibited.

Any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access or parking area, shall not be abandoned, relinquished, or conveyed unless an equivalent or better beach access or parking area is first provided consistent with these regulations.

Sec. 10-54. Interfering with access prohibited.

(a) No person shall create, erect, or construct any obstruction, barrier, or restraint on or within a public beach or public access way to and from the beach, that will interfere with the free and unrestricted right of the public to use any public beach.

(b) No person shall display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or cause to be made any written or oral communication or other representation that the public beach, or a public access way to and from the public beach, is private property not subject to use by the public. This provision does not prohibit signs or other written or oral communications that areas landward of the vegetation line and access ways thereon, other than public access ways, are private property.

Sec. 10-55. Post-storm assessment.

The Concurrent Beach/Dune Committee shall assess the status of the public beach boundary within thirty (30) days after a major storm or other event causing significant landward migration of the public beach. After the assessment, the committee shall inform the City Council, General Land Office and the Attorney General's Office of any encroachments on the public beach within ten (10) days of completing the assessment.

Sec. 10-56. Beach closures.

(a) Areas of the public beach may be closed in cases of public necessity by the City Council or the city manager, or his or her designee. "Public necessity" is limited to environmental emergencies, public health and safety emergencies, and government entities' performance of government functions whose importance justifies the restriction of public access. The closure shall be limited to the smallest possible area and the shortest possible time necessary.

(b) These regulations do not restrict the ability of any peace officer or other official in any extraordinary emergency to protect safety or property by exercising powers or carrying out duties conferred on the officer under generally applicable law.

Sec. 10-57. Littering prohibited.

No person shall litter any public beach. "Litter" includes leaving unattended at any place other than a proper disposal receptacle any trash or debris of any character, including food or vegetable material or any remnant or residue thereof, used containers or packaging, or other refuse such as glass, metal, wood, paper, or plastic materials.

Sec. 10-58. Camping.

(a) For the purpose of this section:

(1) "Camping" means occupying a site as a dwelling place for any length of time, whether in a vehicle, tent or improvised shelter, sleeping bag or without a shelter. Occupation of a site under the circumstances above for more than two (2) hours at any time during the period from midnight to sunrise shall be presumed to be overnight camping.

(2) "Director" means the Director of the City's Parks & Recreation Department, or the Director's designee.

(3) "Gulf of Mexico beach" means a beach along the Gulf of Mexico within the city limits, except within the Mustang Island State Park, any beach park operated by Nueces County, or in front of the seawall on North Padre Island.

(b) Except in areas between a residence and the Gulf of Mexico, including a condominium, hotel, or motel, a person may camp on a Gulf of Mexico beach for a period not to exceed three (3) consecutive days nor to exceed six (6) total days in any calendar month.

(1) The Director shall post signs designating no camping areas.

(2) The Director may designate areas where, or time periods when, a person or group may camp for a period longer than three (3) consecutive days or for more than six (6) days in any calendar month.

(c) The Director may prescribe rules governing camping, including but not limited to, limitation of the number of campers and campsites, limitation of the number of persons who may occupy a campsite, limitation of noise, and regulation of activities potentially inconsistent with the public's use of Gulf of Mexico beaches.

(d) The Director and city employees authorized by the Director may direct any individual to cease an activity inconsistent with the rights of other beach users, or may order the individual to leave the area. Any peace officer may arrest or issue a citation for a violation of state law or city ordinance committed in his presence in the areas described in this section.

(e) All provisions of this section, and any rules or directives by the Director, shall be applied equally and uniformly to all persons. Nothing herein shall be applied so as to violate any individual's right of free speech or expression under the law."

Sec. 10-59. Animal control.

(a) No person shall allow a dog or other animal to attack or threaten any person or other animal on a public beach.

(b) Except as provided in subsection (c) of this section, control of animals shall be in accordance with chapter 6 of the Code.

(c) A dog is considered under restraint for the purposes of Section 6-20 while on a Gulf of Mexico beach, if the dog is under the effective control and supervision of its owner, master, or trainer. Effective control and supervision includes the dog being on a leash or subject to the commands of its owner, master, or trainer, or other restrictions that will keep the dog from harassing, threatening, biting, or attacking any other animal or person. (d) The City Manager, or the City Manager's designee, is authorized to prohibit all animals on portions of the beach during specified periods, including, but not limited to, high use periods, such as during Spring Break, holiday weekends, and special events, and in areas designated as animal free zones.

(e) The City Manager, or the City Manager's designee, is authorized to prohibit animals, which are not on a leash, on portions of the beach during high use periods, such as during Spring Break, holiday weekends, and special events.

Sec. 10-60. Monitoring.

The Concurrent Beach/Dune Committee or the General Land Office may require a permittee to conduct or pay for a monitoring program to study the effects on the public beach of the permittee's coastal and shore protection project. The permittee shall notify the General Land Office and the Department of any discernible change in the erosion rate caused by the project.

Sec. 10-61. Beach nourishment standards.

A beach nourishment project shall not be authorized unless the Concurrent Beach/Dune Committee finds and the project sponsor demonstrates that:

- (1) The project is consistent with all applicable requirements of these regulations;
- (2) The sediment to be used is of effective grain size, mineralogy, and quality or is the same as the existing beach material;
- (3) The proposed nourishment material does not contain any toxic materials listed in Title 40 of the Code of Federal Regulations, § 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;
- (4) There will be no adverse environmental effects on the property surrounding the area from which the sediment will be taken or to the site of the proposed nourishment;
- (5) The removal of sediment will not have any adverse impacts on flora and fauna; and
- (6) There will be no adverse effects caused from transporting the nourishment material.

Sec. 10-62. Dune restoration standards.

Except as otherwise expressly provided in these regulations, the restoration of dunes on a public beach shall not be authorized unless the Concurrent Beach/Dune Committee finds and the project sponsor demonstrates that the following requirements are met.

- (1) Except as provided in subsection (2) of this section, restored dunes:
 - a. Shall extend no more than twenty (20) feet seaward of the landward boundary of the public beach and the restoration area shall follow the natural migration of the vegetation line;
 - b. Shall not restrict or interfere with public use of and access to and from the beach at normal high tide;
 - c. Shall be continuous with any surrounding naturally formed dunes;
 - d. Shall approximate the natural position, contour, volume, elevation, vegetative cover, and sediment content of any naturally formed dunes in the proposed dune restoration area;
 - e. Shall be planted with indigenous vegetation that will achieve the same protective capability as the surrounding natural dunes; and
 - f. Shall be afforded the same protection as naturally-formed dunes.
- (2) Restored dunes may be located farther seaward than the twenty-foot restoration area only upon:
 - a. An affirmative demonstration by the permit applicant that substantial dunes would likely form farther seaward naturally; and
 - b. Prior written approval of the General Land Office and the Attorney General's Office.

(3) The following methods or materials may be used to restore dunes:

- a. Piles of sand having similar grain size and mineralogy as the surrounding beach;
- b. Temporary sand fences conforming to General Land Office guidelines;
- c. Organic brushy materials such as used Christmas trees; and
- d. Sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any changes that may increase erosion of the public beach.

(4) The following methods or materials shall not be used to restore dunes:

- a. Hard or engineered structures;
- b. Materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;
- c. Fine, clayey, or silty sediments;
- d. Sediments containing toxic materials listed in Title 40 of the Code of Federal Regulations, § 302.4 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; and
- e. Sand obtained by scraping or grading dunes or the beach.

(5) Activities affecting restored dunes shall be subject to the requirements of these regulations. Permittees shall not construct or maintain private structures on restored dunes within critical dune areas or seaward of a dune protection line, except for specifically permitted dune walkovers or similar access ways meeting the requirements of these regulations.

(6) All applications or proposals for reconstructing dunes on the public beach shall be forwarded to both the General Land Office and the Attorney General's Office at least ten (10) working days prior to the decision on the application.

Sec. 10-63. Dune walkovers.

(a) Construction of dune walkovers or other beach access mechanisms which extend out onto the public beach shall not be authorized unless the Concurrent Beach/Dune Committee finds and the project sponsor demonstrates that the following requirements are met.

- (1) The walkover is restricted, to the greatest extent possible, to the most landward point of the public beach.
- (2) The walkover is constructed and located in a manner that will not interfere with or otherwise restrict public use of the beach at normal high tides.

(b) Permittees shall relocate walkovers to follow any landward migration of the public beach or seaward migration of dunes using the following procedures and standards.

- (1) After a major storm or any other event causing significant landward migration of the landward boundary of the public beach, permittees shall shorten any dune walkovers encroaching on the public beach to the appropriate length for removal of the encroachment.

(2) In cases where the migration of the landward boundary of the public beach occurs slowly over a period of time or where a dune walkover needs to be lengthened because of the seaward migration of dunes, the permittee shall apply for a permit or certificate authorizing the modification of the structure.

(c) The beach will be accessible to disabled persons, consistent with the Americans with Disabilities Act of 1990, as amended.

Sec. 10-64. Standards for beach maintenance and other activities.

(a) Any beach maintenance or management activities that materially weaken dunes or dune vegetation, reduce the protective functions of dunes, result in significant redistribution of sand, or significantly alter the beach profile shall not be authorized or undertaken. All sand moved or redistributed due to beach maintenance activities shall be returned to a location seaward of the dune protection line. "Beach maintenance" means the cleaning or removal of debris from the beach by handpicking, raking, or mechanical means.

(b) Beach maintenance and management measures are in accordance with these regulations and the interlocal agreements between Nueces County, Kleberg County and City of Corpus Christi.

Sec. 10-65. Glass bottles and glass containers prohibited.

It shall be unlawful for any person to possess or place, take, or deposit any glass bottle or glass container of any kind on or in any beach along the Gulf of Mexico within the corporate limits of the city.

Sec. 10-66. Vessel operating from Gulf beaches restricted.

(a) No person may operate a vessel, including, but not limited to a motorboat, sailboat, personal watercraft, kayak, windsurf board, or kite-surf board, on the Gulf of Mexico landward of the outer most line of breaking waves, within 50 feet of any other vessel, person, stationary platform or other object, except at headway speed;

(b) No person may operate a vessel on the Gulf of Mexico within 1,000 feet of the shoreline or landward of the outer most line of breaking waves, that is towing a person or persons on water skis, surfboards, or similar devices and no person while being towed may engage in water-skiing, surfboarding, or similar activity that endangers the life or property of any person.

(c) No person may operate a personal watercraft from a beach on the Gulf of Mexico in the following manner or under the following circumstances:

(1) Unless each person riding on or towed behind the vessel is wearing a U.S. Coast Guard approved Type I, II, III, or V personal flotation device.

(2) If the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch, unless such lanyard is attached to the person, clothing, or personal flotation device of the operator as appropriate for the vessel involved.

(d) The owner of a personal watercraft may not permit a person under 18 years of age to operate the personal watercraft in a manner prohibited by this section.

(e) No person may operate a motorboat of over 15 horsepower or a personal watercraft from a Gulf of Mexico beach unless the person is at least 16 years old, unless:

(1) The operator is accompanied by a person who is at least 18 years old; or

(2) The operator is at least 13 years old and has successfully passed a boating safety course prescribed and approved by the Texas Parks and Wildlife Department.

Sec. 10-67. Fires regulated.

(a) As used in this section:

(1) "Campfire" means a fire contained in a barbecue pit constructed and maintained by the city, or in a portable barbecue pit, or an open fire in a fire pit or on the ground, and is not larger than three feet in any dimension.

(b) No person may build, operate, or use a fire on any beach along the Gulf of Mexico unless in accordance with the provisions of this section.

(c) A person may build, operate, or use a campfire on a beach along the Gulf of Mexico, if:

(1) The campfire is at least fifty feet (50') from any permanent structure, at least seventy-five feet (75') from any vegetation line or dune, and at least twenty-five feet (25') from any vehicle with combustible fuel; and

(2) The prevailing wind will not blow embers into or beyond the dunes. Any wind coming from between the easterly and southerly direction that exceeds twenty (20) miles per hour as reported by the National Weather Service at the Corpus Christi Airport is considered capable of blowing embers into and beyond the dunes.

(d) All campfires must be extinguished when no longer in use. No hot embers may be left on or buried in the sand. Embers must be thoroughly doused with water and cool to the touch before the person who built the campfire leaves the site.

Sec. 10-68. Gulf of Mexico beach vendors--Special regulations.

(a) No permit may be issued to any vendor to operate the vendor's business, and no vendor may vend, on any beach within the City along the Gulf of Mexico shoreline or on the seawall except under the special regulations in this section.

(b) Vendors shall be permitted to operate upon the Gulf beaches in the City or on the seawall fronting on the Gulf of Mexico, subject to the following restrictions and regulations:

(1) The Director of Parks and Recreation may establish designated fixed vendor sites on Gulf beaches within the City and upon the seawall fronting on the Gulf of Mexico, taking into account the following factors:

- a. Primary historical use of the beach and the individuals who normally use the beach at the specific location.
- b. Pedestrian and vehicle traffic flows and congestion.
- c. Availability of parking facilities.
- d. Availability and location of permanent City contractual concessions and other permanent facilities in the immediate vicinity.

(2) The designated fixed vendor sites may be assigned in conjunction with the issuance of any vendor permit, under this section and Article I of Chapter 38, to operate upon a Gulf beach or on the seawall.

- a. Vendor sites may not be "reserved" in advance of permit issuance.
- b. No vendor assigned to a designated fixed vendor site may vend in or at any other location on the Gulf beach or seawall, unless the vendor has a permit for the additional fixed vending site.

(3) Designated fixed vendor sites may be limited in size and number in accordance with the considerations established in subdivision (1) of this subsection.

(4) Vendor permits for vending sites located within any area that has been leased by the City from the State of Texas require the approval of the Texas General Land Office. (5) An applicant for a vendor permit for vending sites located on portions of the Gulf beaches, other than an area that is owned or leased by the City, where the littoral owner has a property interest in the beach, must submit proof that the littoral owner has authorized the use of their portion of the public beach for the vendor's proposed commercial activity. (6) The Director of Parks and Recreation may adjust permit lengths and temporarily relocate designated fixed vendor sites on Gulf beaches as necessary during construction work related to the North Padre Island Storm Damage Reduction and Environmental Enhancement Project and during any beach nourishment operations.

(7) The Director of Parks and Recreation may temporarily relocate designated fixed vendor sites on Gulf beaches as necessary during beach festivals, if the designated fixed vendor sites will interfere with the routing or control of vehicle traffic.

(8) The following types of vending activities may be permitted at the designated fixed vending sites:

- a. Bait and tackle sales.
- b. Food and beverage sales.
- c. Sale or rental of beach amenities, such as suntan lotion, towels, t-shirts, children's beach toys, umbrellas, beach chairs, and surfboards.
- d. Vessel rentals.

(9) Vendors may not in any manner restrict the public from free access to and use of the public beach and to the waters of the Gulf of Mexico, as required by the Texas Open Beaches Act. While a vendor has the exclusive right to conduct business at a designated fixed vending site, the vendor must recognize and not interfere with the rights of beach users to bring to and use their own personal property and equipment on the public beach, including, but not limited to, umbrellas and chairs, regardless of whether the personal property or equipment consists of items sold or rented by the vendor.

(10) Notwithstanding subdivision (9) of this subsection, a vendor who has a permit to lease vessels, including personal watercraft, sailboats, windsurf boards, and kite sail boards, at a designated vessel launching and recovery site shall:

- a. Clearly mark the boundary of the vessel launching and recovery area with flags on the shoreline and buoys in the water.
- b. Place the last set of buoys beyond the outermost breaking waves and use a buoy color that contrasts with other buoys used to mark the area.
- c. Instruct any person who rents a vessel from the vendor on the proper procedures to use when leaving and returning from the beach.

d. Instruct any person who rents a vessel from the vendor on the regulations in Section 10-66.

(11) Vendors, who lease vessels, may not in any manner restrict free access to the public beach and to the waters of the Gulf of Mexico by other vessel owners and operators. While a vendor has the exclusive right to lease vessels at a vessel launching and recovery site, the vendor must recognize and not interfere with the rights of other vessels owners and operators to launch and recover vessels at the site.

(12) Except when a vessel is leaving or returning to the beach, a vendor, who lease vessels, may not in any manner restrict free access to the public beach and to the waters of the Gulf of Mexico by swimmers or others using the public beach. The vendor may direct individuals who are in the water within the vessel launching and recovery site to leave the site when a vessel is leaving or returning to the beach.

(13) Vendors may not service or fuel vehicles or vessels on the beach or in the Gulf waters, unless the vendor has a vehicle or vessel servicing plan that is approved by the Director, Parks & Recreation, that will ensure that no fuels or lubricants will be spilled on the sand or Gulf waters.

(14) No fixed site vendor or vending unit shall restrict, obstruct, or interfere with vehicles operating on a Gulf beach.

(15) No vendor or vending unit shall obstruct the roadway portion of the beach, which portion shall for purposes of this section be deemed a street.

(16) Fixed site vendors and vending units must be at least ten (10) feet from the roadway portion of the beach while conducting business.

(17) Vendors may only vend from sunrise to sunset.

(18) Vendors must remove all equipment, vehicles, and temporary structures from the beach at the end of each business day.

(19) Vendors must remove or relocate their equipment, vehicles, and temporary structures upon request and may not interfere otherwise with beach cleaning operations.

(20) Vendors must take the following actions to control litter that may be created from their operations including the following:

a. The vendor shall provide at least one trash receptacle at the designated fixed vending site, which must be removed from the beach by the vendor within thirty (30) minutes after the vendor has ceased vending activities at the end of each business day.

b. The vendor shall clean the designated fixed vending site, remove all litter from the site and any litter that may have blown from the site, and place all litter collected in a trash receptacle that is removed from the beach within thirty (30) minutes after the vendor has ceased vending activities at the end of each business day.

c. The vendor shall clean the designated fixed vending site, remove all litter from the site and any litter that may have blown from the site, and place all litter collected in a trash receptacle at least every two hours during the business day.

d. It is the duty of the vendor to prevent any litter on the designated fixed vending site and to keep litter from being blown upon or being permitted to come to rest upon other parts of the beach or any private property in the city.

e. Any material that is illegally dumped next to the vendor's trash receptacles must be removed from the beach by the vendor.

f. All litter and other waste collected by the vendor or placed in the vendor's trash receptacles must be properly disposed of.

g. When notified by a City code enforcement official that the overflows from any trash receptacle presents a health or safety hazard, the vendor shall immediately clean up the location, install additional trash receptacles, or arrange for more frequent removal of wastes from the beach.

(c) No permit shall be issued to any mobile vendor to operate the vendor's business and no vendor shall vend upon or from any vehicle on a Gulf beach except subject to the following restrictions and regulations in addition to other conditions imposed upon vendors by this section:

(1) Mobile vending units shall be street-approved motor vehicles duly licensed for operation upon public streets and roadways in accordance with the regulations of the Texas Department of Public Safety and Texas Department of Motor Vehicles.

(2) Mobile vending units shall be permitted to travel upon the roadway portions of public beaches.

(3) Vending units must remain mobile, unless the mobile vending unit is stopped to complete a sale.

(4) Vending from a moving vehicle is prohibited.

(5) No mobile vendor or vending unit may restrict, obstruct, or interfere with other vehicles operating on a Gulf beach.

(6) No mobile vending unit shall stop to vend in or otherwise obstruct the roadway portion of the beach, which portion shall for purposes of this section be deemed a street.

(7) Mobile vending units shall stop at least ten (10) feet from the roadway portion of the beach for conducting business.

(8) Vending shall be conducted from sunrise to sunset.

(9) No mobile vendor shall vend or stop, stand or park his vehicle within seventy-five (75) feet of any beach access road right-of-way lines as projected to the Gulf of Mexico.

(10) Mobile vending units:

a. Shall be equipped with a caution sign that can be extended horizontally from the left side of the vehicle with letters not less than six (6) inches in height spelling out the word CAUTION or SLOW.

b. Shall be equipped with caution signs on the front and back alerting oncoming motorists that children may be crossing near the vehicle.

(11) The extendable caution arm on a mobile vending unit must be extended whenever the unit is stopped for vending.

(12) All equipment installed in or on any vending vehicle shall be secured so as to prevent movement during transit and detachment in the event of a collision or sudden movement or stop. Loose utensils shall be securely stored whenever the vehicle is moving.

(12) No mobile vendor shall use any outcry, sound amplification device, or other instrument which can be heard for a distance greater than five hundred (500) feet to attract attention for vending nor shall any outcry, sound amplification device or other instrument for attracting attention be used in any place or at any time when vending is prohibited by this section.

(13) Vending vehicles shall not exceed fifteen (15) miles per hour on a Gulf beach while engaged in seeking customers.

(14) Mobile vendors shall yield the right-of-way to all other types of traffic.

(15) Mobile vending units may not vend within an area designated as a fixed vending site if the vendor offers any items similar to the items sold or rented by the permitted fixed site vendor.

(16) Mobile vendors on Gulf beaches may only sell:

- a. Bait and tackle sales.
- b. Food and beverage sales.
- c. Sale beach amenities, such as suntan lotion, towels, t-shirts, and children's beach toys.

(17) Mobile vendors may not service or fuel vehicles on the beach.

(d) In addition to the restrictions and regulations in this section, vendors must comply with any additional rules and restrictions imposed upon vendors by Article I of Chapter 38.

Secs. 10-69--10-70. Reserved.

ARTICLE VII. TRAFFIC

Sec. 10-71. Public beach as a street right-of-way.

The City of Corpus Christi hereby accepts and designates the public beach as a street right-of-way.

Sec. 10-72. Obstruction of the main traveled roadway.

(a) It shall be an offense for a person to drive or operate a motor vehicle on any portion of the Gulf Beach other than on the main traveled roadway of such beach or stated parking areas. Under no circumstances shall a person operate any vehicle on a sand dune seaward of the dune protection line.

(b) It shall be an offense for any person to stop, park or leave standing any vehicle, whether attended or unattended, upon the main traveled roadway of the Gulf Beach or Gulf Beach access roads.

(1) This article shall not apply to the driver of any vehicle which is disabled while on the main traveled roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

(2) Whenever any police or peace officer encounters a vehicle, trailer, travel-trailer, tent, umbrella, or other object placed, parked or left standing upon the main traveled roadway, such officer is authorized to move or cause the removal of such vehicle, or items to a position off the main traveled roadway.

(c) It shall be an offense for a person, or persons, to take any actions which may interfere with the safe passage of motor vehicles on and pedestrian activity along the main traveled roadway.

Sec. 10-73. Vehicular operation.

(a) It shall be an offense for a person to drive or operate a motor vehicle on the beach in willful or wanton disregard for the safety of persons or property.

(b) It shall be an offense for a person to drive or operate a motor vehicle with persons on the exterior of a motor vehicle. This shall not apply to a vehicle operated with persons fully seated on the floor of the bed of a pickup truck.

(c) It shall be an offense for a person to operate a motor vehicle with persons standing on the exterior of any part of the motor vehicle.

(d) It shall be an offense for a person to operate a motor vehicle towing any person, object material, or item other than a registered trailer or other vehicle.

(e) It shall be an offense for a person to operate a vehicle within fifty (50) feet of the water's edge on any section of Gulf Beach within the incorporated city limits of the City of Corpus Christi. This traffic regulation shall not apply to the following listed activities and segments of Gulf Beaches:

(1) Vehicle engaged in the actual launching or loading of water craft.

(2) Beach maintenance, seawall maintenance, and emergency vehicles.

(f) Vehicular traffic shall operate as one-way in a southerly direction between Whitecap Boulevard and Beach Access Road # 4.

Sec. 10-74. Speed limits.

No person shall operate or cause to be operated any motor vehicle at a speed in excess of fifteen (15) miles per hour upon the beach section(s) within the incorporated city limits of the City of Corpus Christi.

Sec. 10-75. Parking.

(a) The City Council of the City of Corpus Christi is authorized to regulate traffic by the Texas Natural Resources Code, § 61.129 and the City of Corpus Christi Code of Ordinances, Chapter 53, Traffic, and to require beach parking permits to be displayed on a motor vehicle parked upon any portion of the Gulf Beach within the incorporated city limits of the City of Corpus Christi.

(b) It shall be an offense for a person to park or leave standing, either attended or unattended, a motor vehicle upon any portion of the Gulf Beach within the incorporated city limits of the City of Corpus Christi where sign-posted with conspicuous regulatory signage requiring display of a beach parking permit without having placed on the vehicle a current beach parking permit.

(c) It shall be an offense for any vehicle to be parked within twenty-five (25) feet of the water's edge or within ten (10) feet of any sand dune (including coppice mound area), or as otherwise directed by signage conspicuously sign-posted on any Gulf Beach located within the incorporated city limits of the City of Corpus Christi.

(d) It shall be an offense for any vehicle to be parked within thirty (30) feet of a manned lifeguard station.

(e) It shall be an offense for any person to park or place any vehicle, trailer, travel-trailer, tent, umbrella, or other object on any portion of the beach which, when so parked or placed in conjunction with any other vehicle, trailer, travel-trailer, tent, umbrella, or other object, interferes with or obstructs vehicular or pedestrian traffic on any portion of the main traveled roadway or beach accessway, or which shall

constitute a restraint, barrier or obstruction so as to interfere with the rights of the public, individually or collectively, to the free and unrestricted use of the beach.

(f) The parking of a vehicle within stated areas, or in violation of the terms expressed herein, whether by signage or on-site instruction by police or peace officer(s), shall constitute an offense.

Sec. 10-76. Pedestrian crossings.

(a) The City of Corpus Christi, or its designee, may place signs stating "STOP FOR PEDESTRIANS" facing the direction from which traffic is authorized to travel.

(b) Such signs shall be placed in a manner to regulate the flow of traffic so as to allow the safe passage of pedestrian traffic across the area of Gulf Beach intended as the main traveled roadway.

(c) It shall be an offense for the operator of any motor vehicle to fail to come to a complete stop or to slow to an appropriate approach speed when a pedestrian is within the immediate area of said signage stating "STOP FOR PEDESTRIANS", and attempting to cross the traveled portion of the Gulf Beach. Said signs to be placed by authority granted within the City of Corpus Christi's Code of Ordinances, chapter 53, traffic.

(d) Pedestrians shall have the right-of-way and vehicles shall stop or slow to an appropriate approach speed to allow pedestrians to cross to and from the beach.

Sec. 10-77. Pedestrian Safe Areas.

(a) The City Manager, or the City Manager's designee, may establish pedestrian safe areas on portions of the Gulf beach and prohibit motor vehicles from portions of the beach that are not less than twenty-five feet (25') seaward of the vegetation line or lower edge of the seawall in order to provide for the safety of individuals using the beach, and especially children.

(b) Before prohibiting motor vehicles on portions of the beach in pedestrian safe areas, the City Manager must find that there is sufficient on-beach or off-beach parking to accommodate the vehicles of beach users or that there are sufficient travel lanes on other areas of the beach, excluding the pedestrian safe areas, for vehicles travelling along the beach.

(c) No vehicle, trailer, travel-trailer, or combination of vehicles and trailers may be parked in or on any portion of the beach designated as a pedestrian safe area.

(d) Pedestrian safe areas shall be marked with signs and bollards, posts, poles, fencing, or tethering installed in the sand to prevent vehicles from entering the pedestrian safe areas.

(e) The City Manager may establish a pedestrian safe area seaward of the concrete portion of the Gulf seawall, until the beach seaward of the concrete portion of the seawall has been renourished as determined by the City Manager.

(f) No pedestrian safe area may be implemented until the location and perimeter design has been submitted to the Texas General Land Office and Texas Attorney General, and approved by the Texas General Land Office.

Sec. 10-78. Authorized and emergency vehicles.

The prohibitions in this article do not apply to an authorized emergency vehicle, beach patrol, police, safety, or maintenance vehicle operating within the scope of official duties.

Sec. 10-79. Two-Way Traffic on Beach and Access Roads.

Vehicular traffic may be restricted to a minimum fifty foot (50') linear corridor along the beach where two-way traffic is permitted.

Sec. 10-80. One-way traffic on beach and access roads.

(a) Vehicular traffic may be restricted to a minimum twenty-five foot (25') corridor along the beach where one-way traffic is permitted.

(b) The City Manager, or the City Manager's designee, is authorized to limit the direction of travel on beach access roads and portions of the beach between beach access roads to one specific direction on either a permanent or temporary basis during times of heavy beach traffic (such as during Spring Break, on holiday or summer weekends, or special events) or when vehicle travel on the beach needs to be restricted due to higher than normal tides (including storm tide and "spring" tide events). Any one-way traffic restrictions must be coordinated with any neighboring jurisdiction that might be affected.

(c) Whenever the City Manager designates any one-way access road or beach, the City Manager, or such officers or employees of the City designated by the City Manager, shall place and maintain signs giving notice of the authorized direction of travel, and the one-way travel restriction is not effective unless the signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection of a beach access road and beach or other road where movement of traffic in the opposite direction is prohibited.

(d) Upon those beach access roads and portions of the beach designated by the City Manager under subsection (b) or as designated in subsection (e) of this section, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection of a beach access road and beach or other road where movement in the opposite direction is prohibited.

(e) Vehicles travelling on the Gulf beach between the northern end of the seawall and Padre Balli Park may only travel in a southerly direction.

Sec. 10-81. Portions of the beach closed.

The City Manager, or the City Manager's designee, is authorized to close portions of the beach to all vehicle traffic for declared safety reasons during periods including, but not limited to, extreme high tides, such as storm tide and "spring" tide events, and when less than a twenty-five foot corridor along the beach is available for vehicular traffic.

Sec. 10-82. Limits on number of vehicles allowed on beach during special events.

The City Manager, or the City Manager's designee, is authorized to limit the number of vehicles on portions of the beach during high use periods, such as during Spring Break, holiday weekends, and special events, if the number of vehicles and persons using the beach exceed the capabilities of local law enforcement personnel."

Secs. 10-83 - 10-85 Reserved.

ARTICLE VIII. FEES

Sec. 10-86. Beach User Fees.

(a) In order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public, the following beach user fees are established:

(1) Beach Parking Permit. The City Manager shall prepare a fee schedule of beach parking permits. This schedule shall be submitted to the City Council on an annual basis during the preparation of the City's annual operating budget. The fees must recover, to the extent possible, the City's costs of providing beach-related services, as defined in Section 10-87.B. The parking permit fee schedule shall be filed with the City Secretary, and copies shall be provided to the City Council. Any change in beach user fees shall not go into effect until submitted to the Texas General Land Office and Texas Attorney General, and approved by the General Land Office under §15.8(e) of Title 31 of the Texas Administrative Code.

(2) Reserved.

(b) No beach parking permit fee shall be charged for parking in the free beach areas designated in Appendix VII.

(c) In lieu of the beach parking permit issued by the City under subsection A of this section, the City Council may authorize: (1) recognition of beach parking permit stickers issued by the City of Port Aransas or Nueces or Kleberg County, if the governmental entity imposes a beach parking permit fee that equals or exceeds the City of Corpus Christi beach parking permit fee and enters into an interlocal cooperation agreement with the City that provides for reciprocal recognition of beach parking permits; and/or (2) adoption of a unified parking permit pursuant to an interlocal cooperation agreement with the City and one or more of the governmental entities named in (1) above.

Sec. 10-87. Use of Fee Revenue.

(a) Revenues from beach user fees may be used only for beach-related services.

(b) "Beach-related services" means reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; life guarding and lifesaving; the cleaning or removal of debris from the beach by handpicking, raking, or mechanical means; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.

(c) All funds derived by City from beach user fees required by this article shall be used exclusively for the following purposes:

(1) Printing and distributing the permits.

(2) Other costs of administering the requirements of the beach user fee program.

(3) Provision, construction, maintenance, replacement, and repair of:

a. Sanitary facilities on the beach provided for the use and convenience of the public.

- b. On and off beach parking facilities.
- c. Traffic control or road signs and devices on the beach, such as gates and barricades, or bollards to keep vehicles away from the waters edge, and temporary traffic signals. (Except for emergencies related to public safety, only those devices approved in advance by the Texas General Land Office shall be used.)
- d. Sand dunes.

- (4) Cleaning and maintenance of the public beach.
- (5) Public safety on the beach.
- (6) All costs directly related to the management of the beach.

Sec. 10-88. Indirect Costs and Accounting.

- (a) No more than 10% of beach user fee revenues shall be expended on reasonable administrative costs related to beach-related services, including costs authorized in Section 10-87.C.1 and 2.
- (b) In addition to any requirements in the Interlocal Agreements (see Appendix VIII for copies of current interlocal agreements) between the City of Port Aransas, Nueces County, Kleberg County and the City of Corpus Christi regarding beach user fees, the Director of Financial Services shall send quarterly reports to the General Land Office. The reports shall state the amount of beach user fee revenues collected and itemizing how beach user fee revenues are expended. Beach user fee revenues shall be maintained and accounted for so that fee collections may be directly traced to expenditures on beach-related services. Beach user fee revenues shall not be commingled with any other funds and shall be maintained in special accounts. Beach user fee revenue expenditures shall be documented in a separate financial statement for each different beach user fee. Beach user fee revenue account balances and expenditures shall be documented according to generally accepted accounting principles.

Sec. 10-89. Beach parking prohibited without beach parking permit.

- (a) Except within Mustang Island State Park or within a free parking area designated in Appendix VII of the City Of Corpus Christi, Texas, Dune Protection And Beach Access Regulations, no person may park a motor vehicle on a public beach within the City, which borders on the Gulf of Mexico, unless a valid beach parking permit is affixed to the vehicle's windshield.
- (b) It shall be the duty of each police officer, or other officer or employee of the City as authorized by the City Manager, to take the state vehicle license number of any vehicle parked on a Gulf beach without a valid beach parking permit sticker affixed to the vehicle's windshield, the time and date the vehicle was found parked on the Gulf beach, the approximate location where the vehicle was parked, and the make of the vehicle, and to issue, in writing, on a form provided by the City, a notice to answer to the charge of parking on a Gulf beach without a valid beach parking permit within ten (10) days during the hours and at the place specified in the notice.
- (c) In a prosecution of an offense under this section, it is presumed that the registered owner of the motor vehicle is the person who parked the vehicle at the time and place the offense occurred.

Sec. 10-90. Sale of Beach Parking Permits.

Beach parking permits shall be made reasonably available to all members of the public at all times. In furtherance of this section the City Manager, or the City Manager's designee, may sell permits by the following methods:

1. Direct sales to the public through the Utilities Billing Office, park facilities, and on site.
2. Direct sales to the public at any City fire station located on Mustang or Padre Islands.
3. Sales to merchants and vendors for subsequent sales to the public.

(a) The City Manager may set the fees to be paid to merchants and vendors authorized to sell beach parking permits by this subsection. The fees shall be at a rate determined to be in the best interest of the City.

(b) The City Manager may establish further rules, bonds, fees, or other procedures to be used in the bulk sales of permits. Copies of any rules, bonds, fees, or other procedures must be filed with the City Secretary, and a copy provided to the members of the City Council before the rules, bonds, fees, or other procedures go into effect.

Secs. 10-91 -- 10-96. Reserved.

ARTICLE IX. PENALTIES

Sec. 10-97. Penalties.

(a) A person convicted of an offense for a violation of any provision of this chapter shall be fined not more than five hundred dollars (\$500.00). Each day any violation of this chapter shall continue shall constitute a separate offense.

(b) Any person who violates either the Dune Protection Act, the Open Beaches Act, the regulations issued by the General Land Office under either act, or a permit or certificate condition is liable for a civil penalty of not less than \$50 nor more than \$1,000 per violation per day. Each day the violation occurs or continues constitutes a separate violation. Violations of the Dune Protection Act, the Open Beaches Act, and the rules adopted pursuant to those statutes are separate violations. The assessment of penalties under one Act does not preclude another assessment of penalties under the other Act. Conversely, compliance with one statute and the rules adopted thereunder does not preclude penalties under the other statute and the rules adopted pursuant to that statute.

Secs. 10-98 -- 10-100. Reserved.

ARTICLE X. GENERAL PROVISIONS

Sec. 10-101. Construction.

(a) These regulations and all orders, resolutions, or other enactments related to or pursuant to these regulations shall be read in harmony with city ordinances of general applicability.

(b) Where any provisions of these regulations impose restrictions different from those imposed by any other provisions of the City of Corpus Christi Code of Ordinances or any other city ordinance, or any other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

(c) Article VII, traffic, section 10-57, littering prohibited, and section 10-59, animal control are included for state approval and information purposes and shall not become effective until passage of a separate ordinance by the City Council.

Sec. 10-102. Boundary determinations.

Determinations on issues related to the location of the boundary of the public beach and encroachments on the public beach shall be made in accordance with the Open Beaches Act, as amended.

Sec. 10-103. Beaches presumed to be public.

It shall be presumed that any beach fronting the Gulf of Mexico is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, as amended. A showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

- (1) The title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and
- (2) There is imposed on the area, a common law right or easement in favor of the public for ingress and egress to the sea.

Sec. 10-104. General prohibition.

A person commits an offense if the person violates any provision of these regulations or any permit or certificate or the conditions contained therein.

Sec. 10-105. Appeals and declaratory judgement suits.

(a) Declaratory Judgement Suits (V.T.C.A., Natural Resources Code § 61.019).

- (1) A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgement against the state to try the issue or issues.
- (2) Service of citation on the state shall be made by serving the citation on the attorney general.

(b) Appeal by Littoral Owner (V.T.C.A., Natural Resources Code § 63.151).

A littoral owner aggrieved by a decision of the commissioners court under this chapter may appeal to a district court in that county.

ARTICLE XI. BEACH FESTIVALS

Sec. 10-111. Definitions.

As used in this article the following terms shall have the respective meanings ascribed to them:

Director: The Director of Parks and Recreation Department or the Director's designee.

Festival site: The location of a beach festival.

Beach festival: Any form of entertainment including, but not limited to, performances, contests, or any combination thereof on a public beach, which is scheduled to continue in excess of three (3) hours where:

- (1) The entertainment, contest, or combination of entertainment and contests occurs inside the boundaries of the city; and,
- (2) More than one hundred (100) persons are reasonably anticipated to be in attendance on any one day or

Promoter: Any person or group of persons who attempt to organize, promote or solicit funds, for the organization or promotion of a beach festival.

Sec. 10-112. Registration and permit required.

(a) No person or group of persons may act as a promoter of a beach festival in this city without first registering with the Director.

(b) No person or group of persons may direct or control or participate in the direction or control of a beach festival unless a valid permit for the event has been issued as provided in this article.

Sec. 10-113. Application for permit--Filing; contents; fee.

(a) A promoter shall file a permit application with the Director.

(b) The application must be filed at least forty-five (45) days before the day the beach festival is to begin.

(c) The application for a beach festival must include:

(1) The name(s) and address(es) of the promoter and of all associates and employees promoting the beach festival;

(2) A description and address of the festival site;

(3) The name and address of the littoral owner of the festival site and a statement listing the terms of the agreement authorizing the promoter to use the festival site;

(4) The dates and times that the beach festival is to be held;

(5) Promoter's reasonable estimate of number of persons attending the beach festival and the basis for the estimate;

(6) The maximum number of persons that the promoter expects to attend the beach festival, and a copy of promoter's plan to control attendance at the beach festival;

(7) A description of the promoter's plans to comply with health and sanitation standards required by the City Code of Ordinances or in the permit;

(8) The promoter's financial statement and a statement listing the source and amount of money budgeted to promote the beach festival;

(9) A statement detailing the promoter's traffic control plan;

(10) A synopsis of promoter's agreement with the scheduled performers listing the performers and estimated performance time(s);

(11) A description of the type, method, and location of promoter's past and future advertising for the beach festival; and

(12) A statement whether the promoter or any of the promoter's employees or agents have ever been convicted of any crime regarding misappropriation of funds, theft, burglary, or robbery.

(e) The application for the permit must be signed and verified by the promoter and be based on his best information and belief.

(f) A filing fee for a special event permit must be paid at the time of application.

Sec. 10-114. Health, sanitation, and fire control requirements.

In any application for a permit, in addition to the matters set out in section 10-113, the promoter applying for a permit must agree in the application to provide and maintain the following relating to health, sanitation, fire, security, and crowd and traffic control as determined by the Director, Fire Marshall, City Health Officer, or Police Chief, for the duration of the beach festival:

- (1) Adequate provision for disposal of refuse, including litter removed during the beach festival. Litter control for the beach festival will be prescribed by the Director.
- (2) Reasonable precautions to prevent brush, grass, and structural fires and provision for assisting the city authorities in extinguishing any fire in the vicinity of any tract which may be used for the event. The precautions must be approved by the Fire Marshal, or the Fire Marshall's designee, prior to issuance of the permit(s) described in section 10-111.
- (3) Adequate provision for supplying and servicing portable toilets.
- (4) Adequate provisions for supplying fresh water and disposable drinking cups for the duration of the beach festival.
- (5) Adequate provision for furnishing first aid facilities which are manned by trained personnel.
- (6) Adequate provision for furnishing ambulance service during the beach festival.
- (7) Compliance with other health and sanitation requirements as may be required by the city health officer, or the health officer's designee.
- (8) Adequate provision for the security of the participants as well as businesses and neighborhoods in the vicinity of the festival site.
- (9) Adequate provision for traffic control, before, during, and after the event as determined by the Police Chief, or the Chief's designee.
- (10) No permanent buildings or structures may be built at the festival site. Any temporary or portable buildings or other structures at the festival site shall meet all city building codes and be kept in a safe, sanitary, and sightly condition.
- (11) The applicant must provide procedures and safeguards to keep people attending the beach festival from damaging the dunes and dune vegetation.

Sec. 10-115. Agreement as to use of public beach.

In any application for a permit to conduct a beach festival on any public beach, in addition to the matters contained in sections 10-113 and 10-114, the promoter shall agree to the further conditions and stipulations as follows:

- (1) That the promoter shall pay to the city the reasonable value of any lost, damaged, or destroyed park or beach facilities in the vicinity of the festival.
- (2) That any temporary or portable buildings, structures, or improvements at the festival site shall meet all city building codes and be kept in a safe, sanitary and sightly condition.
- (3) That upon the expiration of the permit, all temporary or portable buildings, structures, and improvements placed on the festival site by the promoter shall be removed and the festival site shall be restored to its former condition.

(4) To provide a bond, or other similar monetary guarantee, in the amount of twenty-five thousand dollars (\$25,000) made payable to the city, subject to approval by the City Attorney, to guarantee that any temporary or portable buildings, structures, or improvements placed on such festival site are removed and to further guarantee that garbage, trash, debris and refuse will be properly disposed of and to guarantee that the festival site used by the promoter for conducting the beach festival shall be restored to its former condition.

(5) That liability insurance and all other relevant insurance as specified by the City's Risk Manager or the Risk Manager's designee will be provided by the promoter prior to the issuance of the permit.

(6) An affidavit that the promoter shall not discriminate against any person or group on the basis of race, color, religious preference, ethnicity, national origin, disability, or sex and that all facilities provided in connection with the beach festival shall be reasonably available to all persons in attendance.

(7) That the promoter shall observe and comply with all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

(8) That the promoter shall show the location of sufficient on-beach and off-beach parking space to accommodate the anticipated attendance.

(9) That the promoter shall affirm and demonstrate that the festival site is accessible from existing beach access roads and that the festival will not block or unduly interfere with beach access roads or normal beach traffic or interfere with normal beach use by those not participating in the festival.

(10) That the promoter has a duty to protect the dunes and is responsible for mitigating any damage to the dunes caused by the beach festival.

(11) That the promoter shall agree to reimburse the City for any costs incurred by the City, including, but not limited to traffic control, extra patrol officers for crowd control, solid waste collection, litter control, and special signage required for the beach festival, as determined by the City Manager, or the City Manager's designee.

Sec. 10-116. Review and processing of applications.

(a) Upon the filing of an application for a permit, the Director shall coordinate a meeting with all relevant departments.

(b) The Director shall assure compliance with all appropriate codes.

(c) Within 3 days of determining that the application is complete the Director shall forward the completed application and associated information to the General Land Office and the Attorney General's Office for review. The Director shall consider the State's comments, if any, if received at or before the public hearing held under Section 10-117.

Sec. 10-117. Hearing.

(a) The Director shall set a date and time for a hearing on the application for a permit. The hearing shall be held not less than twenty (20) days before the day set for the first performance of the beach festival.

(b) The promoter shall be entitled to five (5) days notice prior to the date of the hearing.

(c) Any person may appear at the hearing and give testimony for or against granting the permit.

(d) After conclusion of the hearing, the city manager shall schedule the application for consideration by the City Council.

(Ord. No. 024737, § 5, 01-22-2002)

Sec. 10-118. Denial of permit; grounds.

(a) A permit for a beach festival may be denied to an applicant by the City Council where the Council, based on substantial evidence, finds as follows:

(1) That false or misleading information is contained in the application or that required information is omitted;

(2) That the promoter does not have sufficient financial backing or stability to carry out the preparations specified in the application or to assure the faithful performance of his/her/its agreement;

(3) That the preparations specified in the application are insufficient to protect the community or the persons attending the beach festival from health dangers or dangers from fire or that the facilities are inadequate to accommodate the festival;

(4) That conducting a beach festival according to the application information supplied by the promoter would, on its face, involve the violation of city ordinances or state law;

(5) That the times and place for the beach festival create a substantial danger of congestion and disruption of other lawful activities in its immediate vicinity;

(6) That the beach festival will restrict beach access to or use of the public beach;

(7) That the beach festival will adversely affect or threaten dunes or dune vegetation;

(8) That the crowd control preparations specified in the application are insufficient to limit the number of persons in attendance to the maximum number stated in the application; or

(9) That the promoter does not have adequate agreements with performers to ensure with reasonable certainty that the persons advertised to perform will, in fact, appear.

(b) Denial of a permit hereunder shall require a majority vote of the Council.

Sec. 10-119. Scope of permit.

A permit, if issued, shall authorize the promoter to hold a beach festival at a specified festival site and at specified times and shall extend such privilege only to the promoter named in the application and shall not be assignable by such promoter to any other person, group of people, or entity.

Sec. 10-120. Revocation of permit.

At any time prior to two (2) days before the day of the beach festival, the City Manager, or the City Manager's designee, may, after reasonable notice to the promoter and a hearing, revoke the permit on a finding that the preparations for the beach festival will not be completed in time for the event and that the failure to carry out the preparations will result in a serious threat to the health and safety of the persons attending the event or others using the public beach or for failure to comply with the terms of this article or the permit issued to the promoter.

APPENDICES

- Appendix I Industrial Uses Permitted/Not Permitted**
- Appendix II Dune Protection Line**
- Appendix III Beachfront Construction Line, Erosion Area Restriction Line, Erosion Area Line.**
- Appendix IV Flow Chart of Application Process for Master Planned Developments**
- Appendix V Flow Charts and Application Forms for Beachfront Construction Certificates and Concurrent Dune Protection Permits/Beachfront Construction Certificates**
- Appendix VI Designation of Access Ways, Parking Areas, and Beaches Closed to Motor Vehicles**
- Appendix VII Designated Beach Fee Areas**
- Appendix VIII Interlocal Agreement with in the City of Port Aransas and Nueces County relating to the Mustang and North Padre Islands Beach Parking Permit System**
- Appendix IX Interlocal Agreement for Dune Protection Act with Nueces County (Reserved)**
- Appendix X Interlocal Agreement for Dune Protection Act with Kleberg County**
- Appendix XI 31 TAC Chapter 15 (Coastal Area Planning)**
- Appendix XII Dune Protection Act, V.T.C.A., Natural Resources Code § 61.001 et seq.**
- Appendix XIII Open Beaches Act, V.T.C.A., Natural Resources Code § 63.001 et seq.**
- Appendix XIV Founding Policies**
- Appendix XV Packery Channel Design Concept**
- Appendix XVI Packery Channel Public & Environmental Facilities**

**APPENDIX I
INDUSTRIAL USES PERMITTED/NOT PERMITTED**

(NOTE: This appendix reproduces a copy of Appendix 1 to Chapter 15, Title 31 Texas Administrative Code, as effective on February 1, 2002. It is provided for reference only. Revised versions of Appendix 1 to Chapter 15, 31 Texas Administrative Code, may be substituted without further action by the City Council.)

A local government is not authorized to issue a permit or certificate authorizing construction or operation of the industrial facilities listed in this appendix within critical dune areas or seaward of a dune protection line, as provided in § 15.4(c)(5) of this title (relating to Dune Protection Standards), with the exception of activities in Part 1, Division D, Major Group 20, Industry Group 209, Industry Numbers 2091 and 2092, as provided in the definition of "industrial facilities" in § 15.2 of this title (relating to Definitions). This appendix is taken from the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.).

DIVISION D. MANUFACTURING

- | | |
|-----------------|---|
| Major Group 20. | Food and kindred products, except Industry Numbers 2091 and 2092 |
| Major Group 21. | Tobacco products |
| Major Group 22. | Textile mill products |
| Major Group 23. | Apparel and other finished products made from fabrics and similar materials |
| Major Group 24. | Lumber and wood products, except furniture |
| Major Group 25. | Furniture and fixtures |
| Major Group 26. | Paper and allied products |
| Major Group 27. | Printing, publishing, and allied industries |
| Major Group 28. | Chemicals and allied products |
| Major Group 29. | Petroleum refining and related industries |
| Major Group 30. | Rubber and miscellaneous plastics products |
| Major Group 31. | Leather and leather products |
| Major Group 32. | Stone, clay, glass, and concrete products |
| Major Group 33. | Primary metal industries |
| Major Group 34. | Fabricated metal products, except machinery and transportation equipment |
| Major Group 35. | Industrial and commercial machinery and computer equipment |
| Major Group 36. | Electronic and other electrical equipment and components, except computer equipment |
| Major Group 37. | Transportation equipment |

Major Group 38. Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks

Major Group 39. Miscellaneous manufacturing industries

DIVISION E. TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES

Major Group 49. Sanitary services (sewerage systems, refuse systems, sanitary services not elsewhere classified)

MISCELLANEOUS FOOD PREPARATIONS AND KINDRED PRODUCTS

Industrial facilities listed in Industry Number 2091 are not considered "industrial facilities" as defined in § 15.2 of this title (relating to Definitions).

2091 Canned and Cured Fish and Seafoods

Establishments primarily engaged in cooking and canning fish, shrimp, oysters, clams, crabs, and other seafoods, including soups; and those engaged in smoking, salting, drying, or otherwise curing fish and other seafoods for the trade. Establishments primarily engaged in shucking and packing fresh oysters in nonsealed containers, or in freezing or preparing fresh fish, are classified in Industry 2092.

- Canned fish, crustacea, and mollusks
- Caviar, canned
- Chowder, fish and seafood: canned
- Clam bouillon, broth, chowder, juice: bottled or canned
- Codfish: smoked, salted, dried and pickled
- Crab meat, canned and cured
- Finnan haddie (smoked haddock)
- Fish and seafood cakes: canned
- Fish egg bait, canned
- Fish, canned and cured
- Fish: cured, dried, pickled, salted, and smoked
- Herring: smoked, salted, dried, and pickled
- Mackerel: smoked, salted, dried, and pickled
- Oysters, canned and cured
- Salmon: smoked, salted, dried, canned, and pickled
- Sardines, canned

- Seafood products, canned and cured
- Shellfish, canned and cured
- Shrimp, canned and cured
- Soups, fish and seafood: canned
- Stews, fish and seafood: canned
- Tuna fish, canned

MISCELLANEOUS FOOD PREPARATIONS AND KINDRED PRODUCTS

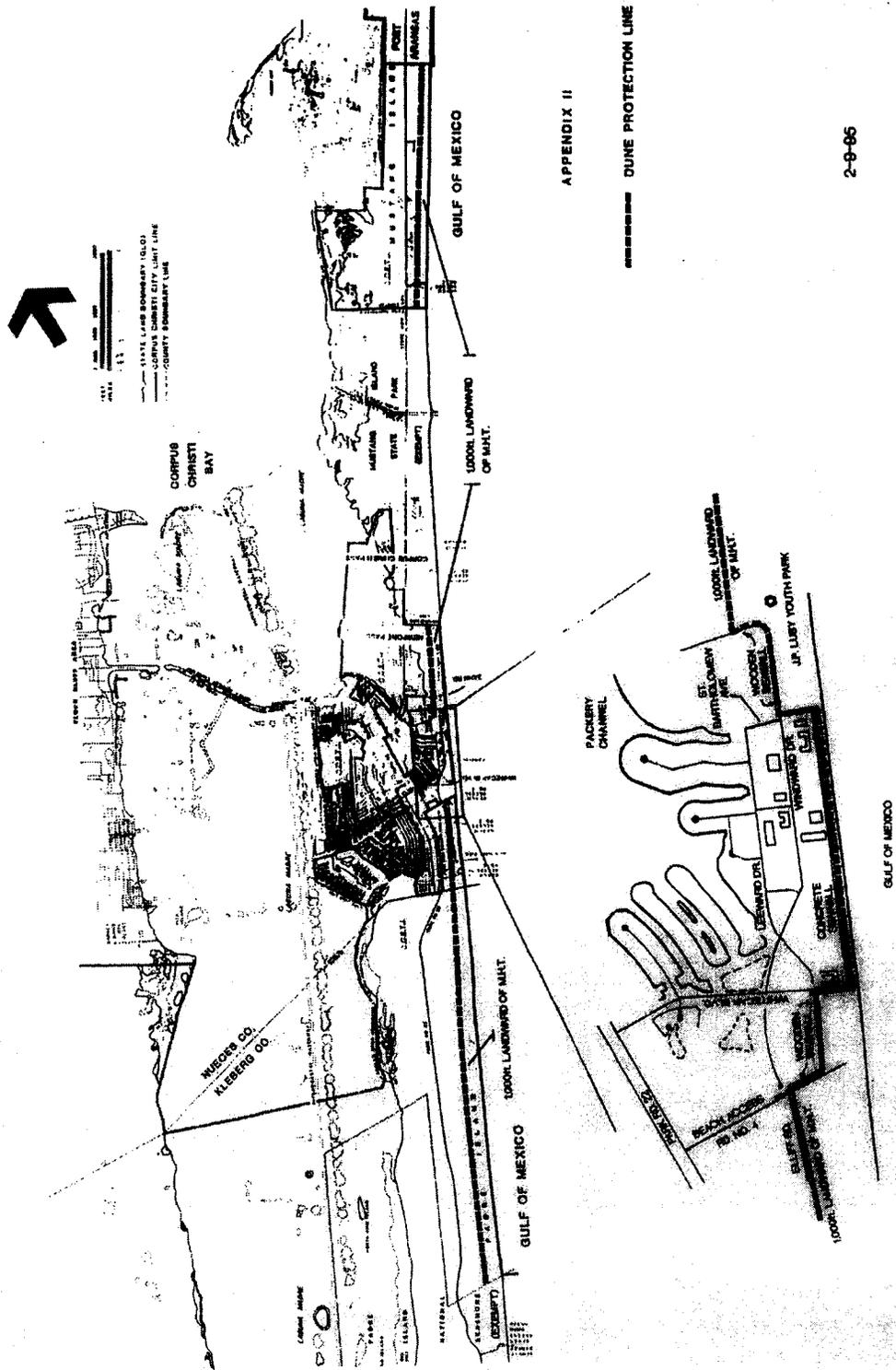
Industrial facilities listed in Industry Number 2092 are not considered "industrial facilities" as defined in § 15.2 of this title (relating to Definitions).

2092 Prepared Fresh or Frozen Fish and Seafoods

Establishments primarily engaged in preparing fresh and raw or cooked frozen fish and other seafoods and seafood preparations, such as soups, stews, chowders, fishcakes, crabcakes, and shrimpcakes. Prepared fresh fish are eviscerated or processed by removal of heads, fins, or scales. This industry also includes establishments primarily engaged in the shucking and packing of fresh oysters in nonsealed containers.

- Chowders, fish and seafood: frozen
- Crabcakes, frozen
- Crabmeat picking
- Crabmeat, fresh: packed in nonsealed containers
- Fish and seafood cakes, frozen
- Fish Fillets
- Fish sticks
- Fish: fresh and frozen, prepared
- Oysters, fresh: shucking and packing in non- sealed containers
- Seafoods, fresh and frozen
- Shellfish, fresh and frozen
- Shellfish, fresh: shucked, picked, or packed
- Shrimp, fresh and frozen
- Soups, fish and seafood: frozen
- Stews, fish and seafood: frozen

APPENDIX II DUNE PROTECTION LINE



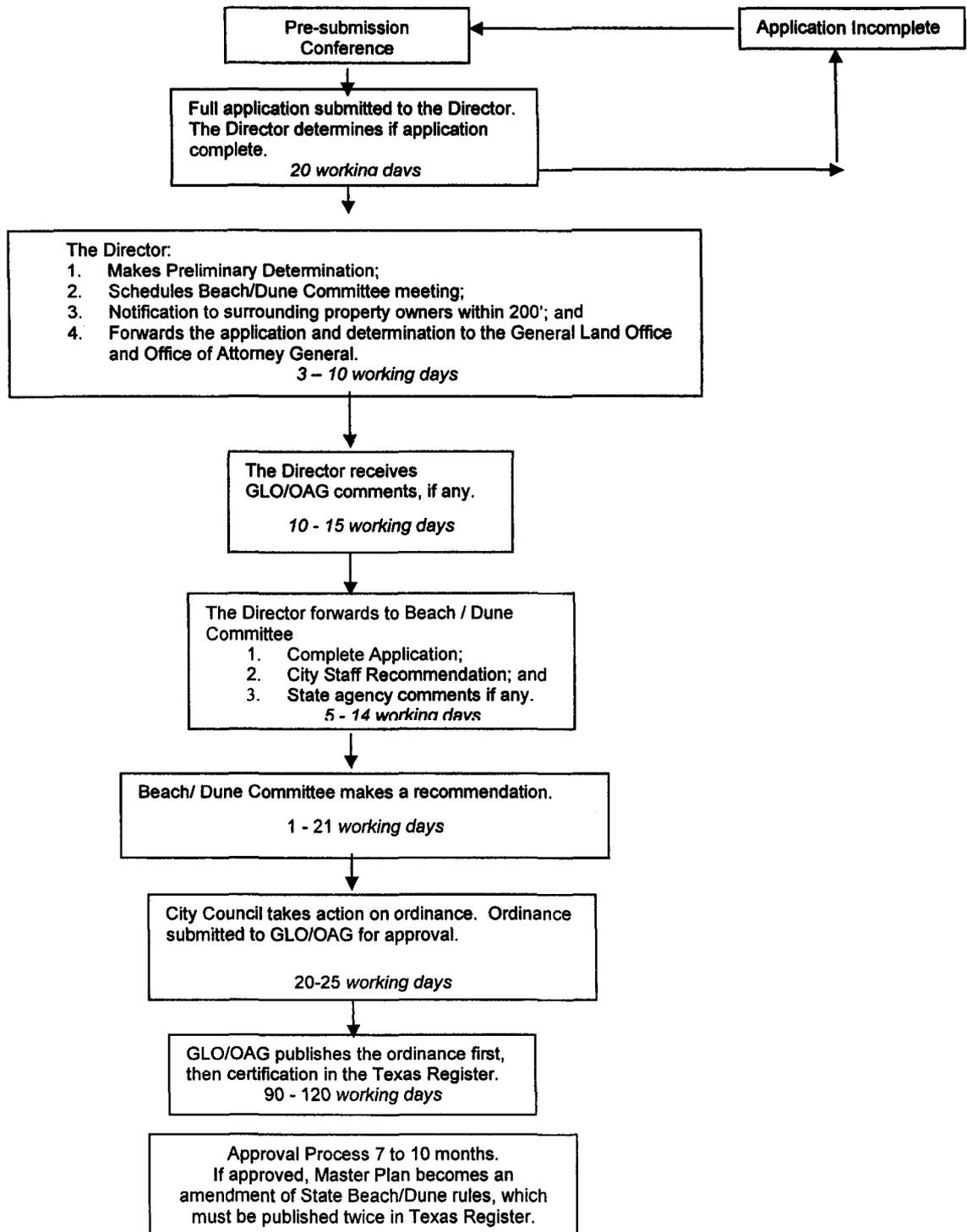
APPENDIX II

===== DUNE PROTECTION LINE

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**APPENDIX IV
FLOW CHART OF APPLICATION PROCESS
FOR MASTER PLANNED DEVELOPMENTS**

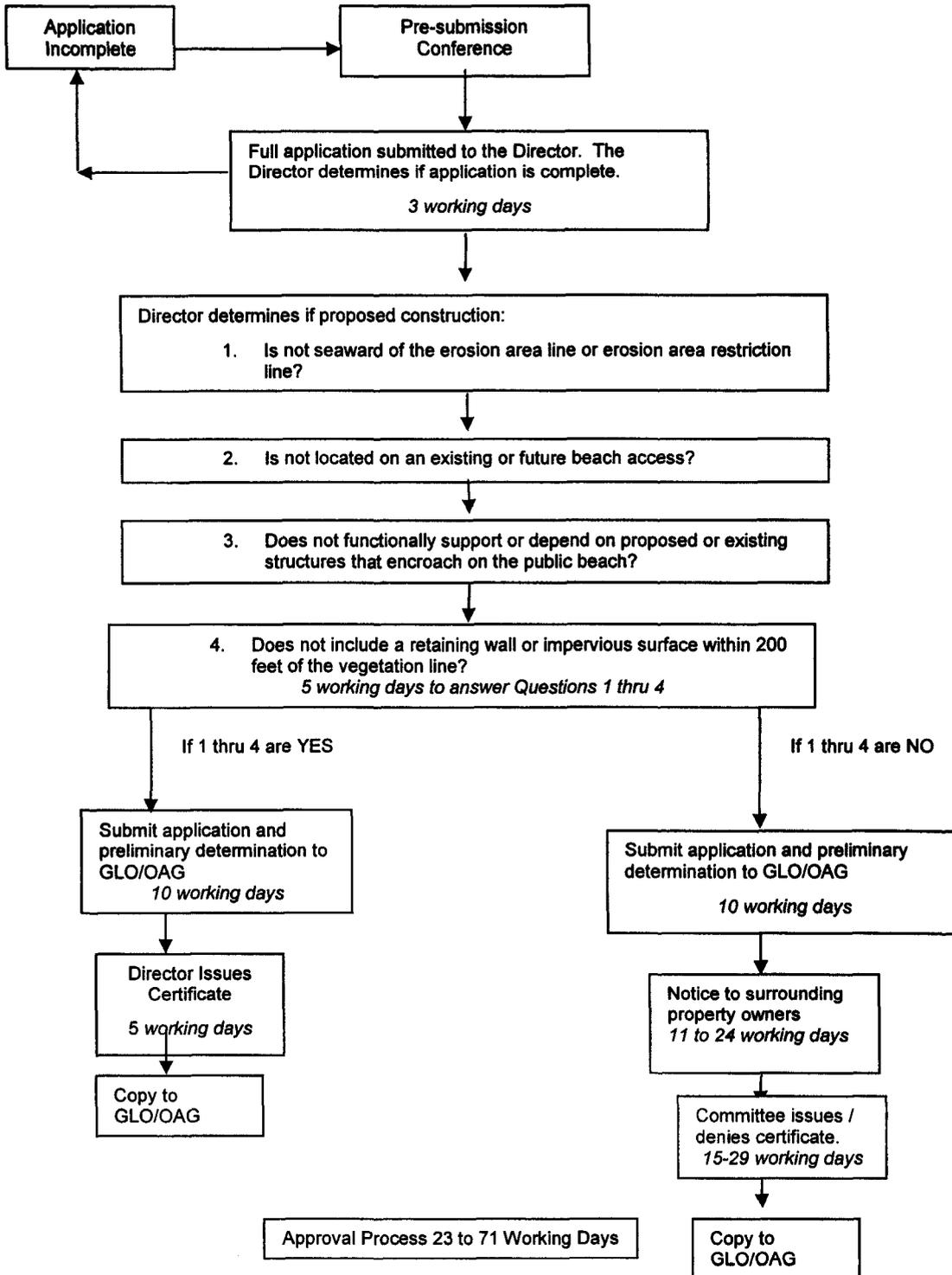
NOTE: Master Plans are typically used for projects requiring more than two or three years to build out. If approved, Master Plans eliminate the need to separate dune protection permits and beachfront construction certificates for lots covered by the Master Plan. Master Plans are valid for 10 years from the effective date of the ordinance that adopts the Master Plan.



APPENDIX V
FLOW CHARTS AND APPLICATION FORMS FOR BEACHFRONT CONSTRUCTION CERTIFICATES
AND CONCURRENT DUNE PROTECTION PERMITS / BEACHFRONT CONSTRUCTION
CERTIFICATES

**APPENDIX V.A.
BEACHFRONT CONSTRUCTION CERTIFICATE
APPLICATION PROCESS**

Note: If approved, beachfront construction certificates may be granted for up to 3 years, with two 90-day renewals.



**APPENDIX V.B.
BEACHFRONT CONSTRUCTION CERTIFICATE
APPLICATION FORM**

**BEACHFRONT CONSTRUCTION CERTIFICATE APPLICATION
(BCCA)**

Applicant's name: _____

Applicant's address: _____

City: _____ State: _____ ZIP: _____

Applicant's phone number: _____ Fax number: _____

Property Owner's name: _____

Property Owner's address: _____

City: _____ State: _____ ZIP: _____

Property Owner's phone number: _____ Fax number: _____

Legal description of the tract: _____

Size of tract in acres or square feet: _____

Description of the proposed construction, including the number of proposed structures and whether the structures are amenities or habitable structures:

Does the proposed construction include a dune walkover? Yes No

Will the proposed dune walkover be constructed under the Texas General Land Office's Dune Protection and Improvement Manual for the Texas Gulf Coast? Yes No

FEMA Standards: The lowest habitable floor of the proposed structure(s) is _____ feet, which is at or above the FEMA base flood elevation for the area.

I certify that the information provided is correct and accurate.

Applicant

Date

Property Owner

Date

Engineer/Surveyor
License #: _____

Date

See reverse for site plan requirements.

Attach a scalable site plan, which includes the following:

- Legal description of the tract, including, where applicable, the subdivision, block, and lot.
- Location of the property lines and a notation of the legal description of adjoining tracts.
- Location, footprint, and perimeter of the existing and proposed structures on the tract (the location, footprint, or perimeter of a proposed structure is not required for proposed structures located landward of the Dune Protection Line or Erosion Area Restriction Line).
- Location of proposed roadways and driveways on the tract (the location of proposed roadways and driveways is not required for proposed structures located landward of Dune Protection Line or Erosion Area Restriction Line).
- Location of any seawalls or any other erosion response structures on the tract and on the properties adjacent to the tract.
- Location of the Beachfront Construction Line, Dune Protection Line, Vegetation Line, Erosion Area Line or Erosion Area Restriction Line, mean high tide line, and mean low tide line.
- Location of any existing beach access ways that are located either on the property or adjacent to the tract.
- Location of any future beach access ways, based on elements of the City's Comprehensive Plan, including the Transportation Plan or applicable area development plan, that are located either on the property or adjacent to the tract.
- Location of any existing or proposed dune walkovers on the tract.

If the applicant has the requested information, attach copies of the following information:

- A copy of the FEMA "elevation certificate.
- The most recent local historical erosion rate data as determined by the University of Texas at Austin, Bureau of Economic Geology.

Describe whether the proposed construction will impact coastal erosion.

The proposed construction will not impact coastal erosion.

The proposed construction will have the following impacts on coastal erosion:

BEACHFRONT CONSTRUCTION CERTIFICATE APPLICATION
Large Scale Construction Addendum
(BCCA-LSCA)

If the proposed construction qualifies as large-scale construction, provide the following information:

If a multiple-unit dwelling will be constructed, how many units will be in the dwelling?

Have any alternatives been considered that would cause fewer or no adverse effects on dunes or dune vegetation?

Yes No

If no, why were no alternatives considered?

No alternatives are necessary, since proposed construction will not impact dunes or dune vegetation.

The only impacts will be from dune walkover(s) constructed under the dune walkover construction standards in the Texas General Land Office's Dune Protection and Improvement Manual for the Texas Gulf Coast.

Because _____

If yes, what alternatives were considered?

How will the proposed construction impact on natural drainage patterns on the site and on adjacent lots?

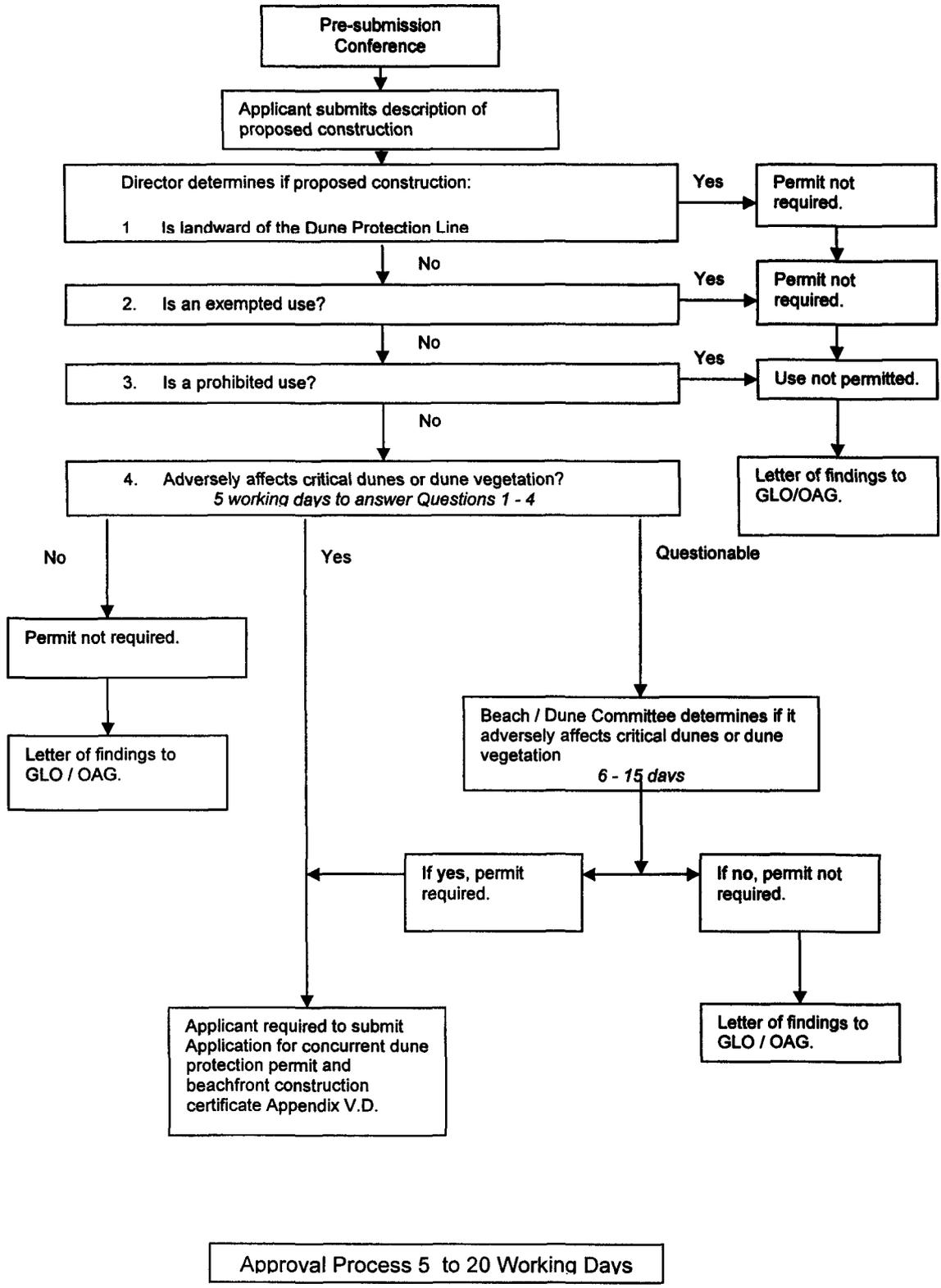
There will be no impact on natural drainage patterns.

Drainage will be improved by the construction of _____

If the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, attach a certified copy of the plat, or if the subdivision has not been platted a preliminary plat.

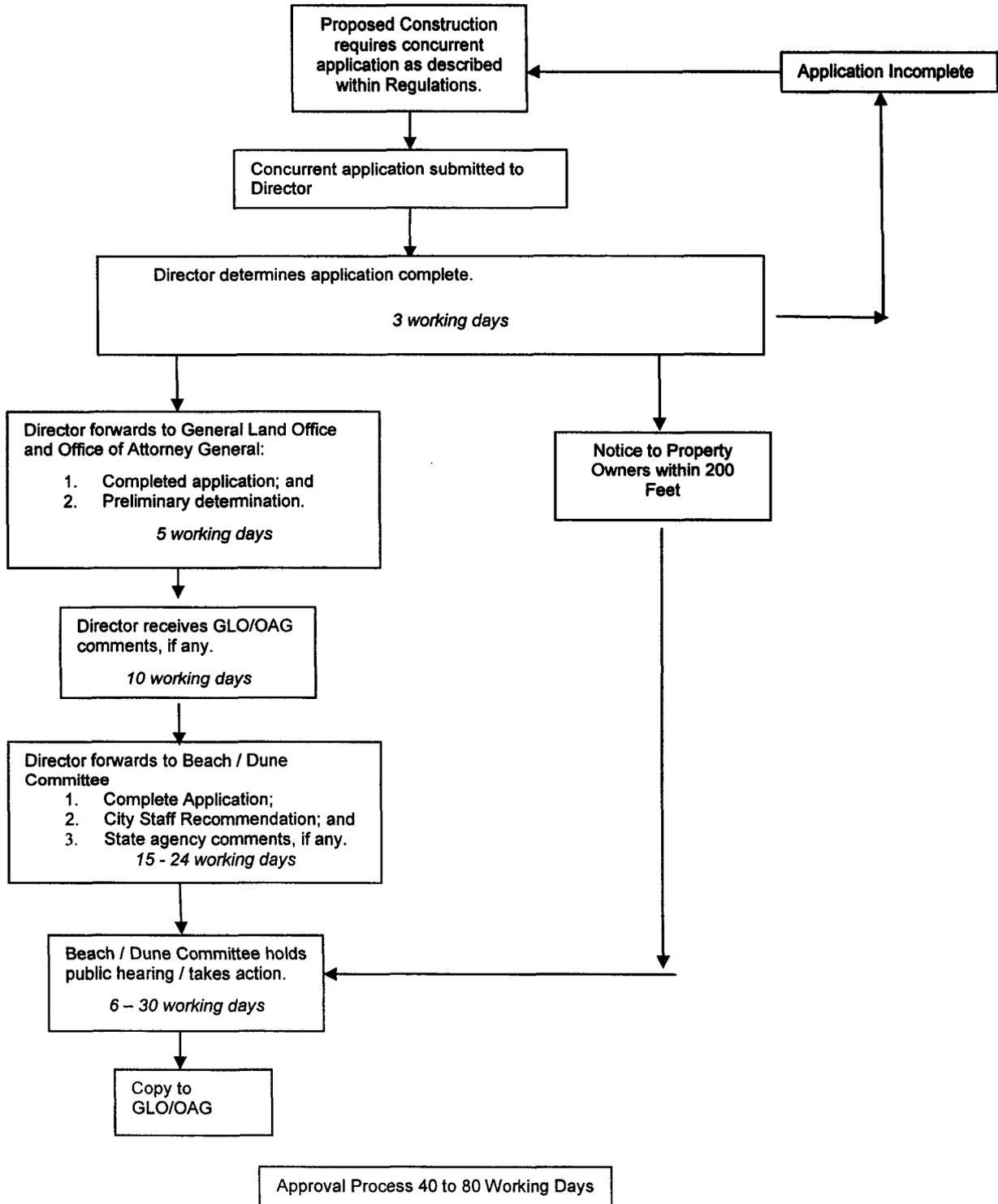
If the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, what is the total area of the subdivision in acres or square feet?

**APPENDIX V.C.
PRELIMINARY DETERMINATION IF
DUNE PROTECTION PERMIT REQUIRED**



**APPENDIX V.D.
CONCURRENT DUNE PROTECTION PERMIT /
BEACHFRONT CONSTRUCTION CERTIFICATE
APPLICATION PROCESS**

NOTE: If approved, concurrent dune protection permits/beachfront construction certificates may be granted for up to 3 years, with two 90-day renewals.



APPENDIX V.E.
CONCURRENT DUNE PROTECTION PERMIT/ BEACHFRONT CONSTRUCTION CERTIFICATE
APPLICATION FORM

**CONCURRENT DUNE PROTECTION PERMIT/
BEACHFRONT CONSTRUCTION CERTIFICATE APPLICATION
(CDPPBCCA)**

Applicant's name: _____

Applicant's address: _____

City: _____ State: _____ ZIP: _____

Applicant's phone number: _____ Fax number: _____

Property Owner's name: _____

Property Owner's address: _____

City: _____ State: _____ ZIP: _____

Property Owner's phone number: _____ Fax number: _____

Legal description of the tract: _____

Size of tract in acres or square feet: _____

Description of the proposed construction, including the number of proposed structures and whether the structures are amenities or habitable structures:

The number of parking spaces: _____

What is the approximate percentage of existing and finished open spaces (those areas completely free of structures):

What is the approximate duration of the construction? _____

Describe the effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes in dune hydrology:

Describe the location and extent of any known man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract:

Describe the location and extent of any wetlands on the tract:

Does the proposed construction include a dune walkover? Yes No

Will the proposed dune walkover be constructed under the Texas General Land Office's Dune Protection and Improvement Manual for the Texas Gulf Coast? Yes No

FEMA Standards: The lowest habitable floor of the proposed structure(s) is _____ feet, which is at or above the FEMA base flood elevation for the area.

I certify that the information provided is correct and accurate.

Applicant

Date

Property Owner

Date

Engineer/Surveyor
License #: _____

Date

See list of required attachments and site plan requirements.

Attach a scalable site plan, which includes the following:

- **Legal description of the tract, including, where applicable, the subdivision, block, and lot.**
- **Location of the property lines and a notation of the legal description of adjoining tracts.**
- **Location, footprint, and perimeter of the existing and proposed structures on the tract (the location, footprint, or perimeter of a proposed structure is not required for proposed structures located landward of the Dune Protection Line or Erosion Area Restriction Line).**
- **Location of proposed roadways and driveways on the tract (the location of proposed roadways and driveways is not required for proposed structures located landward of Dune Protection Line or Erosion Area Restriction Line).**
- **Location of any seawalls or any other erosion response structures on the tract and on the properties adjacent to the tract.**
- **Location of the Beachfront Construction Line, Dune Protection Line, Vegetation Line, Erosion Area Line or Erosion Area Restriction Line, mean high tide line, and mean low tide line.**
- **Location of any existing beach access ways that are located either on the property or adjacent to the tract.**
- **Location of any future beach access ways, based on elements of the City's Comprehensive Plan, including the Transportation Plan or applicable area development plan, that are located either on the property or adjacent to the tract.**
- **Location of any existing or proposed dune walkovers on the tract.**
- **Location and extent of any known man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.**
- **Location and extent of any wetlands on the tract.**

Attach the floor plan and elevation view of any structure(s) proposed to be constructed or expanded.

Attach a description (including location) of any existing or proposed walkways or dune walkovers on the tract.

Attach a grading and layout plan:

- **Identify all existing and proposed structures and paved areas.**
- **All elevations must reference to the National Oceanic and Atmospheric Administration datum.**
- **Show existing contours of the project area (including the location of dunes and swales).**
- **Show proposed contours for the final grade.**
- **If development is proposed to be located seaward of the dune protection line, show the location of the erosion area line.**

Attach photographs of the site, which clearly show the current location of the vegetation line and the existing dunes on the tract.

Attach a comprehensive mitigation plan, which includes a detailed description of the methods which will be used to avoid, minimize, mitigate and/or compensate for any adverse effects on dunes or dune vegetation.

If the applicant has the requested information, attach copies of the following information:

- **A copy of the FEMA "elevation certificate.**
- **The most recent local historical erosion rate data as determined by the University of Texas at Austin, Bureau of Economic Geology.**

A copy of a topographical survey (two-foot contour intervals) of the site.

Describe whether the proposed construction will impact coastal erosion.

The proposed construction will not impact coastal erosion.

The proposed construction will have the following impacts on coastal erosion:

**CONCURRENT DUNE PROTECTION PERMIT/
BEACHFRONT CONSTRUCTION CERTIFICATE APPLICATION
Large Scale Construction Addendum
(CDPPBCCA-LSCA)**

If the proposed construction qualifies as large-scale construction, provide the following information:

If a multiple-unit dwelling will be constructed, how many units will be in the dwelling?

Have any alternatives been considered that would cause fewer or no adverse effects on dunes or dune vegetation?

Yes No

If no, why were no alternatives considered?

No alternatives are necessary, since proposed construction will not impact dunes or dune vegetation.

The only impacts will be from dune walkover(s) constructed under the dune walkover construction standards in the Texas General Land Office's Dune Protection and Improvement Manual for the Texas Gulf Coast.

Because _____

If yes, what alternatives were considered?

How will the proposed construction impact on natural drainage patterns on the site and on adjacent lots?

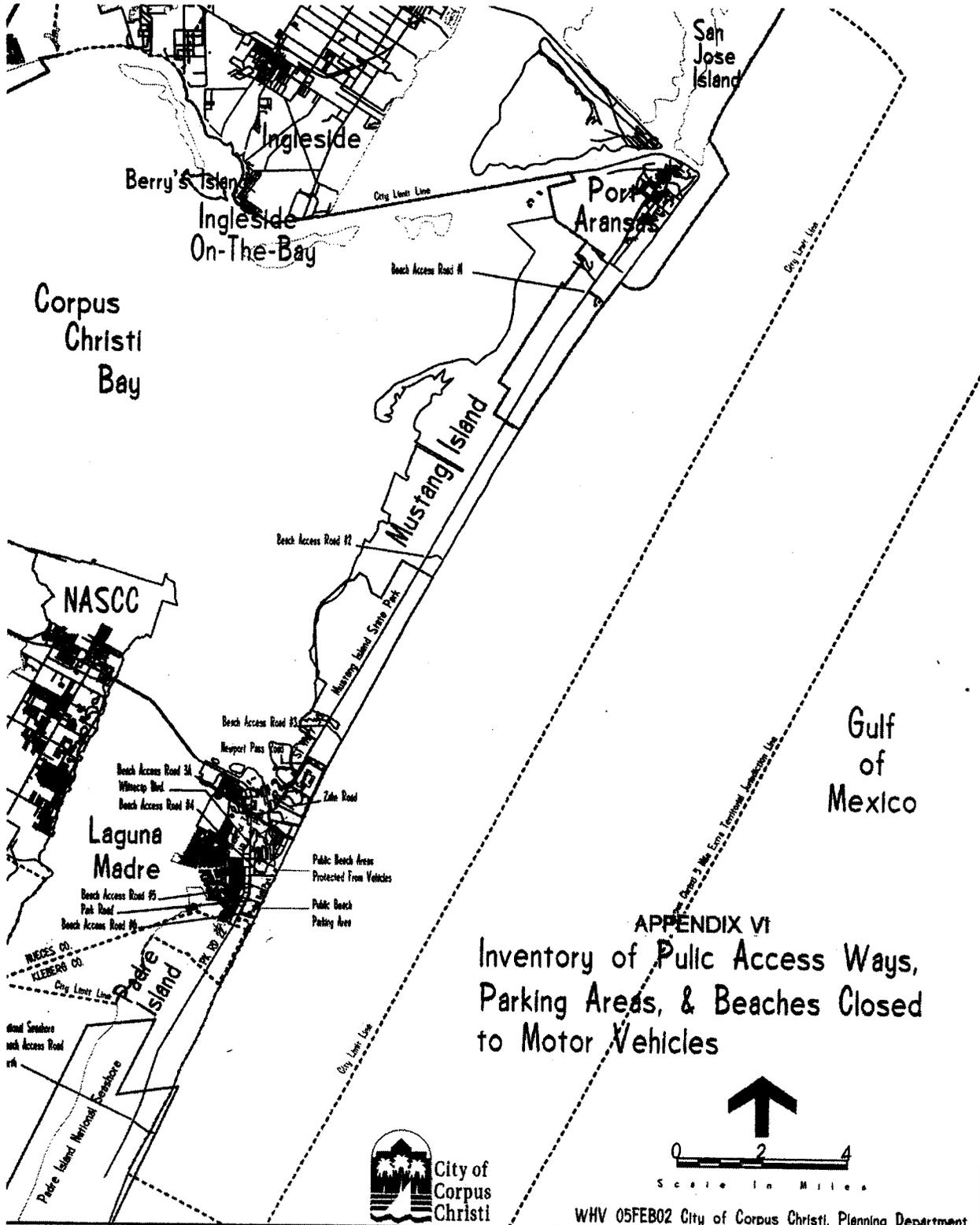
There will be no impact on natural drainage patterns.

Drainage will be improved by the construction of _____

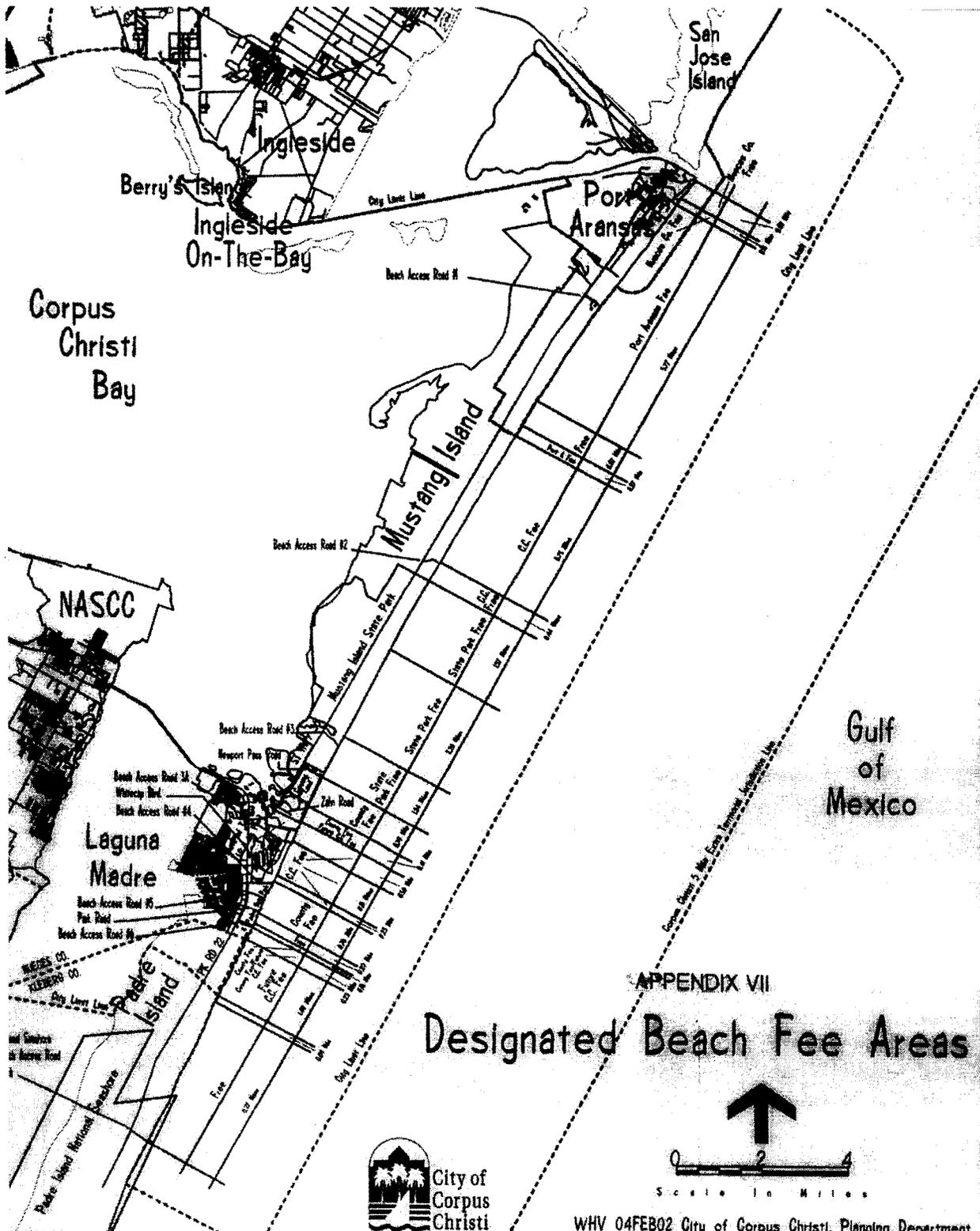
If the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, attach a certified copy of the plat, or if the subdivision has not been platted a preliminary plat.

If the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, what is the total area of the subdivision in acres or square feet?

**APPENDIX VI
DESIGNATION OF ACCESS WAYS, PARKING AREAS, AND BEACHES CLOSED TO MOTOR VEHICLES**



**APPENDIX VII
DESIGNATED BEACH FEE AREAS**



**APPENDIX VIII
INTERLOCAL AGREEMENT WITH IN THE CITY OF PORT ARANSAS AND NUECES COUNTY
RELATING TO THE MUSTANG AND NORTH PADRE ISLANDS BEACH PARKING PERMIT SYSTEM**

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
CITY OF CORPUS CHRISTI,
CITY OF PORT ARANSAS
AND
COUNTY OF NUECES
RELATING TO THE MUSTANG AND NORTH PADRE ISLANDS
BEACH PARKING PERMIT SYSTEM**

This interlocal cooperation agreement, under Chapter 791 of the Texas Government Code, is made by and between the City of Corpus Christi, Texas ("Corpus Christi"), a municipal corporation, the City of Port Aransas, Texas ("Port Aransas"), a municipal corporation, and the County of Nueces ("County"), each of which is a political subdivision of the State of Texas.

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments to contract with one another and state agencies to perform governmental functions and service that each party to the contract is authorized to perform individually, including functions relating to parks and recreation activities, in order to increase efficiency and effectiveness;

WHEREAS, it is the duty and responsibility of the governing body of any incorporated city, town, or village located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches within the corporate boundaries, but the duty to clean and maintain the condition of public beaches does not extend to any public beach within the corporate boundaries that is owned by the county in which it is located.

WHEREAS, it is the duty and responsibility of the commissioners court of any county located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches located inside the county but outside the boundaries of any incorporated city located or bordering on the Gulf of Mexico and all public beaches owned by the county and located inside the boundaries of an incorporated city, town, or village.

WHEREAS, under Section 61.011 of the Texas Natural Resource Code local government responsible for the regulation, maintenance and use of such beaches may charge reasonable fees pursuant to its authority to cover the cost of discharging its responsibilities with respect to such beaches, provided such fees do not exceed the cost of such public facilities and services, and do not unfairly limit public access to and use of such beaches, including imposition of beach access, user, or parking fees and reasonable exercises of the police power by local governments with respect to public beaches;

WHEREAS, each of the parties to this interlocal cooperation agreement have in place an approved Beach Access and Use Plan, as required by Section 61.015 of the Texas Natural Resource Code, that authorizes beach parking permit fees for parking on beaches maintained by the parties;

Page 1 of 8

2002-104

2/19/02

Res. 024775

City of Port Aransas et al

WHEREAS, the General Land Office has adopted regulations in Section 15.8 of Title 31, Texas Administrative Code, that control the imposition of beach user fees by local governments;

WHEREAS, Section 15.8(b) of Title 31, Texas Administrative Code, requires local governments to establish a state-approved system for reciprocity of fees and fee privileges among the different local governments authorized to charge beach user fees;

WHEREAS, the establishment of a system of beach user fee reciprocity is a condition of state approval of local dune protection and beach access plans;

Now, therefore the Parties hereto mutually agree as follows:

- I. **MUSTANG AND NORTH PADRE ISLANDS BEACH PARKING PERMIT SYSTEM.** The Mustang and North Padre Islands Beach Parking Permit System ("Beach Parking Permit System") provides a unified system for the issuance, sale, enforcement, and the reciprocal recognition of beach parking permit stickers within the jurisdictions of Corpus Christi, Port Aransas, and County. Revenue from the beach parking permit stickers will be used to help defray some of the cost of providing beach-related services incurred by the three jurisdictions.
- II. **PARTICIPANT FUNDING.** The funding for the Beach Parking Permit System will come exclusively from the beach parking permit sale revenues. The revenues received will be distributed to the parties based on the linear beach frontage of beach each party is responsible for maintaining under State law. Any beaches within Federal or State parks will be excluded. Attachment A lists the distance each party is responsible for as of the date of this agreement. It will be updated at the time of any boundary changes. Attachment B is a collection of maps showing the fee and free parking areas within each jurisdiction.
- III. **AUTHORIZATION FOR FUNDING.**
 - A. Corpus Christi, Port Aransas, and County each separately certify that the revenues received from the Beach Parking Permit System will only be used for expenses authorized by the General Land Office regulations in 31 TAC 15.8
 1. Section 15.8(f) authorizes the use of beach user revenues only for beach-related services.
 2. Beach-related services are defined as reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; life guarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune

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protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas, recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach related services and facilities shall serve only those areas on or immediately adjacent to the public beach

3. For each fiscal year, a local government shall not spend more than 10% of beach user fee revenues on reasonable administrative costs directly related to beach-related services. Each local government shall send quarterly reports to the General Land Office stating the amount of beach user fee revenues collected and itemizing how beach user fee revenues are expended. The General Land Office may prescribe reporting forms or methods. The General Land Office shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related. Reports are due no later than 60 days after the end of each quarter of the State fiscal year.

- B. Corpus Christi, Port Aransas, and County each separately certify that payments made under this Agreement will be made from current revenues, and any future payments are subject to future appropriations.
- C. All expenditures will be subject to applicable Corpus Christi, Port Aransas, and County purchasing procedures.
- D. The parties further mutually agree that the budget for the Beach Parking Permit System shall be set by the representatives of all parties to this agreement designated in Section V of this agreement.

IV. STANDARD OPERATING PROCEDURES. The parties agree that the Beach Parking Permit System shall be operated under the Standard Operating Procedures (SOP), which will be attached to this agreement as Attachment C.

- A. The SOP may be amended by the representatives of all parties to this agreement designated in Section V of this agreement with the consent of their governing bodies.
- B. The designated representatives of the parties shall periodically review the methods used for the sale of beach parking permits and make recommendations on whether beach parking permit fees need to be adjusted in order to ensure that adequate revenues are available to provide the required beach related services by the parties.

V. **DESIGNATED REPRESENTATIVES.** The following officials, and their successors in office, are the designated representatives of the parties authorized to approve amendments to the SOP:

- A. City of Corpus Christ David R. Garcia, City Manager
- B. City of Port Aransas Tom Brooks, City Manager
- C. Nueces County Richard M. Borchard, County Judge

VI. **RESPONSIBILITIES.**

- A. Each party to this agreement shall make any necessary changes to beach fee provisions of their dune protection and beach access plans that are necessary to implement this agreement, and submit the amendments for review approval to the Texas Land Commissioner and Attorney General as required by section 61.011 and 61.015 of the Texas Natural Resource Code and 31 TAC 15.8(e).
- B. Except as provided in paragraphs 1 and 3 of this subsection, each party shall only recognize Beach Parking Permit System stickers, as described in Section I of this Agreement, within their respective jurisdiction.
 - 1. Each party shall recognize the right of any party to sell beach parking permit stickers that were acquired by the party prior to February 22, 2002.
 - 2. Each party with an existing stock of parking stickers will provide the other parties with information on the number of parking permit stickers in their inventory on February 22, 2002.
 - 3. Pending General Land Office approval of any required amendments to a party's ~~Corpus Christi~~ dune protection and beach access plans relating to beach parking permit fees, and before the unified system goes into effect, each party shall recognize any existing beach parking permit sticker issued by one of the parties until the beach parking permit expires.
- C. Except as provided for in this agreement or the SOP, each party will be responsible for enforcement of the beach parking permits within their jurisdiction.
- D. The parties shall make reasonable effort to maintain reliable operations of the Beach Parking Permit System. But the parties assume no responsibility for unavoidable system failures, equipment failures, or late notification by a party to this agreement. A party's liability in any event shall be solely limited to direct loss of any fee revenues arising from the party's negligence, and shall not be liable for any consequential losses.

- E. Except as provided for in this agreement or the SOP, each party is responsible for the on-site beach parking permit sales within their jurisdiction. Each party's liability in any event shall be solely limited to direct loss of any fee revenues arising from the party's negligence, and shall not be liable for any consequential losses.
- VII. **MODIFICATION/AMENDMENT.** This Agreement may be modified or amended provided that such modification or amendment is in writing and signed by an authorized representative of each party, and approved by the governing body of each party. The modifications to the standard operating procedures approved by the authorized representatives do not require the approval of the governing bodies, unless a governing body reserves the authority to approve amendments to the standard operating procedures or an authorized representative refers the matter to the party's governing body.
- VIII. **APPROVAL BY GOVERNING BODIES.** Each party represents that this Agreement has been duly passed and approved by the governing body of the party as required the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code.
- IX. **TERM AND RENEWAL.**
- A. This Agreement shall be for an initial term of one year.
- B. This Agreement shall be automatically renewed without further action unless terminated by any party.
- C. This agreement may be terminated at any time by any party with or without cause upon (90) days' advance written notice.
- D. Any notice of termination shall be sent to the other parties to this interlocal cooperation agreement at the address listed in Section XI of this agreement, and to the General Land Office and Attorney General.
- X. **SEVERABILITY.** If any portion of this agreement, or its application to any person or circumstance, is held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this agreement shall not be affected and shall continue to be enforceable under the terms of this agreement.
- XI. **NOTICES.** Notices under this Agreement shall be addressed to the parties as indicated below, unless changed by written notice to such effect, and shall be effected when delivered or when deposited in the U.S. mail, postage prepaid, certified, return receipt requested

- A. City of Corpus Christi
Attn: City Manager
P.O. Box 9277
Corpus Christi, Texas 78469-9277
Telephone: (361) 880-3220
Facsimile: (361) 880-3839
- B. City of Port Aransas
Attn: City Manager
710 West Avenue A
Port Aransas, Texas 784
Telephone: (361) 749-4111
Facsimile: (361) 749-4723
- C. Nueces County
Attn: County Judge
901 Leopard Street
Corpus Christi, Texas 78401
Telephone: (361) 888-0444
Facsimile: (361) 888-0446

- XII. **PERFORMANCE.** This agreement shall be performed in Nueces and Kleberg County, Texas, and shall be governed by the laws of the State of Texas.
- XIII. **NO BENEFIT TO THIRD PARTIES.** This Agreement is solely for the benefit of the parties to this agreement, and not for the benefit of any third party.
- XIV. **ASSIGNMENT.** This Agreement is binding upon and inures to the benefit of the parties to this Agreement and their respective successors and permitted assigns. This Agreement may not be assigned by any party without the written consent of all of the other parties.
- XV. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the parties and may not be modified by any oral agreements or understandings. Any amendments must be made in writing and signed by all parties, as provided in Section VII of this agreement.
- XVI. **EFFECTIVE DATE.** This agreement is effective on the date when the last party executes this agreement.

EXECUTED by the City of Corpus Christi on the 4th day of March, 2002.

ATTEST: CITY OF CORPUS CHRISTI

Armando Chapa
Armando Chapa
City Secretary

David R. Garcia
David R. Garcia
City Manager

APPROVED AS TO FORM:

James R. Bray, Jr.
City Attorney

Res. 024775
BY COUNCIL 2/19/02
SECRETARY: ms

By: R. Jay Reining
R. Jay Reining
First Assistant City Attorney

EXECUTED by the City of Port Aransas, on the . . . day of . . . , 2002.

ATTEST: CITY OF PORT ARANSAS

Esther Arzola
Esther Arzola
City Secretary

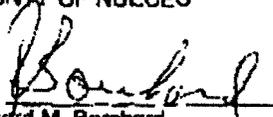
Tommy M. Brooks
Tommy M. Brooks
City Manager

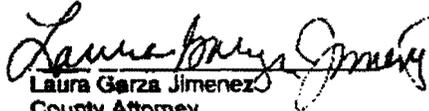
APPROVED AS TO FORM:

Michael G. Morris
Michael G. Morris
City Attorney

EXECUTED by the County of Nueces, on the ___ day of ___, 2002.

ATTEST:
The seal of the County of Nueces, Texas, featuring a five-pointed star in the center, surrounded by the words "COUNTY OF NUECES TEXAS".
Ernest M. Alones
County Clerk

COUNTY OF NUECES

Richard M. Borchard
County Judge


Laura Garza Jimenez
County Attorney

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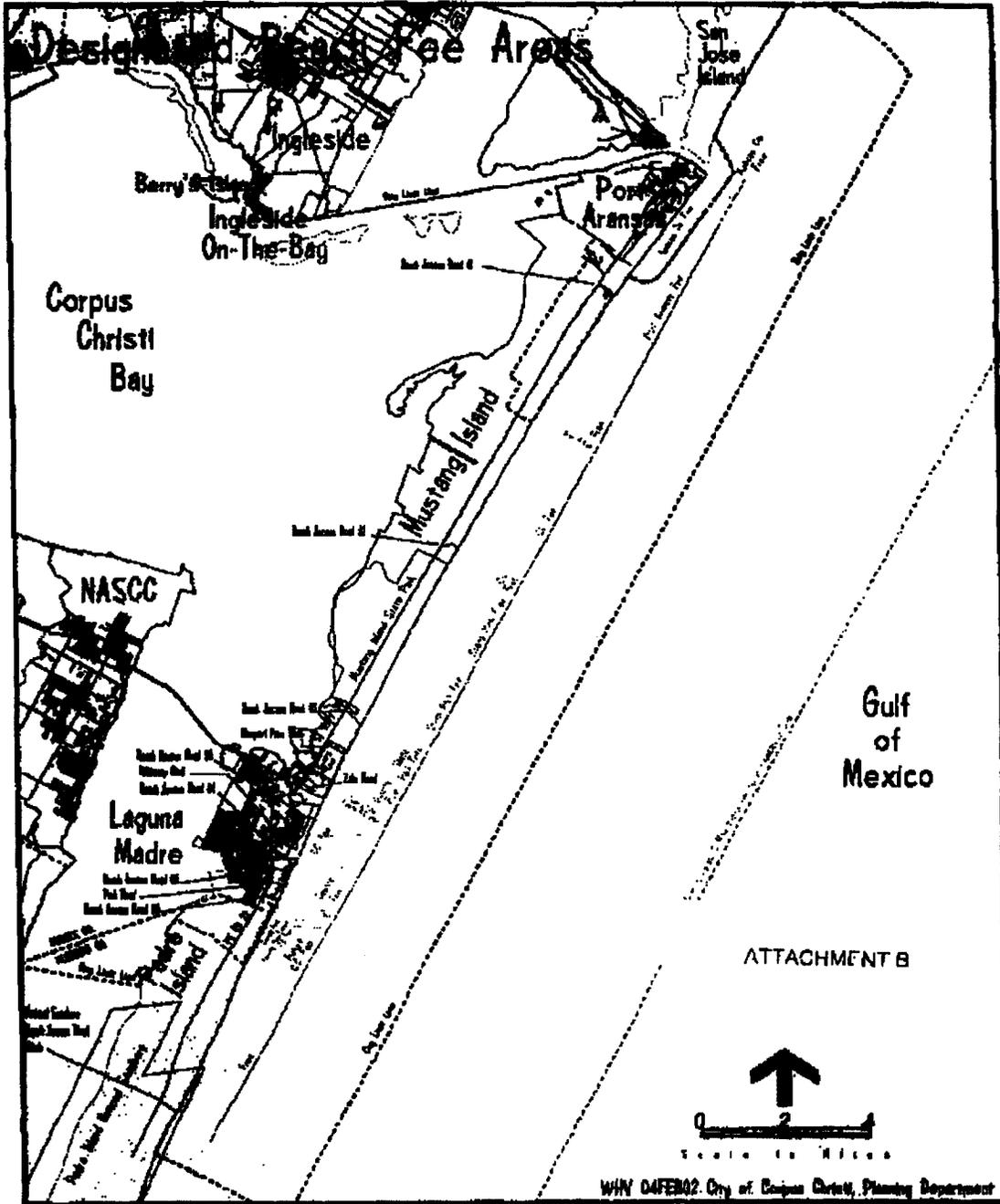
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FEE AND FREE BEACHES BY GOVERNMENTAL ENTITY

CORPUS CHRISTI SHIP CHANNEL TO PADRE ISLAND NATIONAL SEASHORE
 Governmental Entity Fee / Free

		Feet	Miles	% of Total Beaches By Entity	Fee / Free by Governmental Entity	Local Government Beach Parking Fee Distribution %
Nueces County	Fee	9,860	1.87	6.5%	87.0%	
Nueces County	Free	4,800	0.92	3.2%	33.0%	
Subtotal		14,720	2.79	9.7%	100.0%	16.0%
City of Port Aransas	Fee	31,880	6.04	21.0%	90.0%	
City of Port Aransas	Free	3,530	0.67	2.3%	10.0%	
Subtotal		35,410	6.71	23.3%	100.0%	36.5%
City of Corpus Christi	Fee	39,829	7.51	26.1%	94.5%	
City of Corpus Christi	Free	2,300	0.44	1.5%	5.5%	
Subtotal		41,929	7.94	27.6%	100.0%	45.5%
Subtotal		92,059	17.44	60.59%	100.0%	100.0%
State of Texas	Fee	11,934	2.28	7.9%	19.9%	
State of Texas	Free	47,934	9.08	31.6%	80.1%	
Subtotal		59,868	11.34	39.4%	100.0%	
Grand Total with State		151,927	28.77	100.0%		

ATTACHMENT A



Attachment C

**Mustang and North Padre Islands Beach Parking Permit System
Standard Operating Procedures**

This attachment to the interlocal cooperation agreement among the City of Corpus Christi, City of Port Aransas, and Nueces County relating to the sale and enforcement of beach parking permits establishes the initial standard operating procedures for the Mustang and North Padre Islands beach parking system.

1. An annual beach parking fee is instituted of \$6 based on a calendar year. (During this initial period, the \$6 fee will run from March 1 until Dec. 31 or such later starting time as is necessitated by approval of the GLO.)
2. The three entities will use their best efforts and coordinate with each other to encourage and foster the sale of beach parking permits.
 - a. A standard discount rate of \$5.50 is established for off-beach vendors such as convenience stores, gas stations, etc.
 - b. An on-beach discount fee of \$5 is established for either on-beach contractual sellers or the governmental entities themselves.
3. The City of Port Aransas will be held harmless during the initial period relative to their net beach sticker sales during the same period in 2001.
4. Revenues will be held by each entity in a segregated account and will be reviewed quarterly by the representatives of the entities. The revenues will be disbursed among the entities based on lineal feet of beach being cleaned by each entity.
5. At each quarterly review, the representatives of the entities will consider modifications necessary to the standard operating procedures.
6. The entities will make provisions for the utilization of any on hand stickers during the initial period

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**APPENDIX IX
INTERLOCAL AGREEMENT FOR DUNE PROTECTION ACT WITH NUECES COUNTY (RESERVED)**

**APPENDIX X
INTERLOCAL AGREEMENT FOR DUNE PROTECTION ACT WITH KLEBERG COUNTY**

**CITY/COUNTY DUNE PROTECTION
PERMITTING INTERLOCAL AGREEMENT**

STATE OF TEXAS §

COUNTY OF KLEBERG §

I.

PARTIES

The parties to this Interlocal Agreement are Kleberg County, Texas, a political subdivision of the State of Texas, hereinafter referred to as "County" and the City of Corpus Christi, a Texas home rule municipality, hereinafter referred to as "City."

II.

PURPOSE

(a) In a continuing effort to consolidate activities within the appropriate jurisdiction in order to promote efficiency in local government, the City and the County mutually agree that the administration of dune protection (Chapter 63 of the Texas Natural Resources Code) should be undertaken by the City.

(b) The parties enter into this Interlocal Agreement pursuant to the Texas Government Code Chapter 791 (Interlocal Cooperation Act) and pursuant to the terms of Texas Natural Resources Code § 63.011(b) to the effect that the County by this Agreement hereafter delegates to the City the administration of Chapter 63 of the Texas Natural Resources Code within the corporate limits and extraterritorial jurisdiction of the City within Kleberg County, subject, however, to the terms and exceptions of this Agreement.

III.

TERM

The term of this Agreement shall commence on the latest date when both parties have affixed the authorized signatures hereto and shall extend for one (1) year from the date of said signatures. This Agreement shall automatically renew annually on the anniversary date of the commencement of the Agreement.

IV.

AUTHORITY TO THE CITY

The City is hereby delegated the authority to administer the provisions of Chapter 63 of the Texas Natural Resources Code within the corporate limits of the City and the extraterritorial jurisdiction of the City.

V.

CITY PLANNING COMMISSION

The parties agree that the Planning Commission of the City of Corpus Christi shall act for the City of Corpus Christi in administering Chapter 63 of the Texas Natural Resources Code. Appeal from an action by the City Planning Commission may be made to the City Council in accordance with the City Charter.

VI.

BEACH CLEANING

The parties agree that all beach cleaning activities and all state funded reimbursements for beach cleaning activities will be the sole province and under the sole jurisdiction of the County.

VII.

TERMINATION

(a) The parties agree that either party may terminate this Agreement without cause on the annual anniversary date by providing sixty (60) days prior written notice of intent to terminate this agreement.

(b) Upon termination, all authority to administer Chapter 63 of the Texas Natural Resources Code with respect to areas within the corporate limits and extraterritorial jurisdiction of the City and in the County shall revert to the County, subject to the conditions set forth below.

(c) All applications for dune protection permits received by the City after the date of receipt by either party of notice of intent to terminate shall be forwarded to the County Judge within ten (10) days.

(d) All applications for dune protection permits in the possession of the City at the time of receipt by either party of notice of intent to terminate shall be fully administered by the City, notwithstanding the fact that the grant or denial of a permit to an applicant may extend beyond the termination date of this Agreement.

VIII.

MISCELLANEOUS PROVISIONS

(a) Notice required by this Agreement may be given or served by depositing the same in the United States Mail, in certified or registered form, postage prepaid, addressed to the party or parties to be notified, or by delivering the same in person to such party or parties. Notice deposited in the United States Mail in the manner herein prescribed shall be effective upon deposit. The address of the parties is as follows:

City of Corpus Christi, Texas
Attention: City Manager
P. O. Box 9277
Corpus Christi, Texas 78469-9277

Kleberg County
Attention: Kleberg County Judge
Kleberg County Courthouse
Kingsville, Texas 78363

(b) No waiver by either party of any default or violation or breach of the terms, provisions, and covenants contained in this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of this Agreement.

(c) This Agreement constitutes the only agreements of the parties and supercedes any understandings or written or oral agreements between the parties respecting the subject matter of this Agreement. Any changes or modifications to this Agreement must be made in writing and approved by both parties.

EXECUTED in duplicate originals this 1 day of NOVEMBER, 1994.

ATTEST:

[Signature]
Armando Olvera, City Secretary

CITY OF CORPUS CHRISTI

[Signature]
Attest: Juan Garcia, City Manager

APPROVED THIS THE 29TH DAY OF SEPTEMBER, 1994.

JAMES R. BRAY, CITY ATTORNEY

[Signature]
Robert J. Hart, Assistant City Attorney

1044-272 AUTHORIZE:
DATE: 11/1/94
[Signature]
SECRET: 104

KLEBERG COUNTY, TEXAS

By [Signature]
W. C. McDermott, County Judge

**APPENDIX XI
31 TAC CHAPTER 15 (COASTAL AREA PLANNING)**

(NOTE: This appendix reproduces a copy of Chapter 15, Title 31 Texas Administrative Code, as effective on February 1, 2002. It is provided for reference only. Revised versions of Chapter 15 may be substituted without further action by the City Council.)

**TITLE 31. NATURAL RESOURCES AND CONSERVATION
PART 1. GENERAL LAND OFFICE
CHAPTER 15. COASTAL AREA PLANNING**

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

§ 15.1. Policy

The General Land Office has identified the following goals as a basis for managing and regulating human impacts on the beach/dune system:

- (1) to assist coastal citizens and local governments in protecting public health and safety and in protecting, preserving, restoring, and enhancing coastal natural resources including barrier islands and peninsulas, mainland areas bordering the Gulf of Mexico, and the floodplains, beaches, and dunes located there;
- (2) to aid coastal landowners and local governments in using beachfront property in a manner compatible with preserving public and private property, protecting the public's right to benefit from the protective and recreational functions of a healthy beach/dune system, conserving the environment, conserving flora and fauna and their habitat, ensuring public safety, and minimizing loss of life and property due to inappropriate coastal development and the destruction of protective coastal natural features;
- (3) to foster mutual respect between public and private property owners and to assist local governments in managing the Texas coast so that the interests of both the public and private landowners are protected;
- (4) to promote dune protection and ensure that adverse effects on dunes and dune vegetation are avoided whenever practicable. If such adverse effects cannot be avoided and have been minimized, every effort must be made to repair, restore, and rehabilitate existing dunes and dune vegetation;
- (5) to prevent the destruction and erosion of public beaches and other coastal public resources, to encourage the use of environmentally sound erosion response methods, and to discourage those methods such as rigid shorefront structures which can have a harmful impact on the environment and public and private property;
- (6) to aid communities located on barrier islands, peninsulas, and mainland areas bordering the Gulf of Mexico which are extremely vulnerable to flooding and property damage due to violent storms by working to reduce flood losses, by minimizing any waste of public funds in the National Flood Insurance Program, and by ensuring that the insurance remains available and affordable;
- (7) to protect the public's right of access to, use of, and enjoyment of the public beach and associated facilities and services as established by state common law and statutes. The public has vested property rights in Texas' public beaches, and free use of and access to and from the beaches are guaranteed. The Open Beaches Act requires local governments to preserve and enhance use of public beaches and access between the beaches and public roads. If an access point must be closed, then existing law requires it to be replaced with equal or better access

consistent with the appropriate local dune protection and beach access plan. Whenever practicable, local governments should enhance public beach use and access;

(8) to provide coordinated, consistent, responsive, timely, and predictable governmental decision making and permitting processes;

(9) to recognize that the beach/dune system contains resources of statewide value and concern, which local governments are in the best position to manage on a daily basis. This subchapter is designed to provide local governments with the necessary tools for effective coastal management and are regarded as a minimum standard; local governments are encouraged to develop procedures that provide greater protection for the beach/dune system; and

(10) to educate the public about coastal issues such as dune protection, beach access, erosion, and flood protection, and to provide for public participation in the protection of the beach/dune system and in the development and implementation of the Texas Coastal Management Program.

Source: The provisions of this § 15.1 adopted to be effective February 17, 1993, 18 TexReg 661.

§ 15.2. Definitions

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

(1) **Affect** -- As used in this subchapter regarding dunes, dune vegetation, and the public beach, 'affect' means to produce an effect upon dunes, dune vegetation, or public beach use and access.

(2) **Amenities** -- Any nonhabitable major structure including swimming pools, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, artificial runoff channels and other water retention structures, roads, streets, highways, parking areas and other paved areas (exceeding 144 square feet in area), underground storage tanks, and similar structures.

(3) **Applicant** -- Any person applying to a local government for a permit and/or certificate for any construction or development plan.

(4) **Backdunes** -- The dunes located landward of the foredune ridge which are usually well vegetated but may also be unvegetated and migratory. These dunes supply sediment to the beach after the foredunes and the foredune ridge have been destroyed by natural or human activities.

(5) **Beach access** -- The right to use and enjoy the public beach, including the right of free and unrestricted ingress and egress to and from the public beach.

(6) **Beach/Dune Rules** -- 31 TAC §§ 15.1 - 15.10.

(7) **Beach/dune system** -- The land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

(8) **Beachfront construction certificate or certificate** -- The document issued by a local government that certifies that the proposed construction either is consistent with the local government's dune protection and beach access plan or is inconsistent with the local government's dune protection and beach access plan. In the latter case, the local government must specify how the construction is inconsistent with the plan, as required by the Open Beaches Act, § 61.015.

- (9) **Beach maintenance** -- The cleaning or removal of debris from the beach by handpicking, raking, or mechanical means.
- (10) **Beach profile** -- The shape and elevation of the beach as determined by surveying a cross section of the beach.
- (11) **Beach-related services** -- Reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.
- (12) **Beach user fee** -- A fee collected by a local government in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public.
- (13) **Blowout** -- A breach in the dunes caused by wind erosion.
- (14) **Breach** -- A break or gap in the continuity of a dune caused by wind or water.
- (15) **Bulkhead** -- A structure or partition built to retain or prevent the sliding of land. A secondary purpose is to protect the upland against damage from wave action.
- (16) **Coastal and shore protection project** -- A project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach nourishment, sediment bypassing, construction of man-made vegetated mounds, and dune revegetation.
- (17) **Commercial facility** -- Any structure used for providing, distributing, and selling goods or services in commerce including, but not limited to, hotels, restaurants, bars, rental operations, and rental properties.
- (18) **Construction** -- Causing or carrying out any building, bulkheading, filling, clearing, excavation, or substantial improvement to land or the size of any structure. 'Building' includes, but is not limited to, all related site work and placement of construction materials on the site. 'Filling' includes, but is not limited to, disposal of dredged materials. 'Excavation' includes, but is not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. 'Substantial improvements to land or the size of any structure' include, but are not limited to, creation of vehicular or pedestrian trails, landscape work (that adversely affects dunes or dune vegetation), and increasing the size of any structure.
- (19) **Coppice mounds** -- The initial stages of dune growth formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach seaward of the foredunes. Coppice mounds may be unvegetated.
- (20) **Critical dune areas** -- Those portions of the beach/dune system as designated by the General Land Office that are located within 1,000 feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state- owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas include, but are not

limited to, the dunes that store sand in the beach/dune system to replenish eroding public beaches.

(21) Cumulative impact -- The effect on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(22) Dedication -- Includes, but is not limited to, a restrictive covenant, permanent easement, and fee simple donation.

(23) Dune -- An emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be created via man-made vegetated mounds. Natural dunes are usually found adjacent to the uppermost limit of wave action and are usually marked by an abrupt change in slope landward of the dry beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, backdunes, and man-made vegetated mounds.

(24) Dune complex or dune area -- Any emergent area adjacent to the waters of the Gulf of Mexico in which several types of dunes are found or in which dunes have been established by proper management of the area. In some portions of the Texas coast, dune complexes contain depressions known as swales.

(25) Dune Protection Act -- Texas Natural Resources Code, § § 63.001, et seq.

(26) Dune protection and beach access plan or plan -- A local government's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and for preserving and enhancing use of and access to and from public beaches, as required by the Dune Protection Act and the Open Beaches Act.

(27) Dune protection line -- A line established by a county commissioners court or the governing body of a municipality for the purpose of preserving, at a minimum, all critical dune areas identified by the General Land Office pursuant to the Dune Protection Act, § 63.011, and § 15.3(f) of this title (relating to Administration). A municipality is not authorized to establish a dune protection line unless the authority to do so has been delegated to the municipality by the county in which the municipality is located. Such lines will be located no farther than 1,000 feet landward of the mean high tide of the Gulf of Mexico.

(28) Dune protection permit or permit -- The document issued by a local government to authorize construction or other regulated activities in a specified location seaward of a dune protection line or within a critical dune area, as provided in the Texas Natural Resources Code, § 63.051.

(29) Dune vegetation -- Flora indigenous to natural dune complexes, and growing on naturally-formed dunes or man-made vegetated mounds on the Texas coast and can include coastal grasses and herbaceous and woody plants.

(30) Effect or effects -- 'Effects' include: direct effects -- those impacts on public beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and occur at the same time and place; and indirect effects -- those impacts on beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and are later in time or farther removed in distance than a direct effect, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural

systems, including ecosystems. 'Effects' and 'impacts' as used in this subchapter are synonymous. 'Effects' may be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

(31) Eroding area -- A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on published data of the University of Texas at Austin, Bureau of Economic Geology. Local governments may establish an 'eroding area boundary' in beach/dune plans; this boundary shall be whichever distance landward of the line of vegetation is greater: 200 feet, or the distance determined by multiplying 50 years by the annual historical erosion rate (based on the most recent data published by the University of Texas at Austin, Bureau of Economic Geology).

(32) Erosion -- The wearing away of land or the removal of beach and/or dune sediments by wave action, tidal currents, wave currents, drainage, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

(33) Erosion response structure -- A hard or rigid structure built for shoreline stabilization which includes, but is not limited to, a jetty, groin, breakwater, bulkhead, seawall, riprap, rubble mound, revetment, or the foundation of a structure which is the functional equivalent of these specified structures.

(34) FEMA -- The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program and publishes the official flood insurance rate maps.

(35) Foredunes -- The first clearly distinguishable, usually vegetated, stabilized large dunes encountered landward of the Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be large and continuous, foredunes are typically hummocky and discontinuous and may be interrupted by breaches and washover areas. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

(36) Foredune ridge -- The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

(37) Habitable structure perimeter or footprint -- The area of a lot covered by a structure used or usable for habitation. The habitable structure perimeter or footprint does not include incidental projecting eaves, balconies, ground-level paving, landscaping, open recreational facilities (for example, pools and tennis courts), or other similar features.

(38) Habitable structures -- Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

(39) Industrial facilities -- Include, but are not limited to, those establishments listed in Part 1, Division D, Major Groups 20-39 and Part 1, Division E, Major Group 49 of the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management

and Budget (1987 ed.). However, for the purposes of this subchapter, the establishments listed in Part 1, Division D, Major Group 20, Industry Group Number 209, Industry Numbers 2091 and 2092 are not considered 'industrial facilities.' These establishments are listed in 'Appendix I' attached to this section.

(40) Large-scale construction -- Construction activity greater than 5,000 square feet in area and habitable structures greater than two stories in height. Multiple-family habitable structures are typical of this type of construction.

(41) Line of vegetation -- The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach.

(42) Local government -- A municipality, county, any special purpose district, any unit of government, or any other political subdivision of the state.

(43) Man-made vegetated mound -- A mound, hill, or ridge of sand created by the deliberate placement of sand or sand trapping devices including sand fences, trees, or brush and planted with dune vegetation.

(44) Master plan -- A plan developed by the applicant in consultation with the General Land Office, the Office of the Attorney General, the applicant or applicants, and the local government, for the development of an area subject to the beach/dune rules, as identified in § 15.3 of this title (relating to Administration). The master plan shall fully describe in narrative form the proposed development and all proposed land and water uses, and shall include maps, drawings, and tables, and other information, as needed. The master plan must, at a minimum, fully describe the general geology and geography of the site, land and water use intensities, size and location of all buildings, structures, and improvements, all vehicular and pedestrian access ways, and parking or storage facilities, location and design of utility systems, location and design of any erosion response structures, retaining walls, or storm water treatment management systems, and the schedule for all construction activities described in the master plan. The master plan shall comply with the Open Beaches Act and the Dune Protection Act. The master plan shall provide for overall compliance with the beach/dune rules, but may vary from the specific standards, means and methods provided in the beach/dune rules if the degree of dune protection and the public's right to safe and healthy use of and access to and from the public beach are preserved. If all impacts to dunes, dune vegetation and public beach use and access are accurately identified, local governments shall not require permits or certificates for construction on the individual lots within the master plan area. Master plans are intended to provide a comprehensive option for planning along the Texas coast.

(45) Material changes -- Changes in project design, construction materials, or construction methods or in the condition of the construction site which occur after an application is submitted to a local government or after the local government issues a permit or certificate. Material changes are those additional or unanticipated changes which have caused or will cause adverse effects on dunes, dune vegetation, or beach access and use, or exacerbation of erosion on or adjacent to the construction site.

(46) Mitigation sequence -- The series of steps which must be taken if dunes and dune vegetation will be adversely affected. First, such adverse effects shall be avoided. Second, adverse effects shall be minimized. Third, the dunes and dune vegetation adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

(47) National Flood Insurance Act -- 42 United States Code, § § 4001, et seq.

(48) Natural resources -- Land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

(49) Open Beaches Act -- Texas Natural Resources Code, §§ 61.001, et seq.

(50) Owner or operator -- Any person owning, operating, or responsible for operating commercial or industrial facilities.

(51) Permit or certificate condition -- A requirement or restriction in a permit or certificate necessary to assure protection of life, natural resources, property, and adequate beach use and access rights (consistent with the Dune Protection Act) which a permittee must satisfy in order to be in compliance with the permit or certificate.

(52) Permittee -- Any person authorized to act under a permit or a certificate issued by a local government.

(53) Person -- An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

(54) Pipeline -- A tube or system of tubes used for the transportation of oil, gas, chemicals, fuels, water, sewerage, or other liquid, semi-liquid, or gaseous substances.

(55) Practicable -- In determining what is practicable, local governments shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Local governments shall also consider the cost of the technology or technique.

(56) Production and gathering facilities -- The equipment used to recover and move oil or gas from a well to a main pipeline, or other point of delivery such as a tank battery, and to place such oil or gas into marketable condition. Included are pipelines used as gathering lines, pumps, tanks, separators, compressors, and associated equipment and roads.

(57) Project area -- The portion of a site or sites which will be affected by proposed construction.

(58) Public beach -- As used in this subchapter, 'public beach' is defined in the Texas Natural Resources Code, § 61.013(c).

(59) Recreational activity -- Includes, but is not limited to, hiking, sunbathing, and camping for less than 21 days. As used in § 15.3(s)(2)(C) of this title (relating to Administration), recreational activities are limited to the private activities of the person owning the land and the social guests of the owner. Operation of recreational vehicles is not considered a recreational activity, whether private or public.

(60) Recreational vehicle -- A dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle used for recreational purposes.

(61) Restoration -- The process of constructing man-made vegetated mounds, repairing damaged dunes, or vegetating existing dunes.

(62) Retaining wall -- A structure designed to contain or which primarily contains material or prevents the sliding of land. Retaining walls may collapse under the forces of normal wave activity.

(63) Sand budget -- The amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

(64) Seawall -- An erosion response structure specifically designed to or which will withstand wave forces.

(65) Seaward of a dune protection line -- The area between a dune protection line and the line of mean high tide.

(66) Small-scale construction -- Construction activity less than or equal to 5,000 square feet and habitable structures less than or equal to two stories in height. Single-family habitable structures are typical of this type of construction.

(67) Structure -- Includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

(68) Swales -- Low areas within a dune complex located in some portions of the Texas coast which function as natural rainwater collection areas and are an integral part of the dune complex.

(69) Unique flora and fauna -- Endangered or threatened plant or animal species listed at 16 United States Code Annotated, § 1531, the Endangered Species Act of 1973, and/or the Parks and Wildlife Code, Chapter 68, or any plant or animal species that a local government has determined in their local beach/dune plan are rare or uncommon.

(70) Washover areas -- Low areas that are adjacent to beaches and are inundated by waves and storm tides from the Gulf of Mexico. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or breached by storm tides and wind erosion.

Source: The provisions of this § 15.2 adopted to be effective February 17, 1993, 18 TexReg 661; amended to be effective April 16, 1996, 21 TexReg 3004.

§ 15.3. Administration

(a) Integration of dune protection and beach access programs. The Dune Protection Act and the Open Beaches Act require certain local governments to adopt and implement programs for the preservation of dunes and the preservation and enhancement of use of and access to and from public beaches. These Acts provide for regulation of generally the same activities and the same geographic areas, and their requirements are scientifically and legally related. Local governments required to adopt dune protection and beach access programs shall integrate them into a single plan consisting of procedural and substantive requirements for management of the beach/dune system within their jurisdiction. The authority to integrate such plans is provided pursuant to the Dune Protection Act, the Open Beaches Act, and this subchapter. The local government plans shall be consistent with the requirements of the Open Beaches Act, the Dune Protection Act, and this subchapter, and each shall, whenever possible, incorporate the local government's ordinary land use planning procedures.

(b) Boundary of the public beach. The public beach is defined in the Open Beaches Act, § 61.013(c), and § 15.2 of this title (relating to Definitions). The line of vegetation is defined in the Open Beaches Act, § 61.001(5), and § 15.2 of this title (relating to Definitions). The line of vegetation is typically used to determine the landward extent of the public beach. However, there are portions of the Texas coast where there is no marked vegetation line or the line is discontinuous or modified. In those portions of the coast, the line of vegetation shall be determined consistent with § 15.10(b) of this title (relating to General Provisions) and the Open Beaches Act, § 61.016 and § 61.017.

(c) Beachfront construction certification areas. The General Land Office, in conjunction with the Attorney General's Office, has the responsibility of protecting the public's right to use and have access to and from the public beach and of providing standards to the local governments certifying construction on land adjacent to the Gulf of Mexico consistent with such public rights. The Open Beaches Act, § 61.011(d)(6), limits the geographic scope of the beachfront construction certification area to the land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or the area up to 1,000 feet of mean high tide, whichever distance is greater. For this area, local governments shall prepare a beach access and use program, pursuant to the Open Beaches Act, § 61.015, for inclusion in their dune protection and beach access plans to control any adverse effects of beachfront construction on public beach use and access. Applications for beachfront construction certificates shall be reviewed by local governments for consistency with their dune protection and beach access plans.

(d) Critical dune areas and dune protection lines. The commissioner of the General Land Office, as trustee of the public lands of Texas, has the responsibility to identify and protect Texas' critical dune areas that are essential to the protection of coastal public land, public roads, public beaches, and other public resources. Local governments have the responsibility to establish dune protection lines for the purpose of preserving sand dunes within their jurisdiction. The Dune Protection Act, § 63.121 and § 63.012, respectively, limits the geographic scope of critical dune areas and the location of the dune protection line to that portion of the beach within 1,000 feet of mean high tide of the Gulf of Mexico.

(e) Identification of critical dune areas. Pursuant to the authority provided in the Dune Protection Act, § 63.121, the General Land Office has identified critical dune areas as all dunes and dune complexes located within 1,000 feet of mean high tide of the Gulf of Mexico. This identification is based on the determination that all of the various protective functions served by the dunes and dune complexes located within that 1,000 feet are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas are related to dune protection lines in that local governments are required to establish such lines for the purpose of preserving dunes in a location landward of all critical dune areas. Criteria for establishing dune protection lines shall, at a minimum, include the criteria for establishing critical dune areas in this subsection.

(f) Establishment of dune protection lines. Pursuant to the authority provided in the Dune Protection Act, § 63.011, local governments shall establish and maintain dune protection lines which preserve, at a minimum, the dunes within the critical dune areas as defined in this subchapter. A local government must conduct a field inspection to determine the appropriate location of the line unless it proposes to establish or relocate its line at a distance of 1,000 feet of mean high tide of the Gulf of Mexico, as that 1,000 feet is the maximum extent of the local government's jurisdiction for establishing dune protection lines.

(g) Deadline for establishment of dune protection lines. Local governments shall establish dune protection lines as part of the dune protection component of their local plans. The local plans shall be submitted to the state no later than 180 days after the effective date of this subchapter. Therefore, local governments shall establish dune protection lines no later than 180 days after this subchapter goes into effect.

(h) Information required regarding dune protection lines. Local governments are required to submit the following information to the General Land Office to allow state evaluation of the adequacy of the dune protection line location: a map or drawing of the line; a written description of the line; or a written description and a map or drawing. This information shall be included in the local government's dune protection and beach access plan and must clearly designate for the public and the state the location of the line and the location of dunes seaward of the line. All maps, drawings, or descriptions shall incorporate sufficient elements of the Texas State Plane Coordinate System to enable such description to be located on the ground and shall be tied to and/or include the Texas State Plane Coordinates for two or more monumented points along any described boundary. Each local government shall file a map or drawing or description of its dune protection line with the clerk of the county or municipality establishing the line.

(i) State assistance in the establishment of local government dune protection lines. The General Land Office may assist and advise local governments in establishing or modifying a dune protection line. Pursuant to the Dune Protection Act, § 63.013, local governments shall notify the General Land Office of the establishment of dune protection lines and any subsequent change in a line. Upon such notification, the General Land Office shall review the location of the line by examining the map or description of the line submitted to the state and by conducting field inspections, as necessary. The General Land Office will review the location of the line to determine whether the line meets the geographic standard of being located landward of all critical dune areas. If the General Land Office is satisfied that the line meets that geographic standard, the General Land Office will notify the local government of this finding in writing. If the line does not meet that geographic standard, the General Land Office will assist and advise the local government in adjusting the line.

(j) State review of dune protection line location. Each local government shall submit the information regarding the location of the dune protection line, as required in subsection (h) of this section, to the General Land Office as part of its dune protection and beach access plan. In determining whether to approve the local plan, the General Land Office will review the various components of the plan, including the adequacy of the location of a local government's dune protection line (with respect to the protection of critical dune areas), based on the geographic standards provided in subsection (i) of this section.

(k) Local government review of dune protection line location. Each local government shall review its dune protection line every five years to determine whether the line is adequately located to achieve the purpose of preserving critical dune areas. In addition to the five-year review, each local government shall review the adequacy of the location of the line within 90 days after a tropical storm or hurricane affects the portion of the coast in its jurisdiction.

(l) Provisions for public hearings on dune protection lines. Local governments shall provide notice of a public hearing to consider establishing or modifying a dune protection line by publishing such notice at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing. Notice shall be given to the General Land Office not less than one week nor more than three weeks before the hearing. In the notice to the General Land Office, local governments shall also include the information described in subsection (h) of this section.

(m) Local government authority. Local governments shall include in the plans submitted to the General Land Office and the Attorney General's Office citations of all statutes, policies, and ordinances which demonstrate the authority of the local government to implement and enforce the plan in a manner consistent with the requirements of this subchapter. Local government plans shall also demonstrate the coordination, on the local level, of the dune protection, beach access, erosion response, and flood protection programs (if participating in the National Flood Insurance Program under the National Flood Insurance Act). Each local government shall integrate these programs into one plan for the management of the beach/dune system within its jurisdiction. The General Land Office will provide written guidance on the form and content of the plan upon written request by a local government.

(n) Content of local government dune protection and beach access plans. Local government plans shall contain procedural mechanisms and substantive requirements necessary for compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act. Local governments shall attach copies of this subchapter, the Dune Protection Act, and the Open Beaches Act to their plans, and their plans shall state that these state laws are incorporated into the plans. A local government shall also state in its plan that any person in violation of the incorporated state laws is in violation of its local plan.

(o) Submission of local government plans to state agencies. Local governments shall submit dune protection and beach access plans to the General Land Office for review, comment, and certification as to compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act and to the Attorney General's Office for review and comment.

(1) A local government's governing body must formally approve the plan prior to submission to the state agencies. Prior to formally approving its plan, a local government may request legal and technical advice from the General Land Office for assistance in meeting the requirements for state agency approval.

(2) The General Land Office shall either grant or deny certification of a local government's formally approved dune protection and beach access plan within 60 days of receipt of the plan. In the event of denial, the General Land Office shall send the plan back to the local government with a statement of specific objections and the reasons for denial of certification, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan for state agency review.

(3) The General Land Office shall use the same procedure for reviewing revised or amended plans as the procedure used for reviewing the plan originally submitted.

(4) The General Land Office's certification of local government plans shall be by adoption into the rules authorized under the Texas Natural Resources Code, § 61.011. The rules adopted by the General Land Office to certify plans will consist of state approval of the plans, but the text of plans will not be adopted by the General Land Office.

(5) Subsequent to initial certification, local governments may amend their dune protection and beach access plans by submitting the proposed changes to the General Land Office for review, comment, and certification and to the Attorney General's Office for review and comment.

(6) A local government may request General Land Office certification of a plan or a plan amendment that includes a variance regarding any requirement or prohibition of this chapter.

(A) A local government requesting certification of a plan or a plan amendment containing a variance shall submit to the General Land Office a reasoned justification demonstrating how the variance will provide an equal or better level of protection or equal or better procedures than provided under this chapter. If the General Land Office determines that the reasoned justification for the variance is incomplete or inadequate, the General Land Office may return the request to the local government.

(B) The General Land Office may certify a plan or a plan amendment containing a variance to the beach/dune rules if a local government demonstrates that the variance provision will advance the public interest and provide either or, where appropriate, both:

(i) an equal or better level of protection of dunes, dune vegetation, and public access to and use of the public beach than provided under this chapter; or

(ii) equal or better procedures for evaluating the impacts identified in an application for a permit or certificate on dunes, dune vegetation, and public access to and use of the public beach.

(p) Submission deadline for dune protection and beach access plans. Local governments shall submit dune protection and beach access plans to the General Land Office and the Attorney General's Office no later than 180 days from the effective date of this subchapter. If the General Land Office does not approve a plan, the local government shall submit revisions of the plan until the plan is approved. However, any local government that submits a revised plan that has not been modified to address the state comments regarding the statutory requirements and the minimum standards identified in this subchapter is presumed to be in violation of this subchapter, the Open Beaches Act, and the Dune Protection Act. Local governments that fail to submit plans within 180 days of the effective date of this subchapter will be liable for penalties as provided in § 15.9 of this title (relating to Penalties). Further,

local governments that fail to submit plans by that deadline will not be authorized to permit construction within the geographic scope of this subchapter.

(q) Areas exempt from local government plans. Local government dune protection and beach access plans shall not include the following areas, which are exempt from regulation by local governments:

- (1) national park areas, national wildlife refuges, or other designated national natural areas;**
- (2) state park areas, state wildlife refuges, or other designated state natural areas; and**
- (3) beaches on islands and peninsulas not accessible by public road or ferry facility for as long as that condition exists.**

(r) State-owned or public land not exempt from local government plans. Local government plans shall apply to all state-owned or public land other than parks and refuges, subject to the provisions of the Texas Natural Resources Code, § § 31.161, et seq.

(s) Acts prohibited without a dune protection permit or beachfront construction certificate. An activity requiring a dune protection permit may typically also require a beachfront construction certificate and vice versa. Local governments shall, whenever possible, issue permits and certificates concurrently when an activity requires both. In their dune protection and beach access plans, local governments may combine the dune protection permit and the beachfront construction certificate into a single permit or a two-part permit; however, they are not required to do so.

(1) Acts prohibited without a dune protection permit. Unless a dune protection permit is properly issued by a local government authorizing the conduct, no person shall:

(A) damage, destroy, or remove a sand dune or a portion of a sand dune seaward of a dune protection line or within a critical dune area; or

(B) kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

(2) Activities exempt from permit requirements. Pursuant to the Dune Protection Act, § 63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act. Where local governments have separate authority to regulate the following activities, permittees shall comply with the local laws as well. The activities exempt from the permit requirements are:

(A) exploration for and production of oil and gas and reasonable and necessary activities directly related to such exploration and production, including construction and maintenance of production and gathering facilities located in a critical dune area which serve wells located outside of a critical dune area, provided that such facilities are located no farther than two miles from the well being served;

(B) grazing livestock and reasonable and necessary activities directly related to grazing; and

(C) recreational activities other than operation of a recreational vehicle.

(3) Acts prohibited without a beachfront construction certificate. No person shall cause, engage in, or allow construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that

affects or may affect public use of and access to and from public beaches unless the construction is properly certified by the appropriate local government as consistent with its local plan, this subchapter, and the Open Beaches Act.

(4) Permit and certificate application requirements. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate. Local governments may require more information, but they shall require that applicants for dune protection permits and beachfront construction certificates provide, at a minimum, the following items and information.

(A) Permit application requirements for large-and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

- (i) the name, address, phone number, and, if applicable, fax number of the applicant, and the name of the property owner, if different from the applicant;**
- (ii) a complete legal description of the tract and a statement of its size in acres or square feet;**
- (iii) the number of proposed structures and whether the structures are amenities or habitable structures;**
- (iv) the number of parking spaces;**
- (v) the approximate percentage of existing and finished open spaces (those areas completely free of structures);**
- (vi) the floor plan and elevation view of the structure proposed to be constructed or expanded;**
- (vii) the approximate duration of the construction;**
- (viii) a description (including location) of any existing or proposed walkways or dune walkovers on the tract;**
- (ix) a grading and layout plan identifying all elevations (in reference to the National Oceanic and Atmospheric Administration datum), existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade;**
- (x) photographs of the site which clearly show the current location of the vegetation line and the existing dunes on the tract;**
- (xi) the effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology;**
- (xii) a comprehensive mitigation plan which includes a detailed description of the methods which will be used to avoid, minimize, mitigate and/or compensate for any adverse effects on dunes or dune vegetation;**

(xiii) proof of the applicant's financial capability acceptable to the local government to mitigate or compensate for adverse effects on dunes and dune vegetation;

(xiv) an accurate map, site plan, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the dune protection line, the line of vegetation, proposed and existing structures, and the project area of the proposed construction on the tract;

(IV) proposed roadways and driveways and proposed landscaping activities on the tract;

(V) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract; and

(VI) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(B) Certificate application requirements for large-and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, fax number of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) the number of proposed structures and whether the structures are amenities or habitable structures;

(iv) a statement written by the applicant affirming that the construction, the completed structure, and use of or access to and from the structure will not adversely affect the public beach or public beach access ways or exacerbate erosion;

(v) the approximate duration of the construction;

(vi) a description (including location) of any existing or proposed walkways or dune walkovers on the tract;

(vii) photographs of the site which clearly show the current location of the vegetation line and any dunes on the tract which are seaward of the dune protection line;

(viii) an accurate map, site plan, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the proposed construction and the distance between the proposed construction and mean high tide, the vegetation line, the dune protection line, and the landward limit of the beachfront construction area;

(IV) the location of proposed and existing structures, and the size (in acres or square feet) of the proposed project area;

(V) proposed roadways and driveways;

(VI) proposed landscaping activities within 200 feet of the line of vegetation; and

(VII) the location of any retaining walls or erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line.

(C) Permit and certificate applications for large-scale construction. For all proposed large-scale construction, local governments shall require applicants to submit the following additional items and information:

(i) if the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, a certified copy of the recorded plat of the subdivision, or, if not a recorded subdivision, a plat of the subdivision certified by a licensed surveyor, (if the area is located within an un-platted tract, a survey will suffice) and a statement of the total area of the subdivision in acres or square feet;

(ii) in the case of multiple-unit dwellings, the number of units proposed;

(iii) alternatives to the proposed location of construction on the tract or to the proposed methods of construction which would cause fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access; and

(iv) the proposed activity's impact on the natural drainage pattern of the site and the adjacent lots.

(D) Submission of readily available information with permit and certificate applications. For all proposed construction (large and small-scale), if applicants already have the following items and information, local governments shall require them to be submitted in addition to the other information required:

(i) the most recent local historical erosion rate data (as determined by the University of Texas at Austin, Bureau of Economic Geology) and the activity's potential impact on coastal erosion; and

(ii) a copy of the FEMA 'Elevation Certificate.'

(E) Submission of information by local governments. For all proposed construction (large and small-scale), local governments shall provide to the state the following information:

(i) a copy of the community's most recent flood insurance rate map identifying the site of the proposed construction;

(ii) a preliminary determination as to whether the proposed construction complies with all aspects of the local government's dune protection and beach access plan;

(iii) the activity's potential impact on the community's natural flood protection and protection from storm surge;

(iv) a description as to how the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly, the dune protection and beach access plan's provisions relating to public beach ingress/egress, off-beach parking, and avoidance of reduction in the size of the public beach due to erosion; and

(v) copies of aerial photographs of the proposed construction site with a delineation of the footprint of the proposed construction, if the local government has aerial photographs of the area in which construction is proposed.

(F) Dissemination of erosion data and other technical information. For all proposed construction (large and small-scale), the General Land Office shall be the state contact for erosion rate data questions and supply available technical information to a local government, upon request.

(5) Master plan. Local governments may adopt separate ordinances or county commissioners court orders authorizing master plans located within the geographic scope of this subchapter. These ordinances and orders shall be consistent with and address the dune protection and beach access requirements of this subchapter, the Dune Protection Act and Open Beaches Act. The ordinances and orders shall be submitted to the General Land Office and the Attorney General's Office for review and approval to ensure consistency with this subchapter. When considering approval of a master planned development or construction plans and setting conditions for operations under such plans, local governments shall consider:

(A) the plan's potential effects on dunes, dune vegetation, public beach use and access, and the applicant's proposal to mitigate for such effects throughout the construction;

(B) the contents of the master planned development; and

(C) whether any component of the master plan, such as installation of roads or utilities, or construction of structures in critical dune areas or seaward of a dune protection line, will subsequently require a dune protection permit or a beachfront construction certificate. If a dune protection permit or beachfront construction certificate will be necessary, the local government shall require the developer to apply for the permit and/or certificate as part of the master plan approval process. This requirement only applies if the local government is authorizing activities impacting critical dune areas and public beach use and access under its dune protection and beach access plan.

(6) State agency comments.

(A) A person proposing to conduct an activity for which a permit or certificate is required shall submit a complete application to the appropriate local government. The local

government shall forward the complete application, including any associated materials, to the General Land Office and the Attorney General's Office. The application, any documents associated with the application, and information as to when the decision will be made must be received by the General Land Office and the Attorney General's Office no later than ten working days before the local government is first scheduled to act on the permit or certificate. Local governments shall not act on a permit or certificate application if the General Land Office and the Attorney General's Office have not received the application for the permit or certificate at least ten working days before the local government is first scheduled to act on the permit or certificate. However, a local government may act on such applications if the state agencies received the application within the proper time frame and the state does not submit comments on the application to the local government.

(B) The General Land Office and the Attorney General's Office may submit comments on the proposed activity to the local government.

(7) Local government review. When determining whether to approve a proposed activity, a local government shall review and consider:

(A) the permit or certificate application;

(B) the proposed activity's consistency with this subchapter and the local government's dune protection and beach access plan, including the dune protection and beachfront construction standards contained in both;

(C) any other law relevant to dune protection and public beach use and access which affects the activity under review;

(D) the comments of the General Land Office and the Attorney General's Office; and

(E) any other information the local government may consider useful to determine consistency with the local government's dune protection and beach access plan, including resource information made available to them by federal and state natural resource entities. A local government shall not issue a dune protection permit or beachfront construction certificate that is inconsistent with its plan, this subchapter, and other state, local, and federal laws related to the requirements of the Dune Protection Act and Open Beaches Act.

(t) Term and renewal of permits and certificates.

(1) A local government's dune protection permits or beachfront construction certificates shall be valid for no more than three years from the date of issuance. A local government may renew a dune protection permit or beachfront construction certificate allowing proposed construction to continue if the activity as proposed in the application for renewal meets the applicable state and local standards and the permittee supplements the information provided in the original permit or certificate application materials with additional information indicating any changes to the original information provided by the applicant. For the purpose of maintaining administrative records for permits, certificates, and renewals, if any, local governments are required to keep all original application materials submitted by any applicant for three years, as provided in subsection (u) of this section. Each renewal of a permit and certificate allowing construction shall be valid for no more than 90 days. A local government shall issue only two renewals for each permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate. In addition, local governments shall require a permittee to apply for a new permit or a certificate if the proposed construction is changed in any manner which causes or

increases adverse effects on dunes, dune vegetation, and public beach use and access within the geographic scope of this subchapter.

(2) Local governments that choose to authorize master plans may adopt a different term limit for permits and certificates only if the master plans are authorized under a separate, state-approved ordinance or county commissioners court order. Each master plan will be deemed to be a new local ordinance or county commissioners court order subject to state approval regarding effects on dunes, dune vegetation, and public beach use and access.

(3) Any dune protection permit or beachfront construction certificate allowing beachfront construction issued by a local government pursuant to its dune protection and beach access plan shall be voidable under the following circumstances.

(A) The permit or certificate is inconsistent with this subchapter or the local government's plan at the time the permit or certificate was issued.

(B) A material change occurs after the permit or certificate is issued.

(C) A permittee fails to disclose any material fact in the application.

(4) A local government shall require that a permittee apply for a new permit or certificate in the event of any material changes. A local government shall require that an applicant modify an application disclosing all information relevant to the material changes, if such changes occur before the local government issues the permit or certificate.

(5) A permit or certificate automatically terminates in the event the certified construction comes to lie within the boundaries of the public beach by artificial means or by action of storm, wind, water, or other naturally influenced causes. Nothing in the certificate shall be construed to authorize the construction, repair, or maintenance of any construction within the boundaries of the public beach at any time.

(u) Administrative record.

(1) Local governments shall compile and maintain an administrative record which demonstrates the basis for each final decision made regarding the issuance of a dune protection permit or beachfront construction certificate. The administrative record shall include copies of the following:

(A) all materials the local government received from the applicant as part of or regarding the permit or certificate application;

(B) the transcripts, if any, or the minutes and/or tape of the local government's meeting during which a final decision regarding the permit or certificate was made; and

(C) all comments received by the local government regarding the permit or certificate.

(2) Local governments shall keep the administrative record for a minimum of three years from the date of a final decision on a permit or certificate. Local governments shall send to the General Land Office or the Attorney General's Office, upon request by either agency, a copy of those portions of the administrative record that were not originally sent to those agencies for permit or certificate application review and comment. The record must be received by the appropriate agency no later than ten working days after the local government receives the request. The state agency reviewing the administrative record shall notify the appropriate permittee of the request for a copy of the administrative record from the local government. Upon request of the permittee, a local government shall provide to the permittee copies of any materials in the administrative record regarding the permit or certificate which were not submitted to the local government by the

permittee (i.e., the permit application) or given to the permittee by the local government (i.e., the permit).

Source: The provisions of this § 15.3 adopted to be effective February 17, 1993, 18 TexReg 661; amended to be effective April 16, 1996, 21 TexReg 3004; amended to be effective September 25, 1997, 22 TexReg 9476.

§ 15.4. Dune Protection Standards

(a) Dune protection required. This section provides the standards and procedures local governments shall follow in issuing, denying, or conditioning dune protection permits. A local government shall protect dunes and dune vegetation from adverse effects resulting directly or indirectly from construction in a critical dune area or seaward of its dune protection line, as cumulatively required by the Dune Protection Act, this subchapter, and that local government's dune protection and beach access plan.

(b) Procedures for local government permit determinations and permit issuance. Before issuing a dune protection permit, a local government shall make the following determinations.

(1) The proposed activity is not a prohibited activity as defined in subsection (c) of this section, § 15.5 of this title (relating to Beachfront Construction Standards), or § 15.6 of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(2) The proposed activity will not materially weaken dunes or materially damage dune vegetation based on the application of technical standards resulting in substantive findings under subsection (d) of this section.

(3) There are no practicable alternatives to the proposed activity and the impacts cannot be avoided as provided in subsection (f)(1) of this section.

(4) The applicant's mitigation plan will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects, as provided in subsections (f)(2)-(5) of this section.

(c) Prohibited activities. A local government shall not issue a permit or certificate authorizing the following actions within critical dune areas or seaward of that local government's dune protection line:

(1) activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:

(A) moving sand to a location landward of the critical dune area or dune protection line; and

(B) temporarily or permanently moving sand off the site, except for purposes of permitted mitigation, compensation, or an approved dune restoration or beach nourishment project and then only from areas where the historical accretion rate is greater than two feet per year, and the project does not cause any adverse effects on the sediment budget;

(2) depositing sand, soil, sediment, or dredged spoil which contains the hazardous substances listed in Volume 40 of the Code of Federal Regulations, Part 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;

(3) depositing sand, soil, sediment, or dredged spoil which is of an unacceptable mineralogy or grain size when compared to the sediments found on the site (this prohibition does not apply to materials related to the installation or maintenance of public beach access roads running generally perpendicular to the public beach);

(4) creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits;

(5) constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of this subchapter;

(6) operating recreational vehicles;

(7) mining dunes;

(8) constructing concrete slabs or other impervious surfaces within 200 feet landward of the natural line of vegetation. Local governments may authorize construction of a concrete slab or other impervious surface beneath a habitable structure elevated on pilings provided the slab will not extend beyond the perimeter of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the perimeter of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. The use of permeable materials such as brick pavers, limestone, or gravel is recommended for drives or parking areas;

(9) depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction;

(10) constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields; and

(11) detonating bombs or explosives.

(d) Technical standards for local government determination as to material weakening of dunes and material damage of dune vegetation within a critical dune area or seaward of a dune protection line. A local government may approve a permit application only if it finds as a fact, after a full investigation, that the particular conduct proposed will not materially weaken any dune or materially damage dune vegetation or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water. In making the finding as to whether such material weakening or material damage will occur, a local government shall use the following technical standards. Failure to meet any one of these standards will result in a finding of material weakening or material damage and the local government shall not approve the application for the construction as proposed.

(1) The activity shall not result in the potential for increased flood damage to the proposed construction site or adjacent property.

(2) The activity shall not result in runoff or drainage patterns that aggravate erosion on or off the site.

(3) The activity shall not result in significant changes to dune hydrology.

(4) The activity shall not disturb unique flora or fauna or result in adverse effects on dune complexes or dune vegetation.

(5) The activity shall not significantly increase the potential for washovers or blowouts to occur.

(e) Local government considerations when determining whether to issue a dune protection permit. Local governments shall consider the following items and information when determining whether to grant a permit:

- (1) all comments submitted to the local government by the General Land Office and the Attorney General's Office;**
- (2) cumulative and indirect effects of the proposed construction on all dunes and dune vegetation within critical dune areas or seaward of a dune protection line;**
- (3) cumulative and indirect effects of other activities on dunes and dune vegetation located on the proposed construction site;**
- (4) the pre-construction type, height, width, slope, volume, and continuity of the dunes, the pre-construction condition of the dunes, the type of dune vegetation, and percent of vegetative cover on the site;**
- (5) the local historical erosion rate as determined by the University of Texas at Austin, Bureau of Economic Geology, and whether the proposed construction may alter dunes and dune vegetation in a manner that may aggravate erosion;**
- (6) the applicant's mitigation plan for any unavoidable adverse effects on dunes and dune vegetation and the effectiveness, feasibility, and desirability of any proposed dune reconstruction and revegetation;**
- (7) the impacts on the natural drainage patterns of the site and adjacent property;**
- (8) any significant environmental features of the potentially affected dunes and dune vegetation such as their value and function as floral or faunal habitat or any other benefits the dunes and dune vegetation provide to other natural resources;**
- (9) wind and storm patterns including a history of washover patterns;**
- (10) location of the site on the flood insurance rate map; and**
- (11) success rates of dune stabilization projects in the area.**

(f) Mitigation. The mitigation sequence shall be used by local governments in determining whether to issue a permit, after the determination that no material weakening of dunes or material damage to dunes or dune vegetation will occur within critical dune areas or seaward of the dune protection line. The mitigation sequence consists of the following steps: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; and compensating for the impact by replacing resources lost or damaged. If, for any reason, an applicant cannot demonstrate the ability to mitigate adverse effects on dunes and dune vegetation, the local government is not authorized to issue the permit. A local government shall require a permittee to use the mitigation sequence as a permit condition if that local government finds that an activity will result in any adverse effects on dunes or dune vegetation seaward of a dune protection line or on critical dune areas. When a local government requires mitigation as a permit condition, it shall require that the permittee follow the order of the mitigation sequence as provided in this subsection.

(1) Avoidance. Avoidance means avoiding the effect on dunes and dune vegetation altogether by not taking a certain action or parts of an action. Local governments shall require permittees to avoid adverse effects on dunes and dune vegetation. Local governments shall not issue a permit allowing any adverse effects on dunes and dune vegetation located in critical dune areas or seaward of the dune protection line unless the applicant proves there is no practicable alternative to the proposed activity, proposed site or proposed methods for conducting the activity, and the activity will not materially weaken the dunes or dune vegetation. Local governments shall require permittees to include information as to practicable alternatives in the permit application. Local

governments shall review the permit application to determine whether the permittee has considered all practicable alternatives and whether one of the practicable alternatives would cause no adverse effects on dunes and dune vegetation than the proposed activity. Local governments shall require permittees to employ construction methods which will have no adverse effects, unless the permittee can demonstrate that the use of such methods is not practicable. Local governments shall require that permittees undertaking construction in critical dune areas or seaward of a dune protection line use the following avoidance techniques.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those subject to the exemption in § 15.3(s)(2)(A) of this title (relating to Administration). Local governments shall not allow permittees to construct nonexempt pipelines within critical dune areas or seaward of a dune protection line unless there is no practicable alternative.

(B) Location of construction and beach access. Local governments shall require permittees proposing construction seaward of dune protection lines and within critical dune areas to locate all such construction as far landward of dunes as practicable. Local governments shall not restrict construction which provides access to and from the public beach pursuant to this provision.

(C) Location of roads. Local governments shall require permittees constructing roads parallel to beaches to locate the roads as far landward of critical dune areas as practicable and shall not allow permittees to locate such roads within 200 feet landward of the natural vegetation line.

(D) Artificial runoff channels. Local governments shall not permit construction of new artificial channels, including storm water runoff channels, unless there is no practicable alternative.

(2) Minimization. Minimization means minimizing effects on dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. Local governments shall require that permittees minimize adverse impacts to dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If an applicant for a dune protection permit demonstrates to the local government that adverse effects on dunes or dune vegetation cannot be avoided and the activity will not materially weaken dunes and dune vegetation, the local government may issue a permit allowing the proposed alteration, provided that the permit contains a condition requiring the permittee to minimize adverse effects on dunes or dune vegetation to the greatest extent practicable.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those subject to the exemption in § 15.3(s)(2)(A) of this title (relating to Administration). If a permittee demonstrates that there is no practicable alternative to crossing critical dune areas, the local government may allow a permittee to construct a pipeline across previously disturbed areas, such as blowout areas. Where use of previously disturbed areas is not practicable, the local government shall require the permittee to avoid adverse effects on or disturbance of dune surfaces and shall require the mitigation sequence if the adverse effects are unavoidable.

(B) Location of construction and beach access.

(i) Local governments shall require permittees to minimize construction and pedestrian traffic on or across dune areas to the greatest extent practicable, taking into account trends of dune movement and beach erosion in that area.

(ii) Local governments may allow permittees to route private and public pedestrian beach access to and from the public beach through washover areas or over elevated walkways in their approved dune protection and beach access plans. All pedestrian access routes and walkways shall be clearly and conspicuously marked with permanent signs by the local government if the beach access is public.

(iii) Local governments shall minimize proliferation of excessive private access by permitting only the minimum necessary private beach access points to the public beach from any proposed subdivision, multiple dwelling, or commercial facility. In some cases, the minimum beach access points may be only one access point. In determining the appropriate grouping of access points, the local government shall consider the size and scope of the development.

(iv) Local governments and the owners and operators of commercial facilities, subdivisions, and multiple dwellings shall post signs in areas where pedestrian traffic is high, explaining the functions of dunes and the importance of vegetation in preserving dunes.

(C) Location of roads.

(i) Wherever practicable, local governments may require permittees to locate beach access roads in washover areas, blowout areas, or other areas where dune vegetation has already been disturbed; local governments shall require permittees to build such roads along the natural land contours, to minimize the width of such roads, and where possible, to improve existing access roads with elevated berms near the beach that prevent channelization of floodwaters. Where practicable, local governments shall require permittees to locate roads at an oblique angle to the prevailing wind direction.

(ii) Wherever practicable, local governments shall provide vehicular access to and from beaches by using existing roads or from roads constructed in accordance with paragraph (1)(C) of this subsection and clause (i) of this subparagraph. Local governments shall not apply this provision in a manner which restricts public beach access.

(iii) Local governments shall include in any permit authorizing the construction of roads a permit condition prohibiting persons from using or parking any motor vehicle on, through, or across dunes in critical dune areas except for the use of vehicles on designated access ways.

(D) Artificial runoff channels. Local governments shall only authorize construction of artificial runoff channels (that direct storm water flow) if the channels are located in a manner which avoids erosion and unnecessary construction of additional channels. Local governments shall require that permittees make maximum use of natural or existing drainage patterns, whenever practicable, when locating new channels and storm water retention basins. However, if new channels are necessary, local governments shall require that permittees direct all runoff inland and not to the Gulf of Mexico through critical dune areas, where practicable.

(3) Mitigation. Mitigation means repairing, rehabilitating, or restoring affected dunes and dune vegetation. Local governments shall require permittees, as a condition of the permit, to mitigate all adverse effects to dunes and dune vegetation which will occur after a permittee has avoided and minimized such adverse effects to the greatest extent practicable. Local governments shall require the permittee to mitigate damage to dunes and dune vegetation so as to provide, when compared to the pre-existing dunes and dune vegetation, an equal or greater area of vegetative

cover and dune volume, an equal or greater degree of protection against damage to natural resources, and an equal or greater degree of protection against flood and erosion damage and other nuisance conditions to adjacent properties. When determining the appropriate mitigation method, local governments shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts.

(A) Mitigation standards for dunes. Local governments may allow a permittee to mitigate adverse effects on dunes using vegetative or mechanical means. Local governments shall require that a permittee proposing to restore dunes use the following techniques:

(i) restore dunes to approximate the naturally formed dune position or location, contour, volume, elevation, vegetative cover, and sediment content in the area;

(ii) allow for the natural dynamics and migration of dunes;

(iii) use discontinuous or continuous temporary sand fences or an approved method of dune restoration, where appropriate, considering the characteristics of the site; and

(iv) restore or repair dunes using indigenous vegetation that will achieve the same protective capability or greater capability as the surrounding natural dunes.

(B) Stabilization of critical dune areas. Local governments shall give priority for stabilization to blowouts and breaches when permitting restoration of dunes. Before permitting stabilization of washover areas, local governments shall:

(i) assess the overall impact of the project on the beach/dune system;

(ii) consider any adverse effects on hydrology and drainage which will result from the project; and

(iii) require that equal or better public beach access be provided to compensate for impairment of any public beach access previously provided by the washover area.

(4) Compensation. Compensation means compensating for effects on dunes and dune vegetation by replacing or providing substitute dunes and dune vegetation. Compensation may be undertaken both on-site and off-site; however, off-site compensation may only be allowed as provided in subparagraph (B) of this section.

(A) On-site compensation. On-site compensation consists of replacement of the affected dunes or dune vegetation on the property where the damage to dunes and dune vegetation occurred and seaward of the local dune protection line. A local government shall require permittees to undertake compensation on the construction site, where practicable. A local government shall require a permittee to follow the requirements provided in paragraph (3)(A) of this subsection and paragraph (4)(C)(iii)-(iv) of this subsection when replacing dunes or dune vegetation.

(B) Off-site compensation. Off-site compensation consists of replacement of the affected dunes or dune vegetation in a location outside the boundary of the property where the damage to dunes and dune vegetation occurred. The landward limit of allowable off-site mitigation is the local dune protection line. Local governments shall require that a permittee's compensation efforts take place on the construction site unless the permittee demonstrates the following facts to the local government:

- (i) on-site compensation is not practicable;
- (ii) the off-site compensation will be located as close to the construction site as practicable;
- (iii) the proffered off-site compensation has achieved a 1:1 ratio of proposed adverse effects on successful, completed, and stabilized restoration prior to beginning construction;
- (iv) the permittee has notified FEMA, Region 6, of the proposed off-site compensation.

(C) Information required for off-site compensation. Local governments shall require permittees to provide the following information when proposing off-site compensation:

- (i) the name, address, phone number, and fax number, if applicable, of the owner of the property where the off-site compensation will be located;
- (ii) a legal description of property intended to be used for the proposed off-site compensation;
- (iii) the source of sand and the dune vegetation;
- (iv) all information regarding permits and certificates issued for the restoration of dunes on the compensation site;
- (v) all relevant information regarding the success, current status, and stabilization of the dune restoration efforts on the compensation site;
- (vi) any increase in potential flood damage to the site where the adverse effects on dunes and dune vegetation will occur and to the public and private property adjacent to that site; and
- (vii) the proposed date of initiation of the compensation. Local governments shall include a condition in each permit authorizing off-site compensation which requires permittees to notify local governments in writing of the actual date of initiation within ten working days after compensation is initiated. If the permittee fails to begin compensation on the date proposed in the application, the permittee shall provide the local government with the reason for the delay. Local governments shall take this reason into account when determining whether a permittee has violated the compensation deadline.

(5) Compensation for adverse effects on dune vegetation. Local governments shall require that permittees compensate for adverse effects on dune vegetation by planting indigenous vegetation on the affected dunes and shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts. Local governments may allow a permittee to use temporary sand fencing or another approved method of dune restoration. Local governments shall prohibit a permittee from compensating for adverse effects on dune vegetation by removing existing vegetation from private or state-owned property unless the permittee has received prior written permission from the property owner or the state. In addition to the requirement that permission be obtained from the property owner, all persons are prohibited from removing vegetation from a critical dune area or seaward of a dune protection line unless specifically authorized to do so in a dune protection permit. Local governments shall include conditions in such permits requiring the permittee to provide a copy of the written permission for vegetation removal and to identify the source of any sand and vegetation which

will be used to compensate for adverse effects on dunes and dune vegetation in the mitigation plan contained in the permit application.

(g) Mitigation or compensation deadline.

(1) Initiation of compensation. Local governments shall require permittees to begin compensation for any adverse effect(s) to dunes and dune vegetation prior to or concurrent with the commencement of construction. If compensation is not completed prior to commencement of construction, the local government shall require that the permittee provide the local government with proof of financial responsibility in an amount equal to that necessary to complete the mitigation. This can be done in the form of an irrevocable letter of credit, performance bond, or any other instrument acceptable to the local government.

(2) Completion of compensation. Local governments shall require permittees to conduct compensation efforts continuously until the repaired, rehabilitated, and restored dunes and dune vegetation are equal or superior to the pre-existing dunes and dune vegetation. These efforts shall include preservation and maintenance pending completion of compensation.

(3) Local government determination of completion of compensation. Local governments shall determine a compensation project complete when the dune restoration project's position, contour, volume, elevation, and vegetative cover matches or exceeds the surrounding naturally formed dunes.

(4) State agency notification of compensation certification. Local governments shall provide written notification to the General Land Office after determining that the compensation is complete. The General Land Office may conduct a field inspection to verify compliance with this subchapter. If the local government does not receive an objection from the General Land Office regarding the completion of compensation within 30 working days after the General Land Office is notified in writing, the local government may certify that the compensation is complete.

(5) Violation of compensation deadline. The General Land Office recognizes that the time necessary to restore dunes and dune vegetation varies with factors such as climate, time of year, soil moisture, plant stability, and storm activity. The permittee shall be deemed to have failed to achieve compensation if a 1:1 ratio has not been achieved within three years after beginning compensation efforts.

Source: The provisions of this § 15.4 adopted to be effective February 17, 1993, 18 TexReg 661; amended to be effective April 16, 1996, 21 TexReg 3004.

§ 15.5. Beachfront Construction Standards

(a) Local government certification of beachfront construction. This section provides the standards local governments shall follow when preparing that portion of the dune protection and beach access plan specifically related to issuing or conditioning beachfront construction certificates. In general, within its jurisdiction, a local government shall not allow diminution of the size of public beaches and shall preserve and enhance public access between public beaches and public roads lying landward. A local government certification shall consist of one of two affirmative findings: an affirmative finding by a local government that the proposed construction is consistent with the beach access portion of a local government's dune protection and beach access plan and does not encroach upon the public beach, nor does it interfere with, or otherwise restrict, the public's right to use and have access to and from the public beach; or an affirmative finding that the proposed construction is inconsistent with the beach access portion of a local government's dune protection and beach access plan. The beach access portion of the local government's dune protection and beach access plan shall provide that beachfront construction will not adversely affect or allow encroachments upon the public beach or interfere with or otherwise impair the public's right to use and have access to and from the public beach.

(b) Prohibition of certification. Local governments shall not issue a certificate authorizing beachfront construction if the local government determines that the construction:

(1) reduces the size of the public beach in any manner;

(2) closes or otherwise impairs any existing public beach access point unless the local government simultaneously provides or requires the permittee to provide equivalent or better public access; or

(3) includes a proposal to build a concrete slab or other impervious surface within 200 feet of the line of vegetation or within the eroding area boundary (if such a boundary is established in the local beach/dune plan), whichever distance is greater. Local governments may authorize construction of a concrete slab or other impervious surface beneath a habitable structure elevated on pilings provided the slab will not extend beyond the perimeter of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the perimeter of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. The use of permeable materials such as brick pavers, limestone, or gravel is recommended for drives or parking areas.

(c) Encroachments on public beaches.

(1) Prohibition of construction on the public beach. A local government is prohibited from issuing a certificate authorizing any person to undertake any construction on the public beach or any construction that encroaches in whole or in part on the public beach. This prohibition does not prevent the approval of man-made vegetated mounds and dune walkovers under a properly issued dune protection permit and beachfront construction certificate. Any issuance or approval of a permit, certificate, or any other instrument contrary to this subsection is void.

(2) Construction landward of the public beach. Local governments shall not issue any beachfront construction certificate authorizing construction landward of the public beach that functionally supports or depends on, or is otherwise related to, proposed or existing structures that encroach on the public beach, regardless of whether the encroaching structure is on land that was previously landward of the public beach.

(3) Repair of existing structures on the public beach. A local government shall only issue a beachfront construction certificate or dune protection permit authorizing the repair of a structure that crosses the line of vegetation and encroaches on a public beach if the proposed repairs comply with the standards provided in this paragraph and § 15.6(e) and (f) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards), if the structure is not subject to imminent collapse, and if there is no enforcement action pending under this chapter, the Open Beaches Act, the Dune Protection Act, or the local government plan. An enforcement action includes the filing of a suit in district court or the referral of a matter for enforcement to the attorney general or other public prosecutor. Pursuant to this paragraph, a local government may authorize the repair of an existing structure that crosses the line of vegetation and encroaches on a public beach notwithstanding the provisions of paragraphs (1) and (2) of this subsection.

(A) Local governments shall not issue a certificate or permit authorizing repair of a structure that crosses the line of vegetation, as determined pursuant to subparagraph (E) of this paragraph, and encroaches on a public beach if the local government determines that the repairs:

(i) include a proposal to repair or construct a slab or other impervious surface of concrete or other impervious materials, although wooden decking, brick pavers, or other pervious materials may be used beneath the footprint of the structure

(ii) include a proposal to repair or construct an enclosed space below the base flood elevation and seaward of the line of vegetation;

(iii) include a proposal to increase the footprint of the structure;

(iv) are for a structure without a functioning septic system or sewer connection as determined by the local government or the Texas Natural Resource Conservation Commission, unless a septic system may be repaired as provided in subparagraph (B) of this paragraph;

(v) include a proposal for construction, repair, or maintenance of an erosion response structure;

(vi) are for a structure previously built, repaired, or renovated in violation of this subchapter or the local government plan or without an approved certificate or permit; or

(vii) include a proposal to use soil or sediment within the beach/dune system that is not of an acceptable mineralogy or grain size when compared to the sediments found on the site.

(B) A local government may issue a beachfront construction certificate or dune protection permit for the construction or repair of a septic system landward of the line of vegetation if the system complies with the rules of the Texas Natural Resource Conservation Commission and the local government governing on- site sewage facilities.

(C) A local government shall only issue a certificate or permit for the repair of an amenity that crosses the line of vegetation and encroaches on a public beach or that is attached to a structure that crosses the line of vegetation and encroaches on a public beach only if the amenity is less than 50% damaged and if all non-essential paving or other impervious surfaces associated with the amenity are replaced by wooden decking, brick pavers, or other pervious materials.

(D) A local government shall only issue a certificate or a permit authorizing the construction of a dune restoration project concurrent with the repair of a structure that crosses the line of vegetation if the proposed dune restoration follows the standards provided in this paragraph and § 15.7(e) of this title (relating to Local Government Management of the Public Beach). A dune restoration project under this paragraph shall:

(i) use sand that is of an acceptable mineralogy or grain size when compared to the sediments found on the site;

(ii) either extend no more than ten feet seaward of the footprint of the structure or extend no more than twenty feet seaward of the line of vegetation;

(iii) use indigenous vegetation that will achieve the same protective quality as the surrounding natural dunes or other dunes in the general vicinity; and

(iv) not restrict or interfere with the public use of the beach at normal high tide.

(E) A person submitting an application for repair of a structure that crosses the line of vegetation and encroaches on a public beach shall submit an original executed copy of the following statement signed by the owner of the property to the local government, General Land Office, and the Office of the Attorney General.

NOTICE AND ACKNOWLEDGEMENT

The undersigned acknowledges and admits that he/she is the owner of record of the following described real property which crosses the line of vegetation and is partially seaward of the line of vegetation:

[property street address and legal description].

In applying for a permit to repair the above described real property, the undersigned acknowledges and admits that the public has acquired a right of use or easement to or over the area of the public beach by prescription, dedication, or prescription, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. The line of vegetation, the extreme seaward boundary of natural vegetation that spreads continuously inland, customarily marks the landward boundary of the public easement.

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the line of vegetation. Structures erected seaward of the line of vegetation (or other applicable easement boundary) or that become seaward of the line of vegetation as a result of natural processes, such as shoreline erosion, are subject to a lawsuit by the State of Texas to remove the structures.

The acknowledgments in this document are binding upon the successors, heirs, and assigns of the undersigned.

[Printed Name]

THIS STATE OF TEXAS §
 §
COUNTY OF §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, _____

Notary Public in and for

Print Name

My commission expires _____

(F) A local government may only authorize the repair of structures pursuant to the provisions of this paragraph from the effective date of this paragraph through June 1, 2000. Notwithstanding any other provision under this subchapter, a local government's dune protection permits or beachfront construction certificates issued under this paragraph shall be valid for no more than 12 months from the date of issuance. A local government shall not renew a dune protection permit or beachfront construction certificate issued under this paragraph.

(d) Dedication of new beach access points.

(1) Pursuant to the authority provided in the Open Beaches Act, § 61.015(g), and as a condition of beachfront construction certification as to consistency with a local government's plan, a local government shall require a permittee to dedicate to the public new public beach access or parking area(s), where necessary, for consistency with the beach access and use, vehicular

control, or beach user fee provisions of the pertinent state-approved dune protection and beach access plan. Such provisions shall incorporate the standards for pedestrian and vehicular access established in § 15.7 of this title (relating to Local Government Management of the Public Beach).

(2) A local government shall require a permittee to dedicate an access area if it issues a certificate allowing a permittee to conduct activities which will impair access to and from the beach in any manner. Such a dedicated access area shall provide access equivalent to or better than the access impaired by the permittee's activity and shall be consistent with the pertinent provisions regarding beach access and use, vehicular controls.

Source: The provisions of this § 15.5 adopted to be effective February 17, 1993, 18 TexReg 661; amended to be effective April 16, 1996, 21 TexReg 3004; amended to be effective February 28, 2000, 25 TexReg 1713

§ 15.6. Concurrent Dune Protection and Beachfront Construction Standards

(a) Local government application of standards. This section provides the standards local governments shall follow when issuing, denying, or conditioning dune protection permits and beachfront construction certificates. This section applies to all construction within the geographic scope of this subchapter and to either permits or certificates or both. The requirements of this section are in addition to the requirements in § 15.4 of this title (relating to Dune Protection Standards), and § 15.5 of this title (relating to Beachfront Construction Standards).

(b) Location of construction. Local governments shall require permittees to locate all construction as far landward as is practicable and shall not allow any construction which may aggravate erosion.

(c) Prohibition of erosion response structures. Local governments shall not issue a permit or certificate allowing construction of an erosion response structure. However, a local government may issue a permit or certificate authorizing construction of a retaining wall, as defined in § 15.2 of this title (relating to Definitions), under the following conditions. These conditions only apply to the construction of a retaining wall; all other erosion response structures are prohibited.

(1) A local government shall not issue a permit authorizing the construction of a retaining wall within the area 200 feet landward of the line of vegetation.

(2) A local government may issue a permit authorizing construction of a retaining wall in the area more than 200 feet landward of the line of vegetation.

(d) Existing erosion response structures. In no event shall local governments issue permits or certificates authorizing maintenance or repair of an existing erosion response structure on the public beach or the enlargement or improvement of the structure within 200 feet landward of the natural vegetation line. Also within 200 feet landward of the natural vegetation line, local governments shall not issue a permit or certificate allowing any person to maintain or repair an existing erosion response structure if the structure is more than 50% damaged, except under the following circumstances.

(1) When failure to repair the structure will cause unreasonable hazard to a public building, public road, public water supply, public sewer system, or other public facility immediately landward of the structure.

(2) When failure to repair the structure will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure.

(e) Construction in flood hazard areas.

(1) A local government shall not issue a permit or certificate that does not comply with FEMA's regulations governing construction in flood hazard areas. FEMA prohibits man-made alteration of sand dunes and mangrove stands within Zones V1-30, V, and VE on the community's flood insurance rate maps which would increase the potential for flood damage.

(2) A local government shall inform the General Land Office and the FEMA regional representative in Texas before it issues any variance from FEMA regulations or allows any activity done in variance of FEMA's regulations found in Volume 44 of the Code of Federal Regulations, Parts 59-77. Variances may adversely affect a local government's participation in the National Flood Insurance Program.

(3) A local government shall not issue a permit or certificate that does not comply with FEMA minimum requirements or with the FEMA-approved local ordinance or county commissioners court order.

(f) Construction in eroding areas. Local governments with jurisdiction over eroding areas shall follow the standards provided in § 15.4 of this title (relating to Dune Protection Standards) and § 15.5 of this title (relating to Beachfront Construction Standards). If there is any conflict between this subsection, § 15.4 of this title (relating to Dune Protection Standards), and § 15.5 of this title (relating to Beachfront Construction Standards), this subsection applies. The General Land Office shall supply information for or assist a local government in determining eroding areas and the landward boundary of eroding areas. In addition, because of the higher risk of damage from flooding or erosion in such areas, local governments shall:

(1) require that structures built in eroding areas be elevated on pilings in accordance with FEMA minimum standards or above the natural elevation (whichever is greater);

(2) require that structures located on property adjacent to the public beach be designed for feasible relocation;

(3) allow a permittee to alter or pave only the ground within the footprint of the habitable structure (however, brick pavers, gravel or crushed limestone may be used to stabilize driveways) only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet from the line of vegetation or landward of an eroding area boundary established in the local beach/dune plan, whichever distance is greater; and

(4) Unless otherwise restricted by the local plan, and if consistent with the requirements of the National Flood Insurance Program, local governments may permit the construction of breakaway or louvered walls for a storage area no larger than 300 square feet.

(g) Construction affecting natural drainage patterns. Local governments shall not issue a certificate or permit authorizing construction unless the construction activities will minimize impacts on natural hydrology. Such projects shall not cause erosion of adjacent properties, critical dune areas, or the public beach.

(h) Emergency response to oil or hazardous substance spills. Any person responding to spills shall comply with the following regulations when cleaning up or disposing of oil or hazardous substances in the beach/dune system.

(1) The state on-scene coordinator is responsible for contacting the GLO Resource Management Division regarding proposed cleanup and disposal methods.

(2) The state on-scene coordinator shall, in consultation with the state natural resource trustees and through the Incident Command System, determine the appropriate depth for excavation and the appropriate quantity of sand to be removed, if any, from the beach/dune system.

(A) Spill cleanup. Cleanup methods shall avoid and otherwise minimize adverse impacts to the beach/dune system by ensuring that:

(i) Removal of sand from the beach is limited to the absolute minimum and will not exacerbate shoreline erosion.

(ii) Manual cleanup methods are used, if practicable.

(iii) Grading or scraping of the beach is minimized, and grading of non-oiled or non-hazardous areas is prohibited.

(B) Disposal of contaminated sand. Disposal methods shall avoid adverse impacts to the beach/dune system by ensuring that:

(i) Before any scraped sand is relocated within the beach/dune system, the material shall be tested for toxicity and percent of oiling. Only material that does not pose a threat to human health and the environment may remain in the beach/dune system. New dunes (man-made mounds) may be built with non-hazardous material provided that they are built in accordance with § 15.7(e) of this title (relating to Restored dunes on public beaches) and placed in areas preapproved by the state natural resource trustees. A dune protection permit is not required for such new dune creation. The disposal shall be in accordance with applicable, relevant and appropriate requirements established by local state and federal laws.

(ii) Hazardous materials shall be removed and disposed of as required by local, state and federal laws.

(iii) Disposal of waste must be in compliance with applicable state and federal laws and regulations of the Texas Natural Resources Conservation Commission and the United States Environmental Protection Agency. Disposal of oiled, non-hazardous sand shall be in accordance with applicable state and federal law, except that such sand shall not be disposed of in a location on or adjacent to dune vegetation, as defined in § 15.2 of this title (relating to Definitions).

Source: The provisions of this § 15.6 adopted to be effective February 17, 1993, 18 TexReg 661; amended to be effective April 16, 1996, 21 TexReg 3004.

§ 15.7. Local Government Management of the Public Beach

(a) Standards applicable to local governments. This section provides standards applicable to local government issuance, denial, or conditioning of permits or certificates, as well as all other local government activities relating to management of public beaches.

(b) Construction of coastal and shore protection projects. Local governments shall encourage carefully planned beach nourishment and sediment bypassing for erosion response management and prohibit erosion response structures within the public beach and 200 feet landward of the natural vegetation line.

(c) Monitoring. A local government or the state may require a permittee to conduct or pay for a monitoring program to study the effects of a coastal and shore protection project on the public beach. Further,

permittees are required to notify the state and the appropriate local government of any discernible change in the erosion rate on their property.

(d) Requirements for beach nourishment projects. A local government shall not allow a beach nourishment project unless it finds and the project sponsor demonstrates that the following requirements are met.

- (1) The project is consistent with the local government's dune protection and beach access plan.**
- (2) The sediment to be used is of effective grain size, mineralogy, and quality or the same as the existing beach material.**
- (3) The proposed nourishment material does not contain any of the hazardous substances listed in the Code of Federal Regulations, Volume 40, Part 300, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.**
- (4) There will be no adverse environmental effects on the property surrounding the area from which the sediment will be taken or to the site of the proposed nourishment.**
- (5) The removal of sediment will not have any adverse impacts on flora and fauna.**
- (6) There will be no adverse effects caused from transporting the nourishment material.**

(e) Restored dunes on public beaches. Sand dunes, either naturally created or restored, may aid in the preservation of the common law public beach rights by slowing beach erosion processes. Except as otherwise provided, local governments shall allow restoration of dunes on the public beach only under the following conditions. Restored dunes may be located farther seaward than the 20-foot restoration area only upon an affirmative demonstration by the permit applicant that substantial dunes would likely form farther seaward naturally. Such seaward extension past the 20-foot area must first receive prior written approval of the General Land Office and the Attorney General's Office. In the absence of such an affirmative demonstration by the applicant, a local government shall require the applicant to meet the following standards relating to the location of restored dunes.

- (1) Local governments shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the landward boundary of the public beach. Local governments shall ensure that the 20-foot restoration area follows the natural migration of the vegetation line.**
- (2) Local governments shall not allow any person to restore dunes, even within the 20-foot corridor, if such dunes would restrict or interfere with the public use of the beach at normal high tide.**
- (3) Local governments shall require persons to restore dunes to be continuous with any surrounding naturally formed dunes and shall approximate the natural position, contour, volume, elevation, vegetative cover, and sediment content of any naturally formed dunes in the proposed dune restoration area.**
- (4) Local governments shall require persons restoring dunes to use indigenous vegetation that will achieve the same protective capability as the surrounding natural dunes.**
- (5) Local governments shall not allow any person to restore dunes using any of the following methods or materials:**

(A) hard or engineered structures;

(B) materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;

(C) fine, clayey, or silty sediments;

(D) sediments containing the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; and

(E) sand obtained by scraping or grading dunes or the beach.

(6) Local governments may allow persons to use the following dune restoration methods or materials:

(A) piles of sand having similar grain size and mineralogy as the surrounding beach;

(B) temporary sand fences conforming to General Land Office guidelines;

(C) organic brushy materials such as used Christmas trees; and

(D) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any changes that may increase erosion of the public beach.

(7) Local governments shall protect restored dunes under the same restrictions and requirements as natural dunes under the local government's jurisdiction. All applications submitted to a local government for restoring dunes on the public beach shall be forwarded to both the General Land Office and the Attorney General's Office at least ten working days prior to the local government's consideration of the permit. Failure of the General Land Office or the Attorney General's Office to submit comments on an application shall not waive, diminish, or otherwise modify the beach access and use rights of the public.

(8) Local governments shall not allow a permittee to construct or maintain a private structure on the restored dunes within critical dune areas or seaward of a dune protection line, except for specifically permitted dune walkovers or similar access ways.

(f) Scientific research projects. Local governments may exempt a scientific research project from the requirements of § 15.4(c) of this title (relating to Dune Protection Standards) or subsection (e) of this section provided the research is conducted by an academic institution or state, federal, or local government. Prior to conducting the research, the project manager shall submit a detailed work plan and monitoring plan for approval by the General Land Office and the Office of the Attorney General. The research activities shall not materially weaken existing dunes or dune vegetation, or increase erosion of adjacent properties.

(g) Dune walkovers. Local governments shall only allow dune walkovers, including other similar beach access mechanisms, which extend onto the public beach under the following circumstances.

(1) Local governments shall require that permittees restrict the walkovers, to the greatest extent possible, to the most landward point of the public beach.

(2) Local governments shall require that permittees construct and locate the walkovers in a manner that will not interfere with or otherwise restrict public use of the beach at normal high tides.

(3) Local governments shall require that permittees relocate walkovers to follow any landward migration of the public beach or seaward migration of dunes using the following procedures and standards.

(A) After a major storm or any other event causing significant landward migration of the landward boundary of the public beach, local governments shall require permittees to shorten any dune walkovers encroaching on the public beach to the appropriate length for removal of the encroachment. This requirement shall be contained as a condition in any permit and certificate issued authorizing construction of walkovers. Local governments are required to assess the status of the public beach boundary within 30 days after a major storm or other event causing significant landward migration of the public beach. After the assessment, local governments shall inform the General Land Office and the Attorney General's Office of any encroachments on the public beach within ten days of completing the assessment.

(B) In cases where the migration of the landward boundary of the public beach occurs slowly over a period of time or where a dune walkover needs to be lengthened because of the seaward migration of dunes, the permittee shall apply for a permit or certificate authorizing the modification of the structure.

(h) Preservation and enhancement of public beach use and access. A local government shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach. A local government shall not impair or close an existing access point or close a public beach to pedestrian or vehicular traffic without prior approval from the General Land Office.

(1) For the purposes of this subchapter, beach access and use is presumed to be preserved if the following criteria are met.

(A) Parking on or adjacent to the beach is adequate to accommodate one car for each 15 linear feet of beach.

(B) Where vehicles are prohibited from driving on and along the beach, ingress/egress access ways are no farther apart than 1/2 mile.

(C) Signs are conspicuously posted which explain the nature and extent of vehicular controls, parking areas, and access points. Local governments may establish their own beach access and use standards for General Land Office approval and certification based upon the General Land Office's affirmative finding that such standards preserve and enhance the public's right to use and access the public beach.

(2) A local government shall have an adopted, enforceable, written policy prohibiting the local government's abandonment, relinquishment, or conveyance of any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access, unless an alternative equivalent or better beach access is first provided by the local government consistent with its dune protection and beach access plan.

(3) This provision does not apply to any existing local government traffic regulations enacted before the effective date of this subchapter, and the former law is continued in effect until the regulations are amended or changed in whole or in part. New or amended vehicular traffic regulations enacted for public safety, such as establishing speed limits and pedestrian rights-of-way, are exempt from the certification procedure but must nevertheless be consistent with the Open Beaches Act and this subchapter.

(4) This subchapter does not prevent a local government from using its existing authority to close individual beach access points for emergencies related to public safety. However, the standards and procedures for such emergency closures shall be included in its state-approved dune protection and beach access plan.

(i) Request for state agency approval of beach access plan. When requesting approval, a local government shall submit a plan to the General Land Office and the Attorney General's Office providing the following information:

(1) a current description and map of the entire beach access system within its jurisdiction;

(2) the status of beach access demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(3) a detailed description of the proposed beach access plan replacing the existing beach access system. Such description shall demonstrate the method of providing equivalent or better access to and from the public beaches; and

(4) a vehicular control plan, if the local government proposes either new or amended vehicular controls for the public beach. The vehicular control plan must include, at a minimum, the following information:

(A) an inventory and description of all existing vehicular access ways to and from the beach and existing vehicular use of the beach;

(B) all legal authority, including local government ordinances that impose existing vehicular controls;

(C) a statement of any short-term or long-range goals for restricting or regulating vehicular access and use;

(D) an analysis and statement of how the proposed vehicular controls are consistent or inconsistent with the state standards for preserving and enhancing public beach access set forth in this subchapter. If a local government or the state determines that the vehicular controls are not consistent with state standards, the local government shall prepare a plan for achieving consistency within a period of time to be determined by the General Land Office and the Attorney General's Office. This plan shall include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements; and

(E) a description of how vehicular management relates to beach construction management, beach user fees, and dune protection within the jurisdiction of the local government.

(j) Integration of vehicular control plan and other plans. The vehicular control plan may be a part of a local government's beach access and use plan required under the Texas Natural Resources Code, § 61.015, any beach user fee plan required under the Texas Natural Resources Code, § 61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office encourages local governments to combine and integrate these various plans and programs.

(k) State agency approval of vehicular control plan adopted or amended after the effective date of this subchapter. A local government shall submit the vehicular control plan to the General Land Office and the Attorney General's Office no later than 90 working days prior to taking any action on the plan. This provision does not prevent a local government from exercising its existing authority over vehicular controls in emergencies. The standards and procedures for such emergency vehicular controls shall be

submitted to the state in the vehicular control portion of a local government's dune protection and beach access plan. A plan may be approved if the vehicular controls are found to be consistent with the Open Beaches Act and with this subchapter. Prior to final adoption or implementation of a new or amended vehicular control ordinance, the local government shall obtain state certification of the plan for vehicular control pursuant to the Open Beaches Act, Texas Natural Resources Code, § 61.022.

(l) Maintaining the public beach. Local governments shall prohibit beach maintenance activities unless maintenance activities will not materially weaken dunes or dune vegetation or reduce the protective functions of dunes. Local governments shall prohibit beach maintenance activities which will result in the significant redistribution of sand or which will significantly alter the beach profile or the line of vegetation. All sand moved or redistributed due to beach maintenance activities shall be returned to the area between the line of vegetation and mean high tide. The General Land Office encourages the removal of litter and other debris by handpicking or raking and strongly discourages the use of machines (except during peak visitation periods which disturb the natural balance of gains and losses in the sand budget and the natural cycle of nutrients.

(m) Prohibitions on signs. A local government shall not cause any person to display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or allow to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to and from the public beach or the right to use the public beach as guaranteed by this subchapter, the Open Beaches Act, and the common law right of the public.

Source: The provisions of this § 15.7 adopted to be effective February 17, 1993, 18 TexReg 661; amended to be effective April 16, 1996, 21 TexReg 3004.

§ 15.8. Beach User Fees

(a) Eligibility. Local governments shall not initiate or amend a beach user fee unless the governing body of the local government with jurisdiction over the area subject to the fee has a state approved dune protection and beach access plan.

(b) Reciprocity of fees. Within each county, local governments are required to establish a state-approved system for reciprocity of fees and fee privileges among the county and the different local governments authorized to charge beach user fees. The establishment of a system of beach user fee reciprocity shall be a condition of state approval of local dune protection and beach access plans.

(c) Amount of beach user fees.

(1) A local government shall not impose a fee or charge for the exercise of the public right of access to and from public beaches. A local government may charge beach users a fee in exchange for providing services to beach users in general. A local government may only impose a beach user fee if the fee is reasonable taking into account the cost to the local government of providing public services and facilities directly related to the public beach. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services. In addition, any fee collected for off-beach parking to provide access to and from the public beach is considered a beach user fee.

(2) Local governments shall not impose a beach user fee which:

(A) exceeds the necessary and actual cost of providing reasonable beach-related public facilities and services;

(B) unfairly limits public use of and access to and from public beaches in any manner;

(C) is inconsistent with this subsection or the Open Beaches Act; or

(D) discriminates on the basis of residence.

(d) Beach user fee plan. A local government that proposes a new or amended beach user fee shall first prepare a plan that includes, at a minimum, the following information:

(1) a description of the current beach access system within its jurisdiction demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(2) a listing and description of all existing beach user fees charged by the local government and by all other local governments in the same county;

(3) all legal authority, including local ordinances that authorize the collection of existing beach user fees;

(4) an analysis and statement of how the proposed user fee is or is not consistent with state standards set forth in this subchapter for preserving and enhancing public beach access;

(5) how the beach user fee relates to beachfront construction, vehicular controls, and parking, and dune protection within the jurisdiction of the local government;

(6) a statement of any short-term or long-range goals relating to the collection and use of beach user fees.

(e) State agency approval of beach user fees. A local government shall not impose a beach user fee or amend an existing beach user fee that is inconsistent with the beach user fee portion of its dune protection and beach access plan. To receive state approval for initiating its beach user fee plan or amending a beach user fee, a local government shall submit its beach user fee plan to the General Land Office and the Attorney General's Office no later than 90 working days prior to any local government action on the beach user fee. The General Land Office shall certify whether the initiation or amendment of a beach user fee is consistent with this subchapter and the Open Beaches Act. Certification of consistency shall be by adoption into the rules authorized by the Open Beaches Act.

(f) Beach user fee revenues. Revenues from beach user fees may be used only for beach-related services. For each fiscal year, a local government shall not spend more than 10% of beach user fee revenues on reasonable administrative costs directly related to beach-related services. Each local government shall send quarterly reports to the General Land Office stating the amount of beach user fee revenues collected and itemizing how beach user fee revenues are expended. The General Land Office may prescribe reporting forms or methods. The General Land Office shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related. Reports are due no later than 60 days after the end of each quarter of the State fiscal year.

(g) Beach user fee accounts. Local governments shall follow the following methods for administering beach user fee accounts.

(1) Beach user fee revenues shall be maintained and accounted for so that fee collections may be directly traced to expenditures on beach-related services. Beach user fee revenues shall not be commingled with any other funds and shall be maintained in separate bank accounts.

(2) Beach user fee revenues shall be maintained in a separate account and documented in a separate financial statement for each beach user fee. Beach user fee revenue account balances and expenditures shall be documented according to generally accepted accounting principles.

(h) Free beach access. Local governments that collect a beach user fee for on-beach parking or driving or for off-beach parking for beach access shall maintain free public beach access by providing areas where no fee is charged for parking on or off the beach and for pedestrian access. This requirement applies to each state-approved dune protection and beach access plan, not to each local government with jurisdiction over the public beach.

(i) Access for disabled persons. Local governments shall establish, preserve, and enhance access for disabled persons. Provisions for access for disabled persons shall be included in local government dune protection and beach access plans.

(j) Identification of fee and non-fee areas. For any local government collecting a beach user fee for on-beach parking or driving, both fee and non-fee beach areas shall be conspicuously marked with signs that clearly indicate, at a minimum, the location of both the fee and non-fee areas and the identity of the local government collecting the fee. In addition, maps identifying fee and non-fee areas shall be provided to the public by any local government collecting a beach user fee.

(k) Coordination with other beach-related plans. The beach user fee plan shall be a part of a local government's beach access and use plan required under the Open Beaches Act, § 61.015, any vehicular control plan required under the Open Beaches Act, § 61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office requires local governments to combine and integrate these various plans.

Source: The provisions of this § 15.8 adopted to be effective February 17, 1993, 18 TexReg 661; amended to be effective April 16, 1996, 21 TexReg 3004.

§ 15.9. Penalties

(a) In addition to any penalties assessed by a local government, any person (as defined in this subchapter) who violates either the Dune Protection Act, the Open Beaches Act, this subchapter, or a permit or certificate condition is liable to the General Land Office for a civil penalty of not less than \$50 nor more than \$1,000 per violation per day. Each day the violation occurs or continues constitutes a separate violation. Violations of the Dune Protection Act, the Open Beaches Act, and the rules adopted pursuant to those statutes are separate violations, and the General Land Office may assess separate penalties. The assessment of penalties under one Act does not preclude another assessment of penalties under the other Act for the same act or omission. Conversely, compliance with one statute and the rules adopted thereunder does not preclude the General Land Office from assessing penalties under the other statute and the rules adopted pursuant to that statute.

(b) Local governments are included in the definition of 'person' in § 15.2 of this title (relating to Definitions), and as such, they are liable for penalties for any violations of this subchapter, the Dune Protection Act, and the Open Beaches Act. A local government will be liable for penalties for such violations, including, but not limited to, failure to submit a dune protection and beach access plan to the General Land Office and the Attorney General's Office; failure to maintain and enforce its plan; and failure to implement the plan. These violations are in addition to any other violations of this subchapter for which a local government may be liable for penalties.

(c) In determining whether the assessment of penalties is appropriate, the General Land Office will consider the following mitigating circumstances: acts of God, war, public riot, or strike; unforeseeable, sudden, and natural occurrences of a violent nature; and willful misconduct by a third party not related to the permittee by employment or contract.

Source: The provisions of this § 15.9 adopted to be effective February 17, 1993, 18 TexReg 661.

§ 15.10. General Provisions

(a) Construction. A local government's ordinances, orders, resolutions, or other enactments covered by this subchapter shall be read in harmony with this subchapter. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this subchapter controls. Certification of a local government's beach access and use plan by the General Land Office may not be construed to expand or detract from the statutory or constitutional authority of that local government or any other governmental entity, nor may any person construe such certification to authorize a local government or any other governmental entity to alienate public property rights in public beaches.

(b) Boundary of the public beach. The attorney general shall make determinations on issues related to the location of the boundary of the public beach and encroachments on the public beach pursuant to the requirements of the Open Beaches Act, § 61.016 and § 61.017, and § 15.3(b) of this title (relating to Administration). The General Land Office and the local governments will consult with the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

(c) Public beach presumption. Except for beaches on islands or peninsulas not accessible by public road or ferry facility, in administering its plan a local government shall presume that any beach fronting the Gulf of Mexico within its jurisdiction is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, § 61.019. That section provides that any person owning property fronting the Gulf of Mexico whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(d) Violations. No person shall violate any provision of this subchapter, a local government dune protection and beach access plan, or any permit or certificate or the conditions contained therein.

(e) Reporting violations. Any local government with knowledge of a violation or a threatened violation of a permit, a certificate, its dune protection and beach access plan, the Dune Protection Act, the Open Beaches Act, or this subchapter shall inform the General Land Office of the violation(s) within 24 hours.

(f) Withdrawal of plan certification. The General Land Office may withdraw certification of all or any part of a local government's dune protection and beach access plan if the local government does not comply with its plan, this subchapter, the Dune Protection Act, or the Open Beaches Act. Without further action by the General Land Office, a local government loses, by operation of law, the authority to issue permits or certificates authorizing construction within the geographic scope of this subchapter and the privilege to collect beach user fees if state agency certification of its dune protection and beach access plan is withdrawn.

(g) Notice of withdrawal of plan certification. The General Land Office will notify the local government and the Attorney General's Office 60 days prior to withdrawing General Land Office certification of the local government's plan. The local government may submit to the General Land Office any evidence demonstrating full compliance with its plan, this subchapter, the Dune Protection Act, and the Open Beaches Act. The General Land Office will consider the good faith efforts of any local government to immediately and fully comply with those laws during the 60-day period after the notification of intent to withdraw certification.

(h) The provisions contained in this subchapter do not limit the authority of the General Land Office and the Attorney General's Office to enforce this subchapter, the Dune Protection Act, and the Open Beaches Act pursuant to the Texas Natural Resources Code, § 63.181 and § 61.018.

(i) Appeals. The Dune Protection Act, § 63.151, and the Open Beaches Act, § 61.019, contain the provisions for appeals related to this subchapter.

(j) Grandfathered plans. Nothing in the amendments shall require modifications of any dune protection and beach access plan certified on or prior to the effective date of these amendments. All permits and

certificates shall be issued in accordance with the General Land Office rules for management of the beach/dune system as described in this chapter.

Source: The provisions of this § 15.10 adopted to be effective February 17, 1993, 18 TexReg 661; amended to be effective April 16, 1996, 21 TexReg 3004.

§ 15.11. Certification of Local Government Dune Protection and Beach Access Plans

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are certified as consistent with state law:

- (1) Brazoria County (adopted August 9, 1993, amended September 27, 1993);**
- (2) Chambers County (adopted August 9, 1993);**
- (3) City of Port Aransas (adopted February 15, 1995);**
- (4) City of Port Arthur (adopted April 12, 1993);**
- (5) Jefferson County (adopted August 16, 1993, amended March 7, 1994);**
- (6) Matagorda County (adopted February 13, 1995). The General Land Office certifies that the Beach User Fees section of the Matagorda County plan adopted by the Matagorda County Commission Court on March 15, 1999, is consistent with state law.**
- (7) Town of Quintana (adopted August 11, 1993);**
- (8) Village of Jamaica Beach (adopted August 16, 1993, amended December 6, 1993);**
- (9) Town of South Padre Island (adopted October 5, 1994);**
- (10) City of Corpus Christi (adopted August 10, 1993);**
- (11) Cameron County:**
 - (A) Plan (adopted September 20, 1994). The 440-foot building line established in the Cameron County plan, Section III.I, shall not be operative unless it is landward of the line of vegetation. The line of vegetation shall be established as required in the Open Beaches Act, Texas Natural Resources Code, § 61.017.**
 - (B) Padre Shore Ltd. Final Master Plan Amendment (adopted November 5, 1996).**
- (12) Nueces County**
 - (A) Plan (adopted March 25, 1992, amended October 23, 1996).**
 - (B) La Concha master plan. The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County commissioners court on March 20, 1996, is consistent with state law.**
 - (C) Palms at Waters Edge master plan: The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County commissioners court on December 27, 1996, is consistent with state law.**

(D) Mustang Island Episcopal Conference Center master plan. The General Land Office certifies that the dune protection section of the Mustang Island Episcopal Conference Center master plan adopted by the Nueces County Commissioners Court on January 31, 2000, is consistent with state law.

(13) Village of Surfside Beach (adopted December 12, 2000).

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General Land Office which are conditionally certified as consistent with state law.

(1) City of Galveston (adopted August 12, 1993, amended February 9, 1995, and amended June 19, 1997.).

(A) This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).

(B) This certification includes a variance from § § 15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title, (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards). The City of Galveston's plan:

(i) provides that paving or altering the ground below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune;

(ii) provides that paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joists, or pervious materials approved by the City Department of Planning and Transportation, in that area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation;

(iii) assesses a "Fibercrete Maintenance Fee" of \$200.00 to be used to pay for the clean-up of fibercrete from the public beaches, should the need arise; and

(iv) allows the use of reinforced concrete in that area landward of 200 feet from the line of vegetation.

(2) Galveston County (adopted August 16, 1993). This certification is valid for 180 days, during which time Galveston County will modify its plan consistent with the General Land Office comments submitted to Galveston County (October 18, 1993).

(c) Implementation of conditionally certified plans. Local governments are required to implement conditionally certified plans consistent with the Texas Natural Resources Code, Chapters 61 and 63, and the General Land Office rules for management of the beach/dune system, § § 15.1-15.10 of this title (relating to Management of the Beach/Dune System).

(d) Removal of conditions of certification.

(1) Local governments shall submit their modified plans on or before the expiration of the 180-day time period. The General Land Office shall provide to the pertinent local government a determination as to the sufficiency of the modification(s) within 60 days of receipt of the plan. The General Land Office will remove all conditions of the plan's certification by amending this

subsection. Such amendments will list the name of the pertinent local government in subsection (a) of this section, and delete the same from subsection (b) of this section. If the General Land Office determines that modifications of plans are insufficient, the General Land Office shall provide specific exceptions to the modifications. If those portions of the plan to which the General Land Office has noted exceptions can be addressed through further comment, plan revision and review, conditional certification will be reissued pursuant to a General Land Office amendment to this subsection, subject to further plan modification.

(2) In the event that a local government chooses not to modify its plan as requested in the General Land Office comments, the local government shall provide in writing the scientific or legal justification as to why such modifications are not feasible. The justification shall be submitted to the General Land Office on or before the due date of the revised plan. The justification will be reviewed by the General Land Office, and a determination as to the sufficiency of the justification will be provided to the local government within 60 days of receipt by the General Land Office. Local government plans shall continue in effect under conditional certification until the sufficiency of the justification is resolved or this section is amended.

(e) **Withdrawal of conditional certification.** Conditional certification of a local government plan shall be withdrawn by the General Land Office after the 180-day time period if the pertinent local government does not submit to the General Land Office either a formally adopted plan which has been modified consistent with General Land Office comments or the written scientific or legal justification as to why such modification is not feasible. In any event, withdrawal of conditional certification shall only occur after the General Land Office adopts an amendment to this subsection withdrawing conditional certification, with accompanying specific reasons, and the General Land Office has given the pertinent local government written notice of the withdrawal of the conditional certification.

Source: The provisions of this § 15.11 adopted to be effective November 28, 1994, 19 TexReg 8981; amended to be effective June 27, 1995, 20 TexReg 4349; amended to be effective April 16, 1996, 21 TexReg 3024; amended to be effective October 7, 1996, 21 TexReg 9167; amended to be effective March 27, 1997, 22 TexReg 2877; amended to be effective July 17, 1997, 22 TexReg 6460; amended to be effective January 5, 1998, 23 TexReg 147; amended to be effective November 29, 1998, 23 TexReg 11827; amended to be effective December 6, 1998, 23 TexReg 12446; amended to be effective September 5, 1999, 24 TexReg 6805; amended to be effective August 6, 2000, 25 TexReg 7180; amended to be effective June 28, 2001, 26 TexReg 4726.

SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

§ 15.21. Evaluation Process For Coastal Erosion Studies And Projects

The General Land Office (Land Office) will evaluate potential projects for funding from the coastal erosion response account based on a three-stage evaluation process as described in this section.

(1) **Initial evaluation** -- project goal summaries submitted to the Land Office by potential project partners.

(A) A potential project partner seeking funds from the coastal erosion response account must submit a project goal summary to the Land Office. The project goal summary must include the following:

- (i) the name of the entity that will be the potential project partner and the name, address, and telephone number of the person who will represent the potential project partner and be the primary point of contact with the Land Office;
- (ii) the location and geographic scope of the erosion problem;

- (iii) a description of the erosion problem and the severity of erosion in the area;
- (iv) the economic impacts of erosion in the area;
- (v) a description of how public infrastructure or resources have been impacted or threatened by erosion in the area;
- (vi) the natural resource impacts of erosion in the area; and
- (vii) the desired outcome or goals of seeking funding from the coastal erosion response account.

(B) The Land Office will accept project goal summaries by:

- (i) mail sent to the General Land Office, Attn: Director, Coastal Projects Division, Stephen F. Austin Building, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495;
- (ii) fax sent to (512) 475-0680; or
- (iii) email sent to coastalprojects@glo.state.tx.us.

(C) The Land Office will evaluate project goal summaries received based on the following criteria: the severity of erosion in the area, the economic impacts of erosion, the degree to which public infrastructure or resources are at risk, and natural resources threatened by erosion. Each criterion will be weighted by the Land Office, and the Land Office will assign a total score to each project goal summary. The Land Office will conduct the initial evaluation in consultation and coordination with the potential project partner, as deemed necessary by the Land Office.

(D) The Land Office encourages potential project partners to submit additional information if it is available on the presumed causes of erosion, other potential project partners in the area, a recommendation on projects to address erosion in the area, and possible funding alternatives that have already been explored. The Land Office will not use this additional information during the initial evaluation stage, but it may be used to expedite the evaluation process in later stages.

(E) The Land Office will inform the potential project partner of the outcome of the initial evaluation and subsequently post the outcome on the Land Office's website at www.glo.state.tx.us.

(F) If, as a result of the initial evaluation, the Land Office chooses not to continue the evaluation into the next stage, the potential project partner will be notified in writing of this result. The Land Office will retain the project goal summary and may reevaluate it if future conditions warrant.

(G) If the Land Office's initial evaluation results in a score that is sufficiently high to warrant an evaluation of alternatives, the Land Office will invite the potential project partner to continue to work cooperatively with the Land Office by becoming a qualified project partner.

(2) Evaluation of alternatives with qualified project partners.

(A) The process of evaluating alternatives will begin with the Land Office and potential project partner entering into a project cooperation agreement. Upon entering into a

project cooperation agreement, the potential project partner will become a qualified project partner. The Land Office and qualified project partner will cooperatively evaluate alternatives for addressing the erosion problem(s) identified in the project goal summary.

(B) The project cooperation agreement with the qualified project partner will explicitly define the activities to be undertaken by the Land Office and the qualified project partner in the evaluation of alternatives. The Land Office may, at its sole discretion, fund studies or activities that are part of the alternatives-evaluation process. Funds expended by a qualified project partner in conformance with the project cooperation agreement can be used to offset the qualified project partner's cost-sharing requirement.

(C) During the alternatives-evaluation process, the Land Office will evaluate projects based on the following criteria:

- (i) the feasibility of alternative projects in meeting the goals of the project goal summary;**
- (ii) whether the qualified project partner has already made or received a binding commitment to fund all or a portion of a given project; and**
- (iii) whether funding can be leveraged with sources other than the coastal erosion response account.**

(D) At the completion of the alternatives-evaluation process, the Land Office in consultation with the qualified project partner will choose one or more preferred alternatives for addressing the erosion problem in the area identified. Each preferred alternative will be scored based on the factors detailed in § 15.21(2)(C) of this section. If new information becomes available during the alternatives-evaluation stage, the Land Office may adjust the score for the initial evaluation of the project goal summary.

(E) Based on the scores from the first two stages of the evaluation process, the Land Office will determine whether any of the preferred alternatives are viable projects for funding from the coastal erosion response account. If the Land Office determines that one or more of the preferred alternatives are viable projects, the Land Office will request that the qualified project partner continue to work cooperatively to seek funding.

(3) Final prioritization of preferred alternatives by the Land Office.

(A) If the qualified project partner chooses to continue the application process for funding a preferred alternative, the Land Office will further score the preferred alternative based on the following criteria:

- (i) the distribution of other erosion response projects in Texas that have received funding from the coastal erosion response account;**
- (ii) whether federal and local financial participation in the project is maximized;**
- (iii) whether the project achieves efficiencies and economies of scale;**
- (iv) the cost of the preferred alternative and the amount of money available in the coastal erosion response account;**
- (v) if the project is located within the jurisdiction of a local government that administers a beach/dune program, whether the local government is adequately administering its duties under the Open Beaches Act (Texas Natural Resources**

Code, Chapter 61) and Dune Protection Act (Texas Natural Resources Code, Chapter 63); and

(vi) whether the project will address an emergency situation in the area.

(B) After the Land Office assigns weighted, numerical scores to the criteria detailed in § 15.21(3)(A) of this section, the Land Office will generate a final cumulative score for each preferred alternative based on the scores achieved by the project in each of the three stages of the evaluation process.

Source: The provisions of this § 15.21 adopted to be effective November 21, 1999, 24 TexReg 10132

§ 15.22. Funding Projects From the Coastal Erosion Response Account

(a) The Land Office will rank each project that has been evaluated through the three-stage evaluation process based on the project's cumulative numerical score.

(b) If the Land Office determines that a project should receive funds from the coastal erosion response account, the Land Office and the qualified project partner will amend the project cooperation agreement that was entered into earlier in the evaluation process. The Land Office shall explicitly describe in the amended project cooperation agreement the terms and conditions under which the Land Office will fund the project.

(c) Cost-sharing requirement for qualified project partners. The CEPRA requires qualified project partners to pay at least 25% of the shared project costs.

(1) The project cooperation agreement shall specify the terms of the qualified project partner's commitment to pay at least 25% of shared project costs.

(2) No costs incurred by a potential project partner before becoming a qualified project partner by entering into a project cooperation agreement with the Land Office can be used to offset the 25% cost-sharing requirement of the CEPRA.

(3) In-kind goods or services provided by the qualified project partner after entering into a project cooperation agreement with the Land Office may offset the 25% cost-sharing requirement, if the qualified project partner provides the Land Office with a reasonable basis for estimating the monetary value of those goods or services. The decision on whether to allow any in-kind good or service to offset the 25% cost-sharing requirement is in the sole discretion of the Land Office.

(4) Local governments that receive financial assistance from the state to clean and maintain public beaches fronting the Gulf of Mexico under Chapter 25 of this title, relating to Beach Cleaning and Maintenance Assistance Program, will not be allowed to use funds received under that program to meet the 25% cost-sharing requirement.

Source: The provisions of this § 15.22 adopted to be effective November 21, 1999, 24 TexReg 10132

§ 15.23. Coastal Boundary Surveys

The CEPRA mandates that no person may undertake an action relating to erosion response on or immediately landward of a public beach or submerged land until the person has conducted and filed a coastal boundary survey with the Land Office in conformance with Texas Natural Resources Code, § 33.136.

(1) If a coastal boundary survey has previously been conducted and filed in the area of an erosion response project that may be funded from the coastal erosion response account, the Land Office

shall determine whether that survey adequately reflects current conditions. If the survey adequately reflects current conditions, the Land Office may determine that a new coastal boundary survey is not required before the project is constructed. The decision on whether a new survey is required before construction of an erosion response project is in the sole discretion of the Land Office.

(2) The boundary depicted on any coastal boundary survey that is required before funding a project from the coastal erosion response account shall be delineated according to the law under which the upland property was originally granted by the sovereign.

Source: The provisions of this § 15.23 adopted to be effective November 21, 1999, 24 TexReg 10132

SUBCHAPTER D. CERTIFICATION OF COASTAL WETLANDS

§ 15.51. Policy; Scope of Rules; Definitions

(a) Policy. The protection and preservation of certain of the coastal wetlands of this state are essential to the public interest. The General Land Office incorporates by reference the policy statement as set forth in Texas Civil Statutes Article 5415e-3, § 2.

(b) Scope of rules. These rules set forth the factors which will be considered by the commissioner in selecting and certifying to the Texas Parks and Wildlife Department those coastal wetlands which are most essential to the public interest; in assigning priorities for acquisition of such coastal wetlands; and in revoking certification of such coastal wetlands whenever it is in the public interest. These rules also set forth the process which the commissioner will employ in certifying those coastal wetlands which are most essential to the public interest.

(c) Definition. The following definitions are intended to assist the public in understanding the impact and scope of these rules. For the purposes of these rules only:

(1) Commissioner -- The commissioner of the General Land Office.

(2) Coastal wetlands -- Highly productive coastal natural systems composed of waters, substrate, vegetation, and animal life. Coastal wetlands mean marshes and other areas of high biologic productivity where seawater is present during times other than and in addition to storms or hurricanes as defined by the Beaufort Wind Scale. Coastal wetlands do not, however, include any areas seaward of the line of mean annual low spring tide, nor does it include any mainland area where seawater is present only during storms or hurricanes as defined by the Beaufort Wind Scale.

(3) Marshes -- Includes only coastal marshes. Coastal marshes are land areas within coastal wetlands that contain seawater and are characterized by plants that are emergent, rooted, herbaceous hydrophytes. Marshes must include one or more of the following species of vegetation.

(A) Grasses and grass-like plants. (Scientific name -- common name.)

(i) Cyperus haspan L. -- sheathed flatsedge.

(ii) C. polystachyos Rottb. var. texensis (Torr.) Fern. -- umbrella sedge.

(iii) Dichromena colorata (L.) A.S. Hitchc. -- starrush whitetop.

(iv) Distichlis spicata (L.) Greene var. spicata -- seashore saltgrass.

- (v) *Eleocharis albida* Torr. – white spikesedge.
- (vi) *E. caribaea* (Rottb.) Blake – spikesedge.
- (vii) *E. interstincta* (Vahl) Roemer & Schultes – gulfcoast spikesedge.
- (viii) *Fimbristylis caroliniana* (Lam.) Fern. – fimbry.
- (ix) *F. Castanea* Vahl – fimbry.
- (x) *F. puberula* (Michx.) Vahl var. *puberula* – fimbry.
- (xi) *Fuirena squarrosa* Michx. – hairy umbrella sedge.
- (xii) *F. simplex* Vahl – western umbrella sedge.
- (xiii) *Juncus marginatus* Rostk. -- grassleaf rush.
- (xiv) *J. Roemerianus* Scheele -- needlegrass rush.
- (xv) *J. validus* Cov. var. *validus* -- roundhead rush.
- (xvi) *J. validus* Cov. var. *fascinatus* M.C. Johnst. -- roundhead rush.
- (xvii) *Monanthochloe littoralis* Englem. -- shoregrass.
- (xviii) *Parapholis incurva* (L.) C.E. Hubb. -- sicklesgrass.
- (xix) *Paspalum vaginatum* Swartz -- seashore paspalm.
- (xx) *Phragmites australis* (Cav.) Trin. -- common reed.
- (xxi) *Scirpus californicus* (C.A. Meyer) Steud. -- California bullrush.
- (xxii) *S. maritimus* L. var. *macrostachyus* Michx. -- saltmarsh bullrush.
- (xxiii) *S. americanus* Pers. var. *longispicatus* Britt. -- three-square bullrush.
- (xxiv) *Spartina alterniflora* Loisel. var. *alterniflora* -- smooth cordgrass.
- (xxv) *S. cynosuroides* (L.) Roth -- big cordgrass.
- (xxvi) *S. patens* (Ait.) Muhl. -- marshay cordgrass.
- (xxvii) *S. spartinae* (Trin.) Hitchc. -- gulf cordgrass.
- (xxviii) *Sporobolus virginicus* (L.) Kunth -- seashore dropseed.
- (xxix) *S. pyramidatus* (Lam.) Hitchc. -- whorled dropseed.
- (xxx) *Zizaniopsis miliacea* (Michx.) Doell and Aschers -- marshmillet.

(B) Other marsh plants. (Scientific name -- common name.)

- (i) *Agalinis heterophylla* (Nutt.) Small -- prairie Agalinis.

- (ii) *A. maritima* Raf. var. *grandiflora* (Benth.) Shinnery -- seaside gerardia.
- (iii) *Amaranthus spinosus* L. -- spiny amaranth.
- (iv) *Avicennia germinans* (L.) L. -- black mangrove.
- (v) *Batis maritima* L. -- saltwort.
- (vi) *Borrchia frutescens* (L.) DC. -- bushy sea oxeye.
- (vii) *Cakile fusiformis* Greene -- sea rocket.
- (viii) *C. geniculata* (Robins.) Millsp. -- sea rocket.
- (ix) *Heliotropium curassavicum* L. -- salt heliotrope.
- (x) *Iva frutescens* L. var. *frutescens* -- bigleaf sumpweed.
- (xi) *I. frutescens* L. var. *oraria* (Bartlett) Fern. & Grisc. -- bigleaf sumpweed.
- (xii) *I. angustifolia* DC. -- sumpweed.
- (xiii) *Limonium Nashii* Small var. *Nashii* -- sea lavender.
- (xiv) *L. Nashii* Small var. *angustatum* (Grah) Ahles -- sea lavender.
- (xv) *Lycium carolinianum* (Moc. & Sesse) C.L. Hitchc. -- Carolina wolfberry.
- (xvi) *Machaeranthera phyllocephala* (DC.) Shinnery -- camphor daisy.
- (xvii) *Philoxerus vermicularis* (L.) R. BR. -- silverhead.
- (xviii) *Salicornia Bigelovii* Torr. -- glasswort.
- (xix) *S. virginica* L. -- Virginia glasswort.
- (xx) *Samolus ebracteatus* H.B.K. -- water pipemel.
- (xxi) *Sesuvium erectum* Correll -- sea purslane.
- (xxii) *S. maritimum* (Walt.) B.S.P. -- coast sesuvium.
- (xxiii) *S. Portulacastrum* L. -- sea purslane.
- (xxiv) *S. trianthemoides* Correll -- sea purslane.
- (xxv) *Solidago sempervirens* L. var. *mexicana* (L.) Fern. -- seaside goldenrod.
- (xxvi) *Suaeda conferta* (Small) I.M. Johnst. -- seablite.
- (xxvii) *S. linearis* (Ell.) Moq. -- annual seepweed.
- (xxviii) *Typha angustifolia* L. -- narrow-leaved cattail.
- (xxix) *T. dominicensis* Pers. -- tule.

(4) Mean annual low spring tide -- The long-time (18.6 years) average of the lowest spring tide occurring within a year for a given area. Spring tides occur for several days every 14.3 days when the low waters are much lower than usual due to the position of the earth, sun, and moon.

(5) Other areas of high biologic productivity -- Areas in coastal wetlands that contain seawater and are adjacent to or within marshes.

(6) Seaward -- The direction away from the shore and toward the body of water bounded by such shore.

(7) Seawater -- Any water containing a concentration of one-twentieth of 1.0% or more by weight of total dissolved inorganic salts derived from the marine waters of the Gulf of Mexico. Seawater may be present either as freestanding water on the surface of the soil, as ground moisture absorbed by the soil, or as both.

Source: The provisions of this § 15.51 adopted to be effective March 22, 1979, 4 TexReg 785.

§ 15.52. Criteria for Certification; Assignment of Priorities for Acquisition; Revocation of Certification

In selecting and certifying those coastal wetlands most essential to the public interest, assigning priorities for acquisition of such wetlands, and determining whether to revoke such a certification, the commissioner will consider the following criteria:

(1) Coastal wetlands. The commissioner may consider whether such lands are coastal wetlands within the definition, intent, and purpose of the Coastal Wetlands Acquisition Act, Texas Civil Statutes Article 5415e-3, as elaborated by the definition of coastal wetlands contained in § 15.51 of this title (relating to Policy; Scope of Rules, Definitions).

(2) Title. The commissioner will consider whether the state owns such coastal wetland or claims title to them, which title can be validated by bringing an appropriate action therefor in a court of law.

(3) Characteristics of the coastal wetland. The commissioner will consider whether the biological, geological, or physical characteristics of such coastal wetlands, including the interrelationship of such coastal wetlands with other coastal wetlands, combine to make the preservation of such coastal wetlands essential to the public interest. In making this determination, the commissioner will be concerned with the effect of these factors on the ability of such coastal wetlands to perform functions beneficial to the public. Since scientific understanding of the operation and functions of the coastal wetlands of the Texas coast is continually evolving, the criteria for assessment of the value of coastal wetlands will evolve as the state of scientific knowledge improves. The criteria considered may include the ability of such coastal wetlands to function in:

- (A) production of plant and animal biomass;
- (B) provision for wildlife habitat and/or nursery grounds;
- (C) protection of endangered or important species;
- (D) temporary storage of flood and storm waters;
- (E) erosion prevention;
- (F) water quality enhancement;

(G) entrapment of sediments;

(H) storage and supply of inorganic nutrients and organic detritus;

(I) aesthetics and recreation;

(J) potential for aquaculture; and

(K) protection of other, interrelated coastal wetlands that would be detrimentally affected if those with which they are interrelated were altered, damaged, or destroyed.

(4) Danger. The commissioner will consider the degree to which such coastal wetlands are in danger of being altered, damaged, or destroyed, and the imminence of such danger. Those coastal wetlands which are both essential to the public interest and subject to alteration, damage, or destruction that will impair their ability to perform functions beneficial to the public will generally be considered a higher priority for state acquisition than those which are subject to less danger. Although receipt of an application under section 10 of the Rivers and Harbors Act of 1899, United States Code 1970, Title 33, section 403 or section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 United States Code § 1344, for any Texas coastal wetland will be considered prima facie evidence of imminent danger to that wetland, the imminence of danger to a coastal wetland is not contingent upon receipt of such applications. Many activities, if properly designed and carried out, may be performed in coastal wetland areas without posing a substantial danger to the wetland. In assessing the imminence of threat to a wetland, the commissioner may consider any of the following:

(A) Chemical and physical factors:

(i) changes in water quality, especially pollutant or toxicant load, temperature, transparency, turbidity, dissolved oxygen concentration, and salinity;

(ii) changes in substrate or soil condition, particularly in relation to topography of the area, as well as fertility and structure of the soils;

(iii) changes in quantity and movement of inorganic nutrients and organic matter (particularly detritus) within, into, and out of the coastal wetland; and

(iv) changes in hydrology, including both the amount, spatial and temporal pattern of water movement.

(B) Biotic factors:

(i) changes in biological oxygen demand;

(ii) changes in productivity of living plants and animals, both within the coastal wetland and in associated natural systems; and

(iii) changes in the composition, biomass, and diversity of plant and animal life within the coastal wetland and in associated natural systems.

(C) Criteria for decision. When evaluating the impacts of proposed activities on coastal wetlands, the commissioner may consider the criteria for decision set forth in § 155.3(g) of this title (relating to Easements).

(5) Cost. The commissioner will consider the cost of acquiring particular coastal wetlands relative to the benefit provided the public by such acquisition.

Source: The provisions of this § 15.52 adopted to be effective March 22, 1979, 4 TexReg 785.

§ 15.53. Certification Procedure

(a) General procedure. The commissioner will from time to time as appropriate, certify in writing to the Texas Parks and Wildlife Department that specified coastal wetlands are essential to the public interest, and he will indicate to the Texas Parks and Wildlife Department priorities for acquisition, if any, for such certified coastal wetlands. To the extent possible and appropriate, the commissioner will certify such wetlands sufficiently far in advance of the next succeeding legislative session to enable the Texas Parks and Wildlife Department to seek a legislative appropriation, if necessary for the acquisition of such certified coastal wetlands.

(b) Nominations. The commissioner will accept and consider written nominations of coastal wetlands for certification. Written justification accompanying such nominations, adequate to support certification pursuant to these sections, is encouraged.

(c) County commissioners court approval. The commissioner will forward a copy of any such certification to the county judge of every county in which any part of the wetlands so certified is located, and will request the recommendation of the commissioners of said county therein.

Source: The provisions of this § 15.53 adopted to be effective March 22, 1979, 4 TexReg 785.

§ 15.54. Revocation of Certification by Commissioner

The commissioner may, from time to time, revoke a certification promulgated pursuant to these rules if he determines, in accordance with the criteria specified in § 15.52 of this title (relating to Criteria for Certification; Assignment of Priorities for Acquisition; Revocation of Certification), that it is in the public interest to do so. The certification will be revoked by sending to the Texas Parks and Wildlife Department written notice of the coastal wetland area, or portion thereof, as to which certification is revoked. Notice of such revocation will also be sent to the appropriate county commissioners court.

Source: The provisions of this § 15.54 adopted to be effective March 22, 1979, 4 TexReg 785.

**APPENDIX XII
DUNE PROTECTION ACT, V.T.C.A., NATURAL RESOURCES CODE § 61.001 ET SEQ.**

(NOTE: This appendix reproduces a copy of Chapter 61, Texas Natural Resources Code, as effective on September 1, 2001. It is provided for reference only. Any future amendments by the Texas Legislature that are inconsistent with any elements of the City of Corpus Christi Dune Protection and Beach Access Regulations supersede these regulations. Revised versions of Chapter 61 may be substituted without further action by the City Council.)

CHAPTER 61. USE AND MAINTENANCE OF PUBLIC BEACHES

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Definitions

In this chapter:

- (1) "Commissioner" means the Commissioner of the General Land Office.
- (2) "Construction" means causing or carrying out any building, bulkheading, filling, clearing, excavation, or any substantial improvement to land or the size of any structure.
- (3) "Department" means the Parks and Wildlife Department.
- (4) "Land office" means the General Land Office.
- (5) "Line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland.
- (6) "Littoral owner" means the owner of land adjacent to the shore and includes a lessee, licensee, or anyone acting under the littoral owner's authority.
- (7) "Local government" means a municipality, county, or any other political subdivision of the state.
- (8) "Public beach" means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 4, eff. June 7, 1991.

SUBCHAPTER B. ACCESS TO PUBLIC BEACHES

§ 61.011. Policy and Rules

(a) It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous

right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(b) The legislature recognizes that, in order to provide and maintain public facilities and public services to enhance access to and safe and healthy use of the public beaches by the public, adequate funds are required to provide public facilities and public services. Any local government responsible for the regulation, maintenance, and use of such beaches may charge reasonable fees pursuant to its authority to cover the cost of discharging its responsibilities with respect to such beaches, provided such fees do not exceed the cost of such public facilities and services, and do not unfairly limit public access to and use of such beaches.

(c) The attorney general shall strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement. The attorney general shall develop and publicize an enforcement policy to prevent and remove any encroachments and interferences on the public beach. The land office may assist the attorney general in enforcing this subchapter.

(d) The commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only:

(1) acquisition by local governments or other appropriate entities or public dedication of access ways sufficient to provide adequate public ingress and egress to and from the beach within the area described in Subdivision (6) of this subsection;

(2) protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance;

(3) local government prohibitions of vehicular traffic on public beaches, provision of off-beach parking, and other minimum measures needed to mitigate for any adverse effect on public access and dune areas;

(4) imposition of beach access, user, or parking fees and reasonable exercises of the police power by local governments with respect to public beaches;

(5) contents and certification of beach access and use plans and standards for local government review of construction on land adjacent to and landward of public beaches; and

(6) construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches.

(e) The commissioner may not adopt a proposed rule or any provision of a proposed rule, including any certification under this subchapter, if the attorney general has certified in writing that the rule or provision would allow encroachments on public beaches or obstructions, barriers, or restraints to public access and use of public beaches contrary to the policies declared and affirmed in this section.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 5, eff. June 7, 1991.

§ 61.012. Definition

In this subchapter, "beach" means state-owned beaches to which the public has the right of ingress and egress bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has

acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.013. Prohibition

(a) It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach or to use any public beach or any larger area abutting on or contiguous to a public beach if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) Unless properly certified as consistent with this subchapter, no person may cause, engage in, or allow construction landward of and adjacent to a public beach within the area described in Section 61.011(d)(6) of this code in a manner that will or is likely to affect adversely public access to and use of the public beach. The prohibition in this subsection takes effect only on adoption of final rules by the commissioner under Section 61.011 of this code.

(c) For purposes of this section, "public beach" shall mean any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4818, ch. 850, § 1, eff. June 19, 1983; Acts 1991, 72nd Leg., ch. 295, § 6, eff. June 7, 1991.

§ 61.014. Denial of Access by Posting

(a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) No person may display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or cause to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to the public beach as guaranteed by this subchapter.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, § 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 295, § 7, eff. June 7, 1991.

§ 61.015. Beach Access and Use Plans

(a) Each local government with ordinance authority over construction adjacent to public beaches and each county that contains any area of public beach within its boundaries shall adopt a plan for

preserving and enhancing access to and use of public beaches within the jurisdiction of the local government. Such beach access and use plans must be consistent with the policies in Section 61.011 of this code and the rules promulgated thereunder and Chapter 63 of this code and shall to the greatest extent practicable incorporate the local government's ordinary land use planning procedures. A municipality may adopt and apply any appropriate ordinances within its extraterritorial jurisdiction to effect the purposes of this subchapter.

(b) Local governments shall submit proposed beach access and use plans to the commissioner for certification as to compliance with such policies and rules and to the attorney general for review and comment. The commissioner shall act on a local government's proposed beach access and use plan within 60 days of submission by either approving the plan or denying certification. In the event of denial, the commissioner shall send the proposed plan back to the originating local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan. The commissioner's certification of local government plans shall be by adoption into the rules under Section 61.011 of this code.

(c) A littoral owner proposing construction adjacent to and landward of a public beach in the area described in Section 61.011(d)(6) of this code shall submit a development plan to the appropriate local government. The local government shall forward the development plan to the commissioner and the attorney general no less than 10 working days prior to acting on the development plan. The commissioner or the attorney general may submit comments on the proposed construction to the local government.

(d) The local government shall review the proposed development plan and the commissioner's and attorney general's comments and other information the local government may consider useful to determine consistency with the local government's beach access and use plan.

(e) If the proposed construction is required to be permitted by the local government under Chapter 63 of this code, the local government shall consider the issuance of the permit concurrently with the certification under this section, unless otherwise provided by rules promulgated under Section 61.011 of this code.

(f) The local government, after considering all appropriate information, shall make the determination and shall certify that the construction as proposed either is consistent with the local government's beach access and use plan or is inconsistent with the local government's beach access and use plan, in which case the local government must specify how the construction is inconsistent with the plan.

(g) The local government may include in the certification any reasonable terms and conditions it finds necessary to assure adequate public beach access and use rights consistent with Chapter 63 of this code.

(h) The requirements of this section take effect only on adoption of final rules by the commissioner under Section 61.011 of this code.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 8, eff. June 7, 1991.

§ 61.016. Boundaries for Areas With No Marked Vegetation Line

(a) To determine the "line of vegetation" in any area of public beach in which there is no clearly marked line of vegetation (for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be to the nearest clearly marked line of vegetation on each side of the unmarked area.

(b) The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side.

(c) If the elevation of the two points on each side of the area are not the same, the extension defining the "line of vegetation" shall be the average elevation as between the two points, but if there is no clearly marked line of vegetation, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 9, eff. June 7, 1991.

§ 61.017. Line of Vegetation Unaffected by Certain Conditions

(a) The "line of vegetation" is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them and by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area.

(b) If the changes listed in Subsection (a) of this section are made and the vegetation line is obliterated or is created artificially, the line of vegetation shall be determined in the same manner as in those areas covered by Section 61.016 of this code, but if there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to public easement until a final court adjudication establishes the line in another place.

(c)(1) In an area of public beach where a seawall structure constructed in its entirety as a single structure of one design before 1970 and continuously maintained with a height of not less than 11 feet above mean low tide interrupts the natural line of vegetation for a distance not less than 4,000 feet nor greater than 4,500 feet, the line of vegetation is along the seaward side of the seawall for the distance marked by the seawall, provided that prior to September 2, 1997:

(A) a perpetual easement has been granted in favor of the public affording pedestrian, noncommercial use along and over the entire length of the seawall and adjacent sidewalk by the general public;

(B) fee title to the surface estate to an area for public parking and other public uses adjacent to the seawall has been conveyed to and accepted by a public entity, which area contains sufficient acreage to provide at least one parking space for each 15 linear feet of the seawall, is located within the center one-third of the length of the seawall or not farther than 300 feet from that center one-third, and has frontage on the seawall for at least 300 linear feet; and

(C) permanent roadway easements exist within 1,000 feet of each end of the seawall affording vehicular access from the nearest public road to the beach.

(2) A line of vegetation established as described in this subsection shall be the landward boundary of the public beach and of the public easement for all purposes. Fee title to all submerged land as described in this code shall remain in the State of Texas.

(d)(1) In an area of public beach where a combination stone revetment and concrete sheet pile wall constructed in its entirety as a single structure before 1999 and continuously maintained with a height of not less than five feet above mean low tide interrupts the natural line of vegetation for a distance not less than 7.5 miles and not more than 8.5 miles, the line of vegetation is along the landward boundary of that strip of land conveyed to the United States of America for the construction of the stone revetment and concrete sheet pile wall and for the distance marked by the stone revetment and concrete sheet pile wall.

(2) A line of vegetation established as described by this subsection is the landward boundary of the public beach and of the public easement for all purposes. Fee title to all submerged land as described in this code shall remain in the State of Texas.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1995, 74th Leg., ch. 593, § 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 331, § 1, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., p. 5214, eff. Sept. 1, 2001.

§ 61.018. Enforcement

(a) The attorney general, individually or at the request of the commissioner, or any county attorney, district attorney, or criminal district attorney shall file in a district court of Travis County, or in the county in which the property is located, a suit to obtain either a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove or prevent any improvement, maintenance, obstruction, barrier, or other encroachment on a public beach, or to prohibit any unlawful restraint on the public's right of access to and use of a public beach or other activity that violates this chapter.

(b) In the same suit, the attorney general, the commissioner, county attorney, district attorney, or criminal district attorney may recover penalties and the costs of removing any improvement, obstruction, barrier, or other encroachment if it is removed by public authorities pursuant to an order of the court.

(c) A person who violates this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000. Each day the violation occurs or continues is a separate violation.

(d) The attorney general, either individually or at the request of the commissioner or any county attorney, may bring a suit for a declaratory judgment to try any issue affecting the public's right of access to or use of the public beach.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 10, eff. June 7, 1991.

§ 61.019. Declaratory Judgment Suits

(a) A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(b) Service of citation on the state shall be made by serving the citation on the attorney general.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.020. Prima Facie Evidence

In a suit brought or defended under this subchapter or whose determination is affected by this subchapter, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and

(2) there is imposed on the area a common law right or easement in favor of the public for ingress and egress to the sea.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 11, eff. June 7, 1991.

§ 61.021. Area Not Covered by Subchapter

(a) None of the provisions of this subchapter apply to beaches on islands or peninsulas that are not accessible by a public road or ferry facility for as long as the condition exists.

(b) A local government or local official may not adopt, apply, or enforce a beach access and use plan or any other provision of this subchapter within a state or national park area, wildlife refuge, or other designated state or national natural area.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 14, eff. June 7, 1991.

§ 61.0211. State or National Park Covered by Subchapter

This subchapter applies to any island or peninsula that is a state or national park or wildlife management area regardless of whether the island or peninsula is accessible by public road or ferry facility.

Added by Acts 1991, 72nd Leg., ch. 295, § 12, eff. June 7, 1991.

§ 61.022. Government Agencies and Subdivisions

(a) The provisions of this subchapter do not prevent any agency, department, institution, subdivision, or instrumentality of this state or of the federal government from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty, or other structure as an aid to navigation, protection of the shore, fishing, safety, or other lawful purpose authorized by the constitution or laws of this state or the United States.

(b) No local government may regulate vehicular traffic so as to prohibit vehicles from an area of public beach or impose or increase public beach access, parking, or use fees in any manner inconsistent with the policies of Section 61.011 of this code or the rules promulgated thereunder.

(c) A local government proposing to adopt or amend such vehicular traffic regulations, except those for public safety, or fees shall submit a plan detailing the proposed action to the attorney general and the commissioner for review. The commissioner shall certify whether the proposed action is consistent or inconsistent with such policies and rules. Certifications of consistency shall be by adoption into the rules promulgated under Section 61.011 of this code.

(d) Subsections (b) and (c) of this section take effect only on adoption of final rules by the commissioner under Section 61.011 of this code. Subsections (b) and (c) of this section do not apply to any existing local government traffic regulation or beach access, parking, or use fee adopted or enacted before the effective date of Subsections (b) and (c) of this section, and the former law is continued in effect for the purpose of the existing regulations and fees, until the regulations or fees are amended or changed in whole or in part.

(e) State-owned or public land not specifically exempted by this chapter shall be subject to the same requirements of this chapter as land owned by private littoral owners except as provided by Sections 31.161 through 31.167 of this code.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 13, eff. June 7, 1991.

§ 61.023. Effect on Land Titles and Property Adjacent to and on Beaches

The provisions of this subchapter shall not be construed as affecting in any way the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicle traffic by public road or by beach.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.024. Effect of Subchapter on Definition of Public Beach

None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.025. Disclosure to Purchaser of Property

(a) A person who sells or conveys an interest, other than a mineral, leasehold, or security interest, in real property located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel must include in any executory contract for conveyance the following statement:

The real property described in this contract is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel. If the property is in close proximity to a beach fronting the Gulf of Mexico, the purchaser is hereby advised that the public has acquired a right of use or easement to or over the area of any public beach by prescription, dedication, or presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

The extreme seaward boundary of natural vegetation that spreads continuously inland customarily marks the landward boundary of the public easement. If there is no clearly marked natural vegetation line, the landward boundary of the easement is as provided by Sections 61.016 and 61.017, Natural Resources Code.

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the landward boundary of the easement. **STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF NATURAL PROCESSES SUCH AS SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.**

The purchaser is hereby notified that the purchaser should:

(1) determine the rate of shoreline erosion in the vicinity of the real property; and

(2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

(b) If there is no executory contract for conveyance, the statement must be delivered to, and receipt thereof acknowledged by, the purchaser prior to closing the transaction.

(c) Failure to include the statement in an executory contract for conveyance shall be grounds for the purchaser to terminate such contract, and upon termination any earnest money shall be returned to the party making the deposit.

(d) Failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, shall constitute a deceptive act under Section 17.46, Business & Commerce Code.

(e) This section, or the failure of a person to give or receive the notice required by this section, does not diminish or modify the beach access and use rights of the public acquired through statute or under common law.

Added by Acts 1985, 69th Leg., ch. 350, § 1, eff. Aug. 26, 1985. Amended by Acts 1987, 70th Leg., ch. 75, § 1, eff. Aug. 31, 1987; Acts 1999, 76th Leg., ch. 508, § 10, eff. Sept. 1, 1999.

§ 61.026. Beach Access Public Awareness and Education

(a) The land office in conjunction with the Texas Department of Transportation shall design and produce a uniform bilingual beach access sign to be used by local governments to designate access ways to and from public beaches.

(b) The land office or the Attorney General's Office may develop and distribute public information about the requirements of this chapter, the importance of natural beach and dune systems, and the necessity for preserving them. Such information may include public service announcements made under the direction of the land office.

(c) The Texas A&M University Sea Grant Program shall make available to public schools materials for natural science classes which explain the importance of natural beach and dune systems and the necessity of preserving them.

Added by Acts 1991, 72nd Leg., ch. 295, § 15, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 165, § 22(54), eff. Sept. 1, 1995.

SUBCHAPTER C. MAINTENANCE OF THE PUBLIC BEACHES

§ 61.061. Purpose

It is the purpose of this subchapter to allocate responsibility for cleaning the beaches of this state and to preserve and protect local initiative in the maintenance and administration of beaches.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.062. Public Policy

It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use. This creates a responsibility for the state, in its position as trustee for the public to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.063. Definitions

In this subchapter:

(1) "Clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected and includes the employment of lifeguards, beach patrols, and litter patrols.

(2) "Land office" means the General Land Office.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 1, eff. Sept. 1, 1991.

§ 61.064. Application of Subchapter

This subchapter applies to incorporated cities, towns, and villages that are located or border on the Gulf of Mexico and to all counties that are located or border on the Gulf of Mexico if the city, town, or village or county that makes application for funds under this subchapter has within its boundaries public beaches.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1979, 66th Leg., p. 366, ch. 163, § 1, eff. Aug. 27, 1979.

§ 61.065. Duty of Cities

(a) It is the duty and responsibility of the governing body of any incorporated city, town, or village located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches within the corporate boundaries.

(b) The duty to clean and maintain the condition of public beaches does not extend to any public beach within the corporate boundaries that is owned by the county in which it is located.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.066. Duty of County

It is the duty and responsibility of the commissioners court of any county located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches located inside the county but outside the boundaries of any incorporated city located or bordering on the Gulf of Mexico and all public beaches owned by the county and located inside the boundaries of an incorporated city, town, or village.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.067. Duty of State

(a) It is the duty and responsibility of the state to clean and maintain the condition of all public beaches located within state parks designated by the department.

(b) The land office shall consult with the department in adopting rules and procedures for cleaning beaches in state parks and areas adjacent to state parks.

(c) The land office shall expand the Adopt-A-Beach program to the greatest extent feasible to enhance the performance of its duties under this subchapter.

(d) The land office may use any cash, gifts, grants, donations, or in-kind contributions that it receives from a public or private entity through the administration of the Adopt-A-Beach program to assist a municipality, a county, or the department in performing any duty imposed on the city, county, or department by this subchapter.

(e) The land office may adopt rules reasonably necessary to perform its duties under this subchapter.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 7.01, eff. Sept. 1, 1991.

§ 61.068. Application Requirement

A city or county that seeks state funds under this subchapter to clean the public beaches must submit an application to the land office.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 3, eff. Sept. 1, 1991.

§ 61.069. Contents of Application

To be approved, the application must provide:

(1) for the administration or supervision of the public beaches of the city or county by a beach park board of trustees, county parks board, commissioners court, or other administrative body that the legislature may from time to time authorize, and provide that the board or agency will have adequate authority to administer an effective program of keeping clean the public beaches within its jurisdiction;

(2) for the receipt by the city or county treasurer or other officer exercising similar functions, if there is no city or county treasurer, of all funds paid to the city or county under this subchapter and provide for the proper safeguarding of the funds by the officer, provide that the funds will be spent solely for the purposes for which they are paid, and provide for the repayment by the city or county of any funds lost or diverted from the purposes for which paid;

(3) that the governing body of the city or county will make reports as to amounts and categories of expenditures that the land office may from time to time require;

(4) that entrance to all public beaches under the jurisdiction of the governing body of the city or county is free of charge; and

(5) for the establishment, maintenance, and administration of at least one beach park by the city or county which meets the minimum requirements of size and facilities available to the public as determined by the land office.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 4, eff. Sept. 1, 1991.

§ 61.070. Parking and Use Fees

Subsection (4). Section 61.069 of this code shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.071. Compliance Before Approval

The land office shall not approve any application that fails to meet the conditions specified in Section 61.069 of this code.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 5, eff. Sept. 1, 1991.

§ 61.072. State Funds

The land office shall pay to each city or county that has an application approved under Sections 61.068 through 61.070 of this code from appropriations that are made available the state share for cleaning and maintenance of public beaches.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 6, eff. Sept. 1, 1991.

§ 61.073. Conditions for Payments

No payments shall be made under this subchapter until the land office finds that:

(1) there will be available in the budget of the city or county not less than \$20,000 to clean and maintain public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought; and

(2) there will be available in the budget of the city or county for the purpose of cleaning and maintaining the public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought an amount not less than the total amount spent by the city or county to clean the beaches in the state fiscal year ending August 31, 1969.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 7, eff. Sept. 1, 1991.

§ 61.074. Submission of Proposed Expenditures

A city or county that seeks reimbursement under the provisions of this subchapter shall submit to the land office proposed expenditures for cleaning and maintaining the public beaches.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 8, eff. Sept. 1, 1991.

§ 61.075. Fair Distribution of Funds

The land office shall distribute the state share to the cities and counties in a fair and impartial manner and under procedures and accounting methods to be adopted by the land office.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 9, eff. Sept. 1, 1991.

§ 61.076. Limitation on State Share

(a) No city or county may receive as its state share an amount that is greater than two-thirds of the amount the city or county spends for the purpose of cleaning and maintaining public beaches within its jurisdiction during the state fiscal year for which reimbursement is sought.

(b) The land office shall allocate the state share to eligible cities and counties taking into account the frequency with which public beaches within the jurisdiction of the cities and counties are used.

(c) For purposes of determining the maximum amount of money a municipality may receive under Subsection (a), money received under Section 156.2511, Tax Code:

(1) is not included in determining the amount the municipality spends to clean and maintain public beaches during the state fiscal year for which reimbursement is sought; and

(2) is included as part of the state share.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 10, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 454, § 9, eff. Sept. 1, 1995.

§ 61.077. Funds for Administrative Purposes and Emergencies

(a) The land office may use for administrative purposes not more than 10 percent of the appropriated funds for any state fiscal year.

(b) The land office may withhold a portion of the appropriated funds to maintain a reserve emergency fund to be used for cleaning beaches in the event of a catastrophe, such as an oil spill, an influx of seaweed, or other major interference with public recreational use of public beaches.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 11, eff. Sept. 1, 1991.

§ 61.078. Authority to Spend County Funds

The commissioners court of any county located or bordering on the Gulf of Mexico may spend from any available fund the amount it considers necessary to carry out the responsibilities provided in this subchapter.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.079. Notice of Ineligibility

After reasonable notice and opportunity for a hearing to a city or county that is receiving funds under the provisions of this subchapter, if the land office finds that the city or county no longer complies with the requirements of this subchapter, it shall notify the city or county that further payments will not be made until the land office is satisfied that there is no longer any failure to comply.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 12, eff. Sept. 1, 1991.

§ 61.080. Public Beaches in Ineligible City

(a) The governing body of any incorporated city located or bordering on the Gulf of Mexico that is not entitled to receive funds under this subchapter may contract with the commissioners court of the county in which the city is located to allow the county to clean the beaches within the corporate limits of the city.

(b) The city may apply to the land office for rebates of 40 percent of the contract price, and the city is not required to meet the terms and conditions imposed in Section 61.069 of this code unless otherwise provided by law.

(c) The land office shall make the rebates at the close of each fiscal year on a showing by the city that entrance to all public beaches under the jurisdiction of the city is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 13, eff. Sept. 1, 1991.

§ 61.081. Public Beaches in Ineligible County

(a) The commissioners court of a county that is not entitled to receive funds under this subchapter may contract with the commissioners court of any adjacent county that is entitled to receive funds under this subchapter to allow the adjacent county to clean the public beaches of the ineligible county.

(b) The contracting county that is not entitled to receive funds under this subchapter may apply to the land office for rebates of 40 percent of the contract price, but the ineligible county is not required to meet the terms and conditions imposed in Section 61.069 of this code.

(c) The land office shall make the rebates at the close of each state fiscal year on a showing by the ineligible county that entrance to all public beaches under the jurisdiction of the county is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 114, § 14, eff. Sept. 1, 1991.

§ 61.082. Authority of Local Governments

(a) The provisions of this subchapter shall not be construed to interfere with local initiative and responsibility in the cleaning, maintenance, and supervision of public beaches.

(b) The administration of public beaches, the selection of personnel, and the determination of the best uses of the funds insofar as is consistent with the purposes of this subchapter are reserved to the several political subdivisions receiving funds under this subchapter.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.083. Exemptions From Subchapter

None of the provisions of this subchapter apply to any beach area that does not border on the Gulf of Mexico or to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition exists.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

SUBCHAPTER D. COUNTY REGULATION OF PUBLIC USE OF BEACHES

§ 61.121. Definition

In this subchapter, "beach" shall have the same definition as provided in Section 61.012 of this code.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.122. County Regulatory Authority

(a) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate motor vehicle traffic on any beach within the boundaries of the county, including prohibiting motor vehicle traffic on any natural or man-made sand dune or other form of shoreline protection, and may prohibit the littering of the beach and may define the term "littering."

(b) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate the possession of animals on the beach within its boundaries, including but not limited to prohibiting animals to run at large on said beach.

(c) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate swimming in passes leading to and from the Gulf of Mexico, located within its boundaries, including but not limited to prohibiting swimming in said passes and posting signs notifying persons of such regulation or prohibition.

(d) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may prohibit the use and possession of all glass containers and products on a beach in the unincorporated area of the county. The commissioners court shall not prohibit any one or several glass products to the exclusion of any others.

(e) Regulation under Subsection (a) of this section that prohibits vehicles from an area of public beach is subject to Section 61.022 of this code.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1979, 66th Leg., p. 775, ch. 341, § 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 295, § 16, eff. June 7, 1991.

Amended by Acts 2001, 77th Leg., p. 2955, eff. immediately.

Amended by Acts 2001, 77th Leg., p. 2595, eff. Sept. 1, 2001.

§ 61.123. Notice of Hearing

(a) Before the commissioners court adopts an order under Section 61.122 of this code, it must publish notice of the intention to adopt the order in at least one newspaper with general circulation in the county.

(b) The notice shall state the time and place of the public hearing on the proposed order and that interested persons may obtain copies of the proposed order from the commissioners court.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.124. Copies of Order

The commissioners court shall make copies of the proposed order available to interested persons.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.125. Public Hearing

(a) Not less than one month but more than two weeks after notice is published, the commissioners court shall conduct a hearing at the time and place stated in the notice.

(b) At the hearing, the commissioners shall allow all interested persons to express their views on the proposed order.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.126. Traffic Regulations

If the order includes a traffic regulation, the order shall provide for signs that are designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.127. Criminal Penalties

In any order adopted under this subchapter, the commissioners court may adopt the following criminal penalties for violation of the order:

(1) for a first conviction, a fine of not less than \$50; nor more than \$100;

(2) for a second conviction, a fine of not less than \$100 nor more than \$200;

(3) for any subsequent convictions after the second conviction, a fine of not less than \$200 nor more than \$1,000 or confinement in the county jail for not more than 60 days, or both.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1985, 69th Leg., ch. 585, § 3, eff. Sept. 1, 1985.

§ 61.128. Order Prevails Over State Law

If an order adopted under this subchapter conflicts with the general law of the state, the order shall control over the state law, and in cases of violation, prosecution may be maintained only under the order.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.129. Ordinance Prevails Over Order and State Law

(a) Except as provided in Section 61.022 of this code, this subchapter does not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any adjacent body of water to regulate motor vehicle traffic and prohibit littering on any beach within its corporate limits.

(b) If these regulatory ordinances are adopted by a city, town, or village and the ordinance conflicts with the general law of the state or with an order of the commissioners court adopted under this subchapter, and the ordinance is consistent with policies and rules under Section 61.011 of this code, the ordinance shall control over the state law and the order, and in cases of violation, prosecution may be maintained only under the ordinance.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 17, eff. June 7, 1991.

§ 61.130. Rights of the Public

The right of the public to use the public beaches defined in this subchapter is inviolate and is subject only to orders adopted by a commissioners court under this subchapter and to ordinances enacted by an incorporated city, town, or village.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.131. Effect of Subchapter on Definition of Public Beach

None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

SUBCHAPTER E. LICENSES FOR BUSINESS ESTABLISHMENTS

§ 61.161. Public Policy

It is the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal

corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.162. Findings

(a) The legislature finds that the operation and maintenance of business establishments at fixed or permanent locations on the public beaches of this state bordering on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and unrestricted rights of ingress and egress of the public, both individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) The legislature finds that a reasonable number of mobile business establishments which traverse the public beach while doing business are beneficial to the public interest and do not interfere with the free and unrestricted rights of ingress and egress of the public as provided in this subchapter.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.163. Definition

In this subchapter, "business establishment" means any structure or vehicle where any commodity including memberships in any private club or other similar organization is offered to the public for sale or lease but does not include any structure or vehicle where only services are offered to the public for sale.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.164. Application

A person who desires to operate a mobile business establishment on a public beach located outside the municipal limits of an incorporated city shall submit a written application to the county of jurisdiction.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1995, 74th Leg., ch. 399, § 1, eff. Aug. 28, 1995.

§ 61.165. Contents of Application

The application shall include:

- (1) the name and street address of the applicant;
- (2) the commodity to be sold or leased; and
- (3) the limits of the territory within which the mobile business establishment will operate.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.166. Filing Fee

(a) The application shall be accompanied by a filing fee in an amount determined by the county.

(b) The filing fee may be used by the county to pay the expenses of carrying out the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1985, 69th Leg., ch. 267, art. 2, § 75, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, § 63, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 399, § 2, eff. Aug. 28, 1995.

§ 61.167. Separate Applications

Any applicant who plans to operate more than one mobile business establishment must file a separate application accompanied by a separate filing fee for each mobile business establishment that he seeks to have licensed.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.168. Granting License

(a) On finding that the issuance of a license is consistent with recreational needs and the public welfare, and that the mobile business establishment would not create a traffic or safety hazard, and on compliance with this subchapter by the applicant, the county shall grant the license.

(b) The license shall be valid for a term selected by the county, not to exceed two years from the day it is issued.

(c) If the license is not granted, the county shall return the filing fee to the applicant.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1985, 69th Leg., ch. 342, § 1, eff. June 10, 1985; Acts 1995, 74th Leg., ch. 399, § 3, eff. Aug. 28, 1995.

§ 61.169. Applications Not to be Granted

The county shall not grant an application:

(1) for a business establishment located at a fixed or permanent location on a public beach; or

(2) that does not otherwise meet the terms and provisions of this subchapter.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1995, 74th Leg., ch. 399, § 4, eff. Aug. 28, 1995.

§ 61.170. License Prohibition Against Glass Containers

(a) Each license granted under this subchapter authorizing the sale of commodities on a public beach shall include a prohibition against the sale of any commodity in a glass container.

(b) Any person selling a commodity in a glass container on a public beach outside the boundaries of any incorporated city shall have his rights conferred by the license immediately terminated and revoked as provided in Section 61.172 of this code.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.171. Assignment

No license issued under this subchapter may be assigned.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.172. Termination and Revocation of License

(a) The failure or refusal of the licensee to comply with the terms and conditions of a license shall operate as an immediate termination and revocation of all rights conferred in or claimed under the license.

(b) The termination and revocation of the license is not effective until notice is delivered by mail to the address of the licensee listed on the application for the license.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.173. Maximum Territorial Limits

(a) If territorial limitations are applied uniformly to all applicants seeking to operate mobile business establishments in the territory, the county may establish maximum territorial limits over which mobile business establishments may operate.

(b) A license to sell or lease only surfboards and related equipment may not be limited as to the territory over which the mobile business establishment may operate.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1995, 74th Leg., ch. 399, § 5, eff. Aug. 28, 1995.

§ 61.174. Additional Standards

In addition to other standards provided in this subchapter, it is the intention of the legislature that the county exercise the authority delegated to it under this subchapter according to the following considerations:

(1) that the number of mobile business establishments licensed by the county should not constitute a substantial interference with the free and unrestricted rights of ingress and egress of the public provided in this subchapter;

(2) that the number of licenses issued by the county under this subchapter are sufficient to ensure free and unrestricted competition in selling or leasing of commodities to the public; and

(3) that no person should be allowed to operate any mobile business establishment on any public beach in restraint of trade or competition by which the person controls all or substantially all the business establishments on the public beach licensed by the county.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1995, 74th Leg., ch. 399, § 6, eff. Aug. 28, 1995.

§ 61.175. Rules, Procedures, and Conditions

The county may establish additional rules, procedures, and conditions necessary or appropriate to carry out the purposes of this subchapter.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1995, 74th Leg., ch. 399, § 7, eff. Aug. 28, 1995.

§ 61.176. Areas Exempt From Subchapter

This subchapter does not apply to a public beach that is within the boundaries of a state park designated by the department or to a remote beach on any island or peninsula which is not accessible by public road or common carrier ferry facility as long as that condition exists.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.177. Penalty

A person, who for himself or on behalf of or under the direction of another person, operates any business establishment, whether mobile or at a fixed or permanent location, on any public beach outside the boundaries of any incorporated city without first obtaining a license to operate the business establishment from the county shall be fined not less than \$10 nor more than \$200.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1995, 74th Leg., ch. 399, § 8, eff. Aug. 28, 1995.

§ 61.178. Enforcement

At the request of a county, department game wardens will assist with enforcement of the provisions of this Act, or permits issued hereunder, along with any other state or local law enforcement entities with jurisdiction over public beaches.

Added by Acts 1995, 74th Leg., ch. 399, § 9, eff. Aug. 28, 1995.

SUBCHAPTER F. REMOVAL OF SAND, MARL, GRAVEL, AND SHELL

§ 61.211. Findings

The legislature finds that the unregulated excavation, taking, removal, and carrying away of sand, marl, gravel, and shell from islands and peninsulas bordering on the Gulf of Mexico and from the public beaches of the state constitute a substantial interference with public enjoyment of Texas beaches and a hazard to life and property.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.212. Exemptions From Subchapter

(a) The provisions of this subchapter do not apply:

(1) to excavating, taking, removing, or carrying away sand, marl, gravel, or shell made for the purpose of constructing improvements on real property if the improvements are constructed on the property on which the excavating, taking, removing, or carrying away occurs;

(2) to any landowner who desires to shift sand, marl, gravel, or shell from one location to another on land wholly owned by him; or

(3) to any agency of the federal or state government or any county, city, or other political subdivision or any of their agents or officers acting in their official capacities.

(b) Any person who holds a lease that was issued by the state under Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415e, Vernon's Texas Civil Statutes), before it was repealed shall be treated as an owner of the land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes provided in Subsection (a) of this section without obtaining a permit from the commissioners court.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.213. Application

Before a person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a mainland public beach that is located outside the boundaries of an incorporated city, town, or village, he must submit a written application to the commissioners court of the county in which the excavation, taking, removal, or carrying away is to take place.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.214. Contents of Application

The application shall include:

(1) the name of the applicant;

(2) the location and dimensions of the proposed excavation;

(3) the property interest or contractual right that enables the applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and

(4) certification by the county treasurer, or other official exercising similar authority if there is no county treasurer, that the applicant has deposited a filing fee of \$50.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.215. Prerequisites to Issuance of Permit

No permit may be issued by the commissioners court under this subchapter to excavate, take, remove, or carry away sand, marl, gravel, or shell from land owned by the state, public beach, or privately owned land that is subject to this subchapter and that is not located on a public beach, unless the applicant is the owner of the land on which the proposed excavating, taking, removing, or carrying away is to take place or unless the applicant is acting with the knowledge and consent of the owner.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.216. Notice of Applications Received

(a) The commissioners court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand, marl, gravel, or shell.

(b) The notice shall be published once in a newspaper of general circulation in the county.

(c) The notice shall include the name of the applicant and the location and dimensions of the proposed activity.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.217. Public Hearing

(a) The commissioners court shall hold a public hearing if the hearing is requested by any citizen within 10 days after notice is published under Section 61.216 of this code.

(b) The hearing may not be held less than 30 days from the date of the first publication of notice under Section 61.218 of this code.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.218. Notice of Public Hearing

Notice of the public hearing shall be published at least once a week for at least two weeks in a newspaper of general circulation in the county.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.219. Issuance of Permit

(a) On a finding that the proposed excavating, taking, removing, or carrying away would not create hazardous conditions or imperil lives or property by exposing the island or peninsula or public beach to the ravages of storm water, the commissioners court may issue a permit to the applicant, and it shall be valid for six months from the date of its issuance.

(b) The decision to issue a permit shall be made with the advice and counsel of the county engineer in counties in which the commissioners court employs a county engineer.

(c) None of the provisions of this subchapter prohibit a commissioners court from issuing a permit to a person who holds a right-of-way easement granted by the commissioner for a pipeline to cross state land, provided the applicant complies with the provisions of this subchapter relating to the issuance of permits.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.220. Return of Filing Fee

If the commissioners court refuses to issue the permit, the applicant may recover his filing fee from the county treasurer or other official exercising similar authority if there is no county treasurer.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.221. Assignment of Permits

No permit may be assigned without the approval of the commissioners court.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.222. Termination and Revocation of Permit

Failure or refusal of the permittee to comply with the terms and conditions of the permit operates as an immediate termination and revocation of all rights conferred by or claimed under the permit.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.223. Suits for Orders and Injunctions

The attorney general, any county attorney, district attorney, or criminal district attorney of the state shall file in a district court in the county in which the conduct takes place, a suit seeking temporary or permanent court orders or injunctions to prohibit any excavating, taking, removing, or carrying away of any sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state if the land is located outside the boundaries of an incorporated city, town, or village in violation of the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.224. Penalty

A person who for himself or on behalf of or under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state, if the land is located outside the boundaries of any incorporated city, town, or village, in violation of the provisions of this subchapter shall be fined not less than \$10 nor more than \$200. Each day a violation occurs constitutes a separate offense.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.225. Sand, Marl, Gravel, or Shell From Public Beaches Within Incorporated Cities, Towns, or Villages

No incorporated city, town, or village having within its boundaries a public beach may authorize a person to excavate, take, remove, or carry away any sand, marl, gravel, or shell from the public beach except for the construction of a publicly owned and operated recreational facility or for the construction of a shoreline protection structure.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.226. Application of Subchapter to Certain Islands and Peninsulas

The provisions of this subchapter do not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition continues.

Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 61.227. Authority of Parks and Wildlife Department

None of the provisions of this subchapter may be construed to repeal or modify the provisions of Chapter 86, Parks and Wildlife Code, which relate to the powers and duties of the Parks and Wildlife Department over matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value and gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation, nor may this subchapter be construed to create additional or supplemental requirements or procedures to those provided in Chapter 86, Parks and Wildlife Code.

Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

SUBCHAPTER G. PERMITS FOR MASS GATHERINGS

§ 61.251. Definition

In this subchapter, "mass gathering" means a gathering that attracts or is expected to attract more than 200 individuals who will remain at the location of the gathering for more than two continuous hours.

Added by Acts 2001, 77th Leg., p. 5214, eff. immediately.

§ 61.252. Permit Requirements

(a) To protect the public health, safety, and welfare, the commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate mass gatherings of individuals on any beach in the unincorporated area of the county by requiring a person to obtain a permit and pay a permit fee set by the commissioners court before the person may hold a mass gathering.

(b) A commissioners court that requires a permit under this subchapter must adopt procedures governing the application for and issuance of a permit under this subchapter. The commissioners court may require the holder of the permit to take reasonable specified actions to protect the public health, safety, and welfare.

Added by Acts 2001, 77th Leg., p. 5214, eff. immediately.

§ 61.253. Injunction

The county is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an order adopted under this subchapter.

Added by Acts 2001, 77th Leg., p. 5214, eff. immediately.

§ 61.254. Criminal Penalty

A person commits an offense if the person violates an order adopted under this chapter. An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., p. 5214, eff. immediately.

APPENDIX XIII
OPEN BEACHES ACT, V.T.C.A., NATURAL RESOURCES CODE § 63.001 ET SEQ.

(NOTE: This appendix reproduces a copy of Chapter 63, Texas Natural Resources Code, as effective on September 1, 2001. It is provided for reference only. Any future amendments by the Texas Legislature that are inconsistent with any elements of the City of Corpus Christi Dune Protection and Beach Access Regulations supersede these regulations. Revised versions of Chapter 63 may be substituted without further action by the City Council.)

CHAPTER 63. DUNES

SUBCHAPTER A. GENERAL PROVISIONS

§ 63.001. Findings of Fact

The legislature finds and declares:

(1) that the mainland gulf shoreline, barrier islands, and peninsulas of this state contain a significant portion of the state's human, natural, and recreational resources;

(2) that these areas are and historically have been wholly or in part protected from the action of the water of the Gulf of Mexico and storms on the Gulf by a system of vegetated and unvegetated sand dunes that provide a protective barrier for adjacent land and inland water and land against the action of sand, wind, and water;

(3) that certain persons have from time to time modified or destroyed the effectiveness of the protective barriers and caused environmental damage in the process of developing the shoreline for various purposes;

(4) that the operation of recreational vehicles and other activities over these dunes have destroyed the natural vegetation on them;

(5) that these practices constitute serious threats to the safety of adjacent properties, to public highways, to the taxable basis of adjacent property and constitute a real danger to natural resources and to the health, safety, and welfare of persons living, visiting, or sojourning in the area;

(6) that it is necessary to protect these dunes as provided in this chapter because stabilized, vegetated dunes offer the best natural defense against storms and are areas of significant biological diversity;

(7) that vegetated stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline; and

(8) that different areas of the coast are characterized by dunes of various types and values, all of which should be afforded protection.

Acts 1977, 65th Leg., p. 2499, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1985, 69th Leg., ch. 814, § 1, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, § 18, eff. June 7, 1991.

§ 63.002. Definitions

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

(3) "Peninsula" means an arm of land bordering on the Gulf of Mexico surrounded on three sides by water.

(4) "Recreational vehicle" means a dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle that is being used for recreational purposes, but does not include any vehicle not being used for recreational purposes.

(5) "Mainland shoreline" means all shoreline fronting on the open Gulf of Mexico that is not located on a barrier island or a peninsula.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1985, 69th Leg., ch. 814, § 2, eff. Aug. 26, 1985.

§ 63.003. Effect of Chapter

The provisions of this chapter do not apply to any dune area not accessible by public road or common carrier ferry facility for as long as that condition exists.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1985, 69th Leg., ch. 814, § 3, eff. Aug. 26, 1985.

SUBCHAPTER B. DUNE PROTECTION LINE

§ 63.011. Establishing Dune Protection Line

(a) After notice and hearing, the commissioners court of each county that has within its boundaries mainland shoreline, a barrier island, or a peninsula located on the seaward shore of the Gulf of Mexico shall establish a dune protection line on any such shoreline, island, or peninsula within its boundaries for the purpose of preserving sand dunes.

(b) A county may allow a municipality within the county to administer this chapter within its corporate limits and extraterritorial jurisdiction. On delegation by a county, a municipality may adopt and apply any appropriate ordinances within its extraterritorial jurisdiction to effect the purposes of this chapter.

(c) Municipalities and counties may enter into interlocal cooperation contracts for the administration of dune permit programs under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(d) The land office may assist and advise counties and municipalities in establishing or altering dune protection lines.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1985, 69th Leg., ch. 814, § 3, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, § 19, eff. June 7, 1991.

§ 63.012. Location of Dune Protection Line

The dune protection line shall not be located further landward than a line drawn parallel to and 1,000 feet landward of the line of mean high tide of the Gulf of Mexico.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 63.013. Notice

(a) Notice of a hearing to consider establishing the dune protection line shall be published at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing.

(b) Notice shall be given to the commissioner not less than one week nor more than three weeks before the hearing.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 63.014. Map and Description of Dune Protection Line

(a) The commissioners court or governing body of each municipality in establishing a dune protection line shall define the line by presenting it on a map or drawing, by making a written description, or by both. Each shall be designated appropriately and filed with the clerk of the county or municipality establishing the line and with the commissioner.

(b) Notice of alterations in the dune protection line shall be filed with the clerk and with the commissioner, and the appropriate changes shall be made on the map, drawing, or description.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 20, eff. June 7, 1991.

§ 63.015. Dune Protection Line Prohibited

No dune protection line may be established within a state or national park area, wildlife refuge, or other designated state or national natural area; provided, however, any state-owned or other public land not specifically exempted by this section shall be subject to the same requirements as private lands except as provided in Sections 31.161 through 31.167 of this code.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 21, eff. June 7, 1991.

SUBCHAPTER C. PERMITS

§ 63.051. Permit Requirement

An owner of land or a person holding an interest in land under the owner who desires to perform or allow any of the acts prohibited in Section 63.091 of this code must apply for a permit from the appropriate commissioners court or municipal governing body.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 22, eff. June 7, 1991.

§ 63.052. Permit Not Required

No permit is required for the following activities:

- (1) grazing livestock;
- (2) production of oil and gas; and
- (3) recreational activity other than the operation of a recreational vehicle.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

§ 63.053. Fees

(a) The commissioners court or governing body of the municipality may require a reasonable fee to accompany the application.

(b) Any commissioners court or governing body of a municipality that has adopted a dune protection line and is administering this chapter and that has a certified beach access plan as provided for in Section 61.015 of this code is hereby authorized, subject to all requirements of Chapter 61 of this code, to charge reasonable fees that do not exceed the cost for the provision and maintenance of public beach related facilities and services necessary to implement such plans, including but not limited to parking, public health and safety, environmental protection and matters contained in the certified beach access plans, and that do not unfairly limit access to and use of such beaches.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 23, eff. June 7, 1991.

§ 63.054. Review

(a) The commissioners court or governing body of the municipality shall evaluate the permit application, and if the commissioners court or governing body of the municipality finds as a fact after full investigation that the particular conduct proposed will not materially weaken the dune or materially damage vegetation on the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, it may grant the permit.

(b) In determining whether or not to grant the permit, the commissioners court or governing body of the municipality shall consider the height, width, and slope of the dune, any significant environmental features of the dune, the feasibility and desirability of restoration of vegetation, and cumulative impacts and shall consider requirements for protection of critical dune areas.

(c) Each county or municipality administering this chapter shall establish procedures and requirements governing the review and approval of dune permits, and these procedures and requirements shall be submitted to the commissioner and attorney general for their comments.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 24, eff. June 7, 1991.

§ 63.055. Terms and Conditions of Permit

The commissioners court or governing body of the municipality may include in a permit the terms and conditions it finds necessary to assure the protection of life, natural resources, and property.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 25, eff. June 7, 1991.

§ 63.056. Notice to and Comments of Commissioner on Permits

(a) After receiving an application for a permit to perform any of the acts prohibited in Section 63.091 of this code, the commissioner's court or the governing body of the municipality shall notify the commissioner by sending, not less than 10 working days before the public hearing on the application, notice of the hearing and a copy of the application.

(b) The commissioner may submit any written or oral comments regarding the effect of the proposed activity on the dunes that protect state-owned land, shores, and submerged land.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 26, eff. June 7, 1991.

§ 63.057. Permit for Certain Activity Prohibited

(a) No permit may be issued that allows the operation of a recreational vehicle on a sand dune seaward of the dune protection line.

(b) No permit may be issued that allows any activity in a critical dune area inconsistent with rules promulgated by the commissioner for protection of critical dune areas.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 27, eff. June 7, 1991.

SUBCHAPTER D. PROHIBITIONS

§ 63.091. Conduct Prohibited

Unless a permit is properly issued authorizing the conduct, no person may damage, destroy, or remove a sand dune or portion of a sand dune seaward of a dune protection line or within a critical dune area or kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1985, 69th Leg., ch. 814, § 3, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, § 28, eff. June 7, 1991.

§ 63.093. Prohibited Operation of Recreational Vehicles

No person may operate a recreational vehicle on a sand dune seaward of the dune protection line in any county in which a dune protection line has been established.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

SUBCHAPTER E. CRITICAL DUNE AREAS

§ 63.121. Identification of Critical Dune Areas

The commissioner, in his role as trustee of the public land of this state, shall identify the critical dune areas within 1,000 feet of mean high tide that are essential to the protection of state-owned land, public beaches, and submerged land. The commissioner shall promulgate rules for the identification and protection of critical dune areas.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 30, eff. June 7, 1991.

§ 63.122. Notice to Counties

After the commissioner has identified the critical dune areas, notice of the critical dune areas and the rules for their protection shall be given to the commissioners court of each county and the governing body of each municipality in which one or more of these areas is located.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 30, eff. June 7, 1991.

SUBCHAPTER F. APPEALS

§ 63.151. Appeal by Littoral Owner

A littoral owner aggrieved by a decision of the commissioners court or governing body of the municipality under this chapter may appeal to a district court in that county.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 31, eff. June 7, 1991.

§ 63.152. Appeal by Commissioner

The commissioner may appeal to a district court of that county any decision of the commissioners court or governing body of the municipality that the commissioner determines to be a violation of this chapter.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 31, eff. June 7, 1991.

SUBCHAPTER G. PENALTIES

§ 63.181. Enforcement

(a) The attorney general, individually or at the request of the commissioner, or any county attorney, district attorney, or criminal district attorney shall file in a district court of Travis County or in the county in which the violation occurred a suit to obtain either a temporary or permanent court order or injunction to prohibit and remedy any violation of this chapter or any rule, permit, or order under this chapter and to collect damages to natural resources injured by the violation and to recover civil penalties.

(b) A person who violates this chapter or any rule, permit, or order under this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000. Each day that a violation occurs or continues constitutes a separate offense.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

Amended by Acts 1991, 72nd Leg., ch. 295, § 32, eff. June 7, 1991.

APPENDIX XIV FOUNDING POLICIES

The regulations promulgated herein are based partially on the Comprehensive Plan including but not limited to the following policies:

GENERAL POLICIES (as extracted from 31 TAC Chapter 15, Coastal Area Planning)

- 1. Protect the public health and safety, and in doing so, to protect, preserve, restore, and enhance coastal natural resources of the barrier islands, bordering the Gulf of Mexico, and the floodplains, beaches, and dunes located there.**
- 2. Aid coastal landowners and governmental entities in using beachfront property in a manner compatible with preserving public and private property, protecting the public's right to benefit from the protective and recreational functions of a healthy beach/dune system, conserving the environment, conserving flora and fauna and their habitat, ensuring public safety, and minimizing loss of life and property due to inappropriate coastal development and the destruction of protective coastal natural features.**
- 3. Foster mutual respect between public and private property owners and to coordinate with and assist other local and state governments in managing the Texas coast so that the interests of both the public and private landowners are protected.**
- 4. Promote dune protection and ensure that adverse effects on dunes and dune vegetation are avoided whenever practicable. If such adverse effects cannot be avoided and have been minimized, every effort must be made to repair, restore, and rehabilitate existing dunes and dune vegetation.**
- 5. Prevent the destruction and erosion of public beaches and other coastal public resources, to encourage the use of environmentally sound erosion response methods, and to discourage those methods such as rigid shorefront structures which can have a harmful impact on the environment and public and private property.**
- 6. Aid populated areas located on the barrier islands bordering the Gulf of Mexico which are extremely vulnerable to flooding and property damage due to violent storms by working to reduce flood losses, by minimizing any waste of public funds in the national flood insurance program, and by ensuring that the insurance remains available and affordable.**
- 7. Protect the public's right of access to, use of, and enjoyment of the public beach and associated facilities and services as established by state common law and statutes. The public has vested property rights in Texas' public beaches, and free use of and access to and from the beaches are guaranteed. The Open Beaches Act requires local governments to preserve and enhance use of public beaches and access between the beaches and public roads. If an access point must be closed, then existing law requires it to be replaced with equal or better access consistent with the appropriate local dune protection and beach access plan. Whenever practicable, public beach use and access shall be enhanced.**
- 8. Provide coordinated, consistent, responsive, timely, and predictable governmental decision making and permitting processes.**
- 9. Recognize that the beach/dune system contains resources of statewide value and concern, which local governments are in the best position to manage on a daily basis.**
- 10. Educate the public about coastal issues such as dune protection, beach access, erosion, and flood protection, and to provide for public participation in the protection of the beach/dune system and in the development and implementation of the Texas Coastal Management Program.**

LOCAL ACTION POLICIES

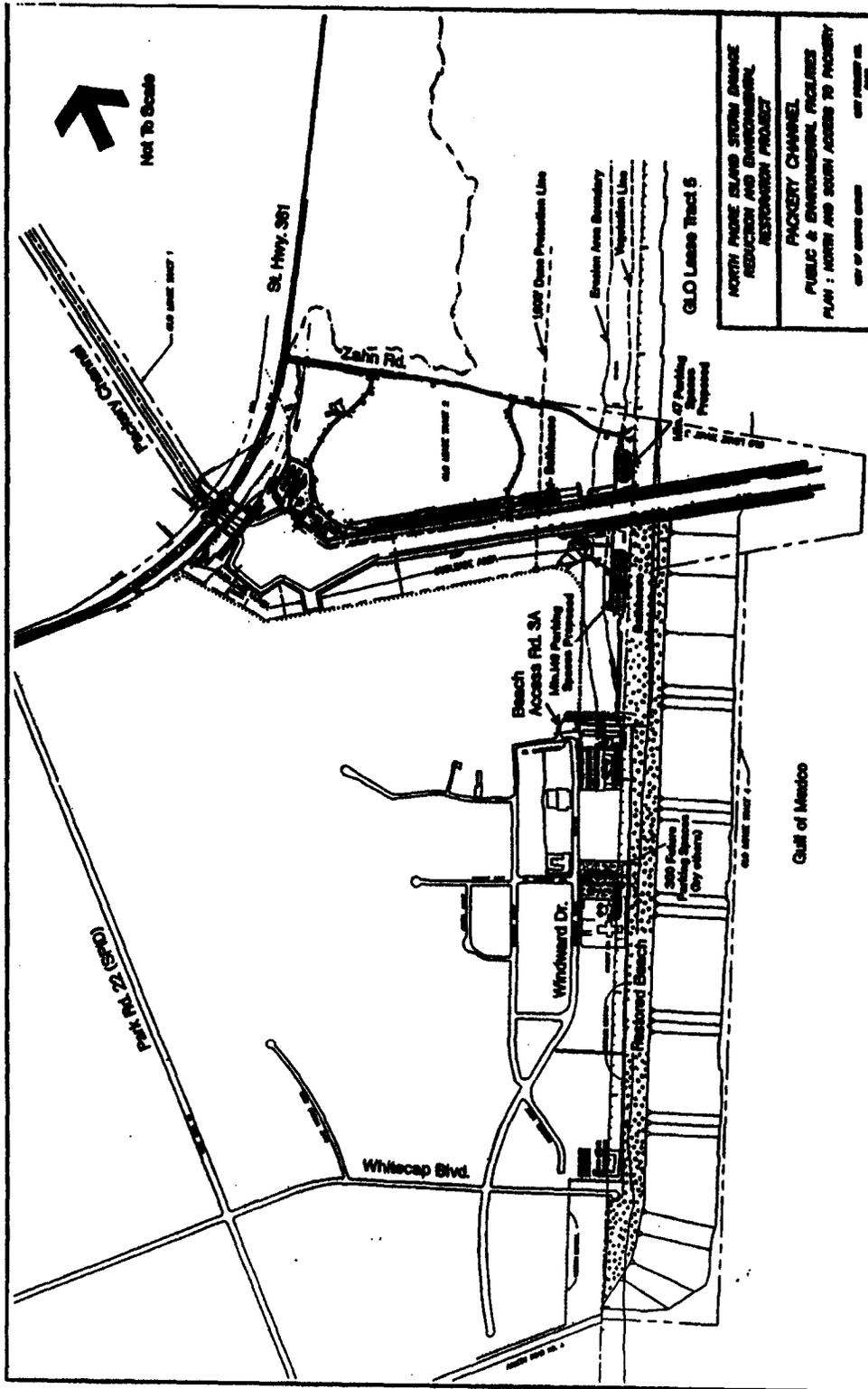
- 1. The City of Corpus Christi will pursue park dedication as required through the Platting Ordinance for unplatted areas and those areas which have platted properties and the park dedication commitment has not been fulfilled. Parkland dedication will be accepted in land, money-in-lieu-of-land, or any appropriate combination emphasizing public parking and access to the beach.**
- 2. The City will actively support the establishment of the Dune Protection Line at the easternmost line of the North Padre Island Seawall.**
- 3. The City will actively seek funding through the General Land Office, other federal and state agencies, and other public sources to purchase and develop an area landward of the Seawall to provide a minimum of 300 public parking spaces. Subsequent to purchase and development of the parking area landward of the seawall, the City will take action to close permanently the beach seaward of the Seawall to vehicular traffic for safety purposes.**
- 4. The City will actively seek funding through the General Land Office, other federal and state agencies and other public sources for the purchase and development of six off-beach parking and beach access parks within the area between the Mustang Island State Park and the Port Aransas City Limits and east of S.H. 361.**
- 5. The City recommends that Nueces County establish a definitive policy to temporarily prohibit vehicular movement on the beach to protect beach users in the area seaward of the Seawall. Specifically, the City recommends that a safety corridor be established between the bottom of the Seawall and the waters edge of a minimum 75 foot width or vehicular traffic will be prohibited from driving on the beach at the Seawall.**
- 6. In order to increase access to the beach seaward of the Seawall, the City will aggressively pursue the permanent dedication of Beach Access Road No. 3-A and the two existing private pedestrian walkways currently owned by private interests.**
- 7. The City will request the General Land Office and the Texas Parks and Wildlife Department to provide public access points at a minimum of one mile intervals within any lands controlled by respective State agencies which are located adjacent to the Gulf Beach. The City will encourage the GLO and the TPWD to provide additional recreational vehicle sites within State lands on Padre and Mustang Islands. The City will request the Department of Interior to provide public access points at a minimum of one mile intervals within any lands controlled by the federal government which are located adjacent to the Gulf Beach. The City will encourage the Department of Interior and National Park Service to provide additional recreational vehicle sites within federal lands on Padre and Mustang Islands.**
- 8. The City encourages the retention of access to the public beach through the means of private easements to accommodate all property between S.H. 361 and the public beach should current beach access be restricted through future sub-division of these properties.**
- 9. Where the developer is proposing public roadways, the City will encourage the use of paralleling roadways and alternative street standards included in the Plan.**
- 10. The City will pursue reopening and improvement of "Packery Channel" for the purpose of providing a recreational boat pass and enhanced water exchange to the Laguna Madre from the Gulf of Mexico (See Figure 1.A). The project will provide greatly improved recreational facilities, economic development potential on adjacent public and private lands. Significantly, the project will provide renourishment to the beach in front of the Seawall immediately and in the future from maintenance dredging. (The project is officially a Federal action and known as the North Padre Island Storm Damage Reduction and Environmental Restoration Project.) The Packery Channel Project, when completed, will provide a world-class multipurpose development unique to the Texas Coast with the potential to attract tourists from all**

over the state and nation. The project is consistent with John F. Kennedy Causeway Recreation Area Master Plan Study adopted by the Texas General Land Office in 1990.

**APPENDIX XV
PACKERY CHANNEL DESIGN CONCEPT**



**APPENDIX XVI
PACKERY CHANNEL PUBLIC & ENVIRONMENTAL FACILITIES**





City of
Corpus
Christi

Angel R. Escobar
CITY MANAGER

PO Box 9277
Corpus Christi
Texas 78469-9277
Phone 361-826-3220
Fax 361-880-3839
www.cctexas.com

March 2, 2010

Jody Henneke
Deputy Commissioner
Coastal Resources
Texas General Land Office
1700 North Congress Avenue
Austin, Texas 78701-1495

Dear Ms. Henneke:

Attached is a certified copy of Ordinance 028494, which was adopted by our City Council on February 9, 2010. The ordinance, when it goes into effect, authorizes restrictions on vehicular traffic on the Gulf beach seaward of portions of the concrete segment of the Padre Island seawall, establishes a vehicle free area when the distance between the toe of the seawall to the water is less than 150 feet in width, allows two way vehicular traffic on the Gulf beach between the northern end of the seawall and Padre Balli Park, establishes a vehicle free area between the northern end of the concrete seawall and the Packery Channel jetty, commits the City Council to undertake efforts to restore and maintain the beach in front of the seawall to a minimum width of 200 feet, and adds an appendix to the City of Corpus Christi, Texas, Dune Protection And Beach Access Regulations to show the approximate location of bollards to be installed on the beach.

This ordinance repealed and replaces Ordinance 027971, which was submitted on January 16, 2009, and withdrawn at GLO's request on May 27, 2009. Ordinance contains the editorial and substantive changes recommended by the GLO staff, and adds another drawing to show the bollard arrangement when the beach seaward of the seawall is renourished.

Our letter of January 16, 2009, addressed how Ordinance 027971, and now this ordinance, are consistent with the Texas Open Beaches Act and the applicable GLO rules.

By this letter, the City is asking for formal General Land Office approval of the changes to the Dune Protection and Beach Access Plan, and a certificate of consistency for our amended dune protection and beach access plan under 31 TAC 15.3(o).

The City of Corpus Christi believes that this ordinance preserves and enhances the public's right to use and access the public beach, and that it is needed to improve the safety of persons using these areas of the beach.



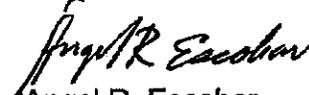
GLO LTR 03012010

rev'd 3/8/2010

1

Please call R. Jay Reining, First Assistant City Attorney, at (361) 826-3371, if you have any questions or need any additional information.

Sincerely,


Angel R. Escobar
City Manager

Attachment

cc: Mayor Joe Adame and Council Members
Lisa Aguilar, Interim City Attorney
Stacie Talbert, Interim Director, Parks & Recreation
Michele Thomas, Beach, Cultural Services, & Special Events
Superintendent
Robert Payne, Senior Planner
Mic Raasch, Senior Planner

CERTIFICATE

THE STATE OF TEXAS §

COUNTY OF NUECES §

I, the undersigned City Secretary of the City of Corpus Christi, Texas, so certify that the following is a true and correct copy of Ordinance No. 028494 passed and approved by Corpus Christi City Council on February 23, 2010 as same appears in the Official Records of the City of Corpus Christi, Texas, of which the City Secretary's Office is the lawful custodian.

WITNESSETH MY HAND and the Official Seal of the City of Corpus Christi, Texas,
this 1st day of March, 2010.



Armando Chapa
City Secretary
Corpus Christi, Texas

(SEAL)

ORDINANCE

REPEALING ORDINANCE 027971, PASSED AND APPROVED ON DECEMBER 9, 2008 AND AMENDING THE CODE OF ORDINANCES, CITY OF CORPUS CHRISTI, CHAPTER 10, BEACHFRONT MANAGEMENT AND CONSTRUCTION, TO RESTRICT VEHICULAR TRAFFIC ON THE GULF BEACH SEAWARD OF PORTIONS OF THE CONCRETE SEGMENT OF THE PADRE ISLAND SEAWALL AND ESTABLISHING A VEHICLE-FREE AREA WHEN THE DISTANCE BETWEEN THE TOE OF THE SEAWALL TO THE MEAN HIGH TIDE LINE IS LESS THAN 150 FEET IN WIDTH; ALLOWING THE OPERATION OF VEHICLES WITHIN 50 FEET OF THE WATER'S EDGE WHEN PARKING AND WHEN SOFT-SAND CONDITIONS PREVENT THE SAFE TRANSIT OF VEHICLES ON THE UPPER BEACH; ALLOWING TWO-WAY VEHICULAR TRAFFIC ON THE GULF BEACH BETWEEN THE NORTHERN END OF THE SEAWALL AND PADRE BALLI PARK (BEACH ACCESS ROAD # 4); ESTABLISHING A PEDESTRIAN SAFE AREA IN THE AREA SEAWARD OF 50 FEET FROM THE MEAN HIGH TIDE LINE BETWEEN THE NORTHERN END OF THE CONCRETE SEAWALL AND THE PACKERY CHANNEL JETTY; COMMITTING THE CITY COUNCIL TO UNDERTAKE EFFORTS TO RESTORE AND MAINTAIN THE BEACH IN FRONT OF THE SEAWALL TO A MINIMUM WIDTH OF 200 FEET; ADDING AN APPENDIX TO THE CITY OF CORPUS CHRISTI, TEXAS, DUNE PROTECTION AND BEACH ACCESS REGULATIONS TO SHOW THE APPROXIMATE LOCATION OF BOLLARDS TO BE INSTALLED ON THE BEACH; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERANCE; PROVIDING FOR PUBLICATION; AND PROVIDING A DELAYED EFFECTIVE DATE

WHEREAS, the Section 15.7(h) of the Beach and Dune Rules established by the Texas General Land Office, under the authority of the Texas Open Beaches Act, authorizes local governments, with the prior approval of the General Land Office, to close portions of the public beach to vehicular traffic, if adequate parking is provided on or adjacent to the beach to accommodate one car for each 15 linear feet of beach that is closed;

WHEREAS, the Padre Island seawall is 4216.5 feet long;

WHEREAS, the City of Corpus Christi owns 2.9 acres (126,441.41 square feet) of land adjoining the seawall, which is adjacent to the public beach;

WHEREAS, the City has constructed a parking lot that will accommodate 310 cars;

WHEREAS, the parking lot is adequate to provide parking for at least one car for each 15 feet of beach seaward of the seawall that is closed to vehicular traffic;

028494

WHEREAS, ingress and egress access to the beach is provided for vehicles at each end of the seawall;

WHEREAS, ingress and egress access to the beach is provided for pedestrians along the entire length of the seawall by a perpetual easement that has been granted in favor of the public affording pedestrians noncommercial use along and over the entire length of the seawall and adjacent sidewalk;

WHEREAS, signs will be conspicuously posted to explain the nature and extent of vehicular controls, parking areas, and access points;

WHEREAS, it has been the City's long term plan to close the beach seaward of the seawall once the City constructed a parking lot on City owned property adjacent to the seawall;

WHEREAS, Policy Statement II.B.3 of the City of Corpus Christi, Texas, Dune Protection and Beach Access Plan, adopted on February 28, 1995, an element of the City's Comprehensive Plan, provides that "Subsequent to the purchase and development of the parking lot landward of the seawall, the City will take action to close permanently the beach seaward of the Seawall to vehicular traffic for safety purpose;"

WHEREAS, Policy Statement C.15, MUSTANG-PADRE AREA DEVELOPMENT PLAN, adopted by City Council Ordinance #025725 on April 20, 2004, an element of the City's Comprehensive Plan, provides the "in order to create a safe day use beach area in front of the sea wall, traffic will be prohibited once a public parking area is constructed," once a 300 space parking lot is available on the existing city land located adjacent to the seawall;

WHEREAS, the 74th Texas Legislature recognized this plan when in 1995 it adopted §61.017(c)(1)(B) of the Texas Natural Resources Code, which in recognizing the seawall as the line of vegetation required the fee title to the surface estate to an area for public parking and other public uses adjacent to the seawall be conveyed to and accepted by a public entity, which area contains sufficient acreage to provide at least one parking space for each 15 linear feet of the seawall;

WHEREAS, the 2.9 acres of land owned by the City, on which the parking lot has been constructed, satisfies that obligation;

WHEREAS, the closing of portions of the public beach seaward of the concrete segment of the Padre Island seawall when there is less than 150 feet of sand between the toe of the seawall and the mean high tide line will provide a family safe area for the public to use the beach without being exposed to the dangers posed by vehicles driving on the beach;

WHEREAS, the public's right to access is protected by the existing access and the availability of public parking adjacent to the public beach and seawall;

WHEREAS, with the exception of the beach seaward of the seawall, it is the policy of the City of Corpus Christi, as adopted in Policy Statements B.33, and C.13, MUSTANG-PADRE AREA DEVELOPMENT PLAN, adopted by City Council Ordinance #025725 on April 20, 2004, an element of the City's Comprehensive Plan, to maintain vehicle access along the Gulf beach unless necessary for an overwhelming public safety concern;

WHEREAS, in 2006, the City's Charter was amended as a result of an initiative and referendum that limited the City Council's authority to restrict vehicular access to and on the Gulf beach unless approved by a majority vote of qualified voters of the City, voting at an election duly called for such purpose;

WHEREAS, Article X, Section 4 of the City's Charter, as amended in 2006, allows the City Council to restrict vehicular access to areas of the Gulf beach for public necessity;

WHEREAS, a public necessity is limited to environmental emergencies, public health and safety emergencies, and government functions whose importance justifies the restriction of vehicular access;

WHEREAS, restrictions on vehicular access for public necessity must be limited to the smallest possible area and for the shortest possible duration;

WHEREAS, the extremely narrow beach between portions of the Gulf beach seaward of the concrete portion of the Padre Island seawall create an extremely unsafe condition in which both beachgoers and drivers are at grave risk;

WHEREAS, there is public necessity to restrict vehicular access to those portions of the Gulf beach seaward of the concrete portion of the Padre Island seawall when the width of the beach is less than 150 feet between the toe of the seawall and the water;

WHEREAS, the restrictions of vehicular access to this small area of the Gulf beach are expected to be of limited duration due to planned renourishment of the beach at the southern end of the seawall;

WHEREAS, the City Council put the issue of closing those portions of the Gulf beach seaward of the concrete portion of the Padre Island seawall when the width of the beach is less than 150 feet between the toe of the seawall and the water to a vote of the citizens of Corpus Christi on Tuesday, November 4, 2008, when it adopted Ordinance 027813;

WHEREAS, on Tuesday, November 4, 2008, a majority of the voters approved Proposition 8, entitled "SEAWALL BEACH ACCESS & SAFETY," by voting for the measure, which read: "RESTRICTING VEHICULAR ACCESS TO AND ON THE GULF BEACH SEAWARD OF PORTIONS OF THE CONCRETE PADRE ISLAND SEAWALL WHEN THE WIDTH OF THE BEACH BETWEEN THE TOE OF THE SEAWALL AND WATER IS LESS THAN 150 FEET,"

WHEREAS, Section 7 of Ordinance 027813 stated the effect of Proposition 8 as: "If this ballot measure is adopted, and is approved by the General Land Office, an ordinance

will take effect that designates the portion of the City's Gulf of Mexico beach seaward of the concrete Padre Island seawall as a pedestrian safe area and closes the beach seaward of the concrete seawall to all vehicular traffic by prohibiting driving on that portion of the beach when the width of the beach between the toe of the seawall and water is less than 150 feet. There is an exception that allows emergency vehicles, vehicles used to maintain the beach, and vehicles used to provide beach related services under a permit issued by the City to drive on that portion of the beach;" and

WHEREAS, on September 9 and October 21, 2008, the City Council adopted two resolutions to inform the citizens of the City of the locations where bollards would be installed to separate the vehicle-free areas from the portions of the beach on which vehicle would be allowed to transit and park in front of the concrete seawall and between the northern end to the concrete seawall and the Packery Channel south jetty;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS, THAT:

SECTION 1. Ordinance 027971, passed and approved on December 9, 2008, is repealed.

SECTION 2. Section 10-77, Code of Ordinances, is amended by revising subsection (e) to read as follows and deleting subsection (f):

"Sec. 10-73. Vehicular operation.

* * * * *

"(e) It shall be an offense for a person to operate a vehicle within fifty (50) feet of the water's edge on any section of Gulf beach within the incorporated city limits of the City of Corpus Christi. This traffic regulation shall not apply to the following listed activities and segments of Gulf beaches:

"(1) Vehicle engaged in the actual launching or loading of water craft.

"(2) Beach maintenance, seawall maintenance, and emergency vehicles.

"(3) Parking a vehicle at least 25 feet from the water's edge.

"(4) When the upper beach sand is too soft to allow safe vehicular transit, and the vehicle does not drive between a parked vehicle and the water.

~~"(f) Vehicular traffic shall operate as one-way in a southerly direction between Whitcap Boulevard and Beach Access Road # 4.~~

SECTION 3. Section 10-77, Code of Ordinances, is amended by revising the title; revising subsection (e); redesignating subsection (f) as subsection (i); and adding a new subsections (f), (g), and (h) to read as follows:

"Sec. 10-77. Vehicle-restricted Areas and Pedestrian Safe Areas

* * * * *

"(e) The city manager may shall establish as a pedestrian-safe-vehicle-restricted area those portions of the Gulf beach seaward of the concrete portion-segment of the Gulf seawall, until the beach seaward of the concrete portion of the seawall has been renourished as determined by the city manager when the beach between the toe of the seawall and the mean high tide line is less than 150 feet in width. The city manager shall:

"(1) Temporarily restrict the operation of vehicles in front of the concrete Padre Island seawall when and where the beach width is less than 150 feet.

"(2) Install rows of bollards parallel to the seawall to maintain vehicle transit and parking lanes.

"a. One row of bollards must preserve a 25' wide pedestrian safe space adjoining the seawall.

"b. A second row of bollards located a minimum of 50' from the first row of bollards must allow two-way vehicle traffic seaward of the seawall.

"c. Areas for approximately 79 head-in parking spaces (with a width of 15 feet), seaward of and parallel to the first row must be provided.

"d. Head-in parking areas may not be located across from walkways that provide access to the seawall and beach from hotels, condominiums, parking lots, and other beach access points along the seawall. These areas should be marked as pedestrian crossings, and may not exceed 80 feet in width.

"e. The bollards must be placed so as to maximize the area of pedestrian-safe beaches near the water in front of the seawall, while still maintaining vehicle lanes.

"(f) The city manager shall mark vehicle-restricted and pedestrian safe areas with signs at each end of the vehicle-restricted and pedestrian safe areas to give notice of the vehicle-restricted or pedestrian safe areas and to prevent vehicles from entering the vehicle-restricted or pedestrian safe areas.

"(g) The city manager shall establish a pedestrian safe area on those portions of the Gulf beach between the north end of the concrete Padre Island seawall and the south jetty of Packery Channel.

"(1) The bollards must be installed no farther than 50 feet landward of mean high tide for a distance of approximately 1550 feet from the north end of the concrete seawall to a point 600 feet from the south jetty.

"(2) The bollards must be spaced to prevent the passage of vehicles between the bollards.

"(3) At the northern end of the row of bollards parallel to the water, a perpendicular row of bollards with a chained opening must be installed that extends seaward to the line of mean low tide.

"(4) At least two areas must be designated for boat launch access, and the bollards spaced to allow vehicles and boat trailers through the row of bollards.

"(5) Openings that are gated or chained must be installed in the bollards to allow vehicles to operate seaward of the bollard line only when the upper beach sand is too soft to allow safe vehicular access to the jetty.

"(h) Appendix XVII of the City of Corpus Christi, Texas, Dune Protection And Beach Access Regulations illustrates the approximate location of the bollards that will separate the vehicle-free areas and the areas set aside for vehicle transit and parking in the vicinity of the concrete seawall and south jetty of Packery Channel.

"(f)(i) No vehicle-free area or pedestrian safe area may be implemented until the location and perimeter design has been submitted to the Texas General Land Office and Texas Attorney General, and approved-certified by the Texas General Land Office as an amendment to the Beach Management and Construction Ordinance."

SECTION 4. Section 10-80(e), Code of Ordinances, is repealed:

"Sec. 10-80. One-way traffic on beach and access roads.

* * * * *

"(e) Vehicles travelling on the Gulf beach between the northern end of the seawall and Padre Balli Park may only travel in a southerly direction."

SECTION 5. Section 10-81, Code of Ordinances, is revised to read as follow:

"Sec. 10-81. Portions of the beach closed.

"(a) The city manager, or the city manager's designee, is authorized to close portions of the beach to all vehicle traffic for declared safety reasons during periods including, but not limited to, extreme high tides, such as storm tide and "spring" tide events, and when less than a twenty-five-foot corridor along the beach is available for vehicular traffic.

"(b) Except for emergency vehicles, vehicles used to maintain the beach, or vehicles used to provide beach related services under a permit issued by the City, when the City Manager has designated portions of the beach seaward of the Padre Island seawall as a vehicle-free area under Section 10-77(e), those portions of the beach are closed to vehicular traffic, and driving on those portions of beach is prohibited."

SECTION 6. The City Council will undertake efforts to renourish the beach in front of the concrete seawall in an expeditious manner in order to restore and maintain the beach to a minimum width of 200 feet.

SECTION 7. The City of Corpus Christi, Texas, Dune Protection And Beach Access Regulations are amended by adding a new Appendix XVII to read as follows:

APPENDIX XVII

APPROXIMATE LOCATION OF BOLLARDS USED TO SEPARATE THE PEDESTRIAN SAFE AREAS VEHICLE-FREE AREAS AND THE AREAS SET ASIDE FOR VEHICLE TRANSIT AND PARKING IN THE VICINITY OF THE CONCRETE SEAWALL AND SOUTH JETTY OF PACKERY CHANNEL

Figure 1
Eroded Beach Conditions

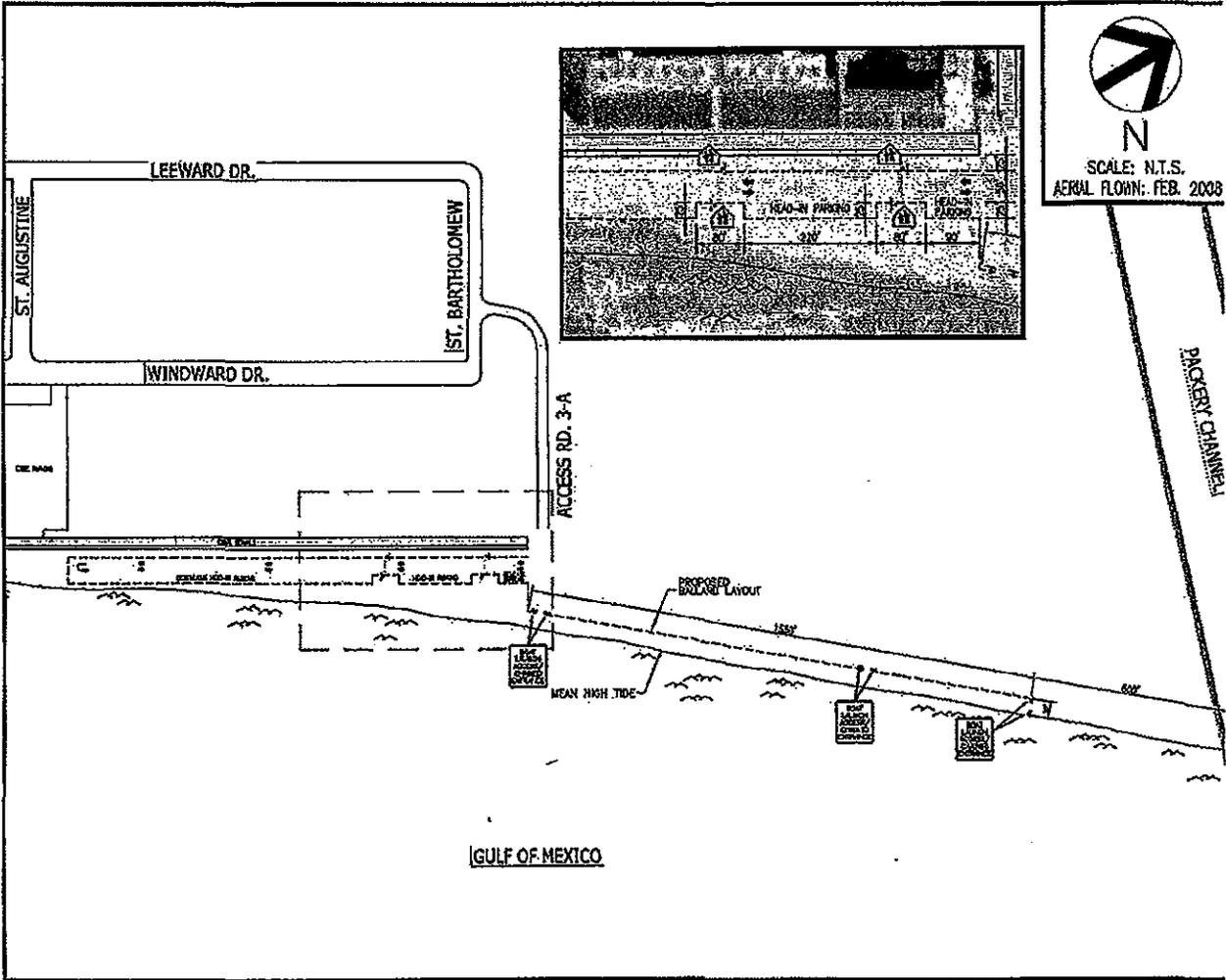
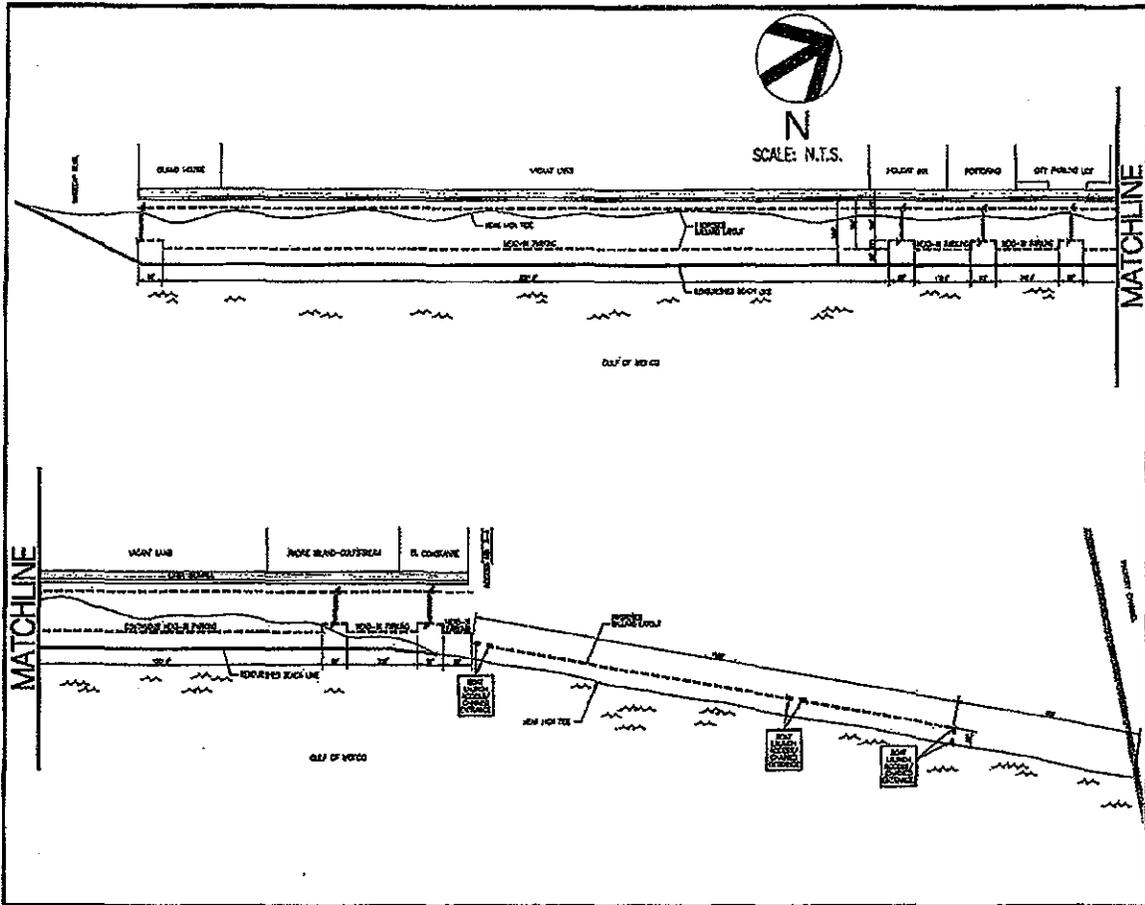


Figure 2
Renourished Beach Conditions



SECTION 8. A violation of this ordinance or requirements implemented under this ordinance constitutes an offense punishable under Section 1-6 of the City Code of Ordinances.

SECTION 9. If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word, or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision of this ordinance be given full force and effect for its purpose.

SECTION 10. Publication shall be made in the official publication of the City of Corpus Christi as required by the City Charter of the City of Corpus Christi.

SECTION 11. This ordinance take effect on the approval of these changes to the City of Corpus Christi's Dune Protection and Beach Access Plan by the General Land Office

That the foregoing ordinance was read for the first time and passed to its second reading on this the 16th day of February, 2010, by the following vote:

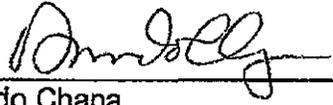
Joe Adame	<u>Aye</u>	Priscilla Leal	<u>Aye</u>
Chris N. Adler	<u>Aye</u>	John E. Marez	<u>Aye</u>
Brent Chesney	<u>Aye</u>	Nelda Martinez	<u>Aye</u>
Larry R. Elizondo, Sr.	<u>Aye</u>	Mark Scott	<u>Aye</u>
Kevin Kieschnick	<u>Aye</u>		

That the foregoing ordinance was read for the second time and passed finally on this the 23rd day of February, 2010, by the following vote:

Joe Adame	<u>Aye</u>	Priscilla Leal	<u>Absent</u>
Chris N. Adler	<u>Aye</u>	John E. Marez	<u>Aye</u>
Brent Chesney	<u>Aye</u>	Nelda Martinez	<u>Aye</u>
Larry R. Elizondo, Sr.	<u>Aye</u>	Mark Scott	<u>Aye</u>
Kevin Kieschnick	<u>Aye</u>		

PASSED AND APPROVED, this the 23rd day of February, 2010.

ATTEST:


 Armando Chapa
 City Secretary


 Joe Adame
 Mayor

APPROVED: 1st day of February, 2010:


 R. Jay Reining
 First Assistant City Attorney
 For City Attorney

<p>EFFECTIVE DATE <u>March 1, 2010</u></p>
--

028494

A Joint Erosion Response Plan for Nueces County and the City of Corpus Christi 2012



This study was funded in part by a National Oceanic and Atmospheric Administration grant from the Texas General Land Office

Nueces County Commissioners Court

Approved by Commissioner's Court
on June 27, 2012
Judge Loyd Neal
Mike Pusley
Joe A. Gonzalez
Oscar Ortiz
Joe McComb

Corpus Christi City Council

Adopted by City Ordinance:
029541 on June 26, 2012
Mayor Joe Adame
David Loeb
Mark Scott
Nelda Martinez
Kelley Allen
John Marez
Priscilla Leal
Chris Adler
Larry Elizondo, Sr.

**Nueces County Beach Management
Advisory Committee**

Fred McCutchon, Chairman
Lawrence Young, Vice-Chairman
James Dinn
Pat Eisenhauer
Don Feferman
Gabi Hilpold
Debbie Lindsey-Opel
John Garcia
Greg Smith
Linda Strong
Anne Williams

**Corpus Christi Planning
Commission/Beach Dune Committee**

Rudy Garza, Chairman
A. Javier Huerta, Vice-Chairman
Mark Adame
Marco Castillo
Gabriel Guerra
Evon J. Kelly
Govind Nadkarni
John C. Tamez
John Taylor

Special Thanks to:

Greg Smith, Chairman of the Erosion Response Plan Working Group
James Skrobarczyk, Sr. Former Planning Commission Member
Colleen McIntyre, Island Strategic Action Committee
John Trice, Island Strategic Action Committee
Cameron Perry, Water Shore Advisory Committee Chairman
Jennifer Smith-Engle, Former County Beach Management Adv. Committee Consultant

Staff

Ron Olson, City Manager
Oscar Martinez, Assistant City Manager
Jay Reining, First Assistant City Attorney Emeritus Corpus Christi Legal Department
Derek Herzog, Superintendent, Corpus Christi Park and Recreation Department
Scott Cross, Nueces County Parks Director
Karen Barsch, (former) GIS Technician, Development Services Department
Mike Newberry, GIS Senior Application Specialist, Development Services Department

Corpus Christi Planning Department

Pete Anaya, P.E., Planning Director
Faryce Goode-Macon, Assistant Planning Director
Robert Payne, AICP, Senior City Planner and Project Manager
Elena Buentello, Planning Technician

Executive Summary

The purpose of the Erosion Response Plan is to reduce storm damage along the City and County gulf coastlines. The 81st Legislature amended Chapter 33 of the Natural Resources Code provided authority to the Texas General Land Office to formulate rules for local governments with gulf coast lines in their jurisdictions to create Erosion Response Plans.

The Erosion Response Plan will be used by the General Land Office to qualify local governments for certain GLO grants. The Plan will be used by the City and the County to justify submission of grants for GLO funding for beach renourishment, dune system enhancements and improvements for public beach access.

A draft City Erosion Response Plan was presented to City Council in June 2011. The City Council recommended the draft plan, with changes, to be submitted to the Texas General Land Office. (GLO) Part of City Council direction to staff was to develop a final plan that is as similar to the County's as possible. The GLO provided comments on the draft plan by October 2011. The Planning Department then formed an informal group of County officials and City officials to develop the final plan document. The informal group included representatives from the City Beach Dune Committee, the County Beach Management and Dune Protection Advisory Committee, the Water Shore Advisory Committee, and the Island Strategic Action Advisory Committee.

The Erosion Response Plan Addresses:

- Assessment of the foredune ridge in the Corpus Christi and Nueces County jurisdictions.
- Review of scientific studies concerning storm surge, coastal erosion, and sea level rise.
- Review of FEMA velocity zones on Mustang and Padre Islands.
- The plan identifies the beach as the first line of defense to storm surge and the foredune ridge as the second line of defense.
- The plan defines the minimum width of the public beach for provision of public beach access as 100 feet wide from the Line of Vegetation to the wet/dry line on the beach.
- The goal for enhancing the foredune ridge is to establish a dune system of at least 14 feet high, 350 foot deep, and containing at least 50% vegetative coverage.
- Mitigation sites for enhancing the foredune ridge are identified and prioritized.
- Establishment of a 350 foot building setback line located 350 feet landward of the Line of Vegetation along the gulf beach. The building setback line will prevent new construction of residential or commercial buildings within the foredune ridge.
- Land that is landward of the seawall is exempt from the Building Setback.
- Existing structures are exempt from the building setback prohibition, provided there is no practicable alternatives, that the foot print of the building is not increased and that the new structure meets new construction guidelines.
- The plan addresses enhancements to public beach access. Generally, these enhancements to public access focus on designs to reduce damage to the public access ways after storm events.
- The criteria for potential acquisition of property seaward of the Building Setback Line.

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Appendix

- Appendix 1: Packery Channel Development Plan
- Appendix 2: Dune Assessment and Mitigation Map Exhibits 1-20
- Appendix 3: Beach Access and Mitigation Map Exhibit 21

I. Introduction

The 81st Legislature amended Chapter 33 of the Natural Resources Code to require local governments with jurisdiction over Gulf of Mexico Shorelines to adopt an Erosion Response Plan (ERP). The changes to Chapter 33 of the Code also requires the Land Commissioner to consider whether a jurisdiction has completed an ERP before awarding Coastal Erosion Planning and Response Account funds for projects within the local jurisdiction. The Texas General Land Office (GLO) adopted rules specifying the requirements that may be considered when developing an Erosion Response Plan. In addition, the rules establish the dates for submittal of the ERP to the GLO in order for it to be considered for each Coastal Erosion Planning and Response Act (CEPRA) biennium. The rules require the plans to be submitted by July 1, 2011 for the current grant cycle. The ultimate purpose of the plan is to minimize future storm damage to public and private property along the Gulf Coast within the local government's jurisdiction.

During the course of developing an Erosion Response Plan the County and the City have worked closely to gather to create plans that are compatible. As the two plans neared completion, by direction of the Commissioner's Court and the City Council, to make the plans as similar as possible, the two separate plans have been merged into this joint Erosion Response Plan.

Nueces County's jurisdiction, with respect to this plan, includes that portion of Mustang Island that is not inside the Corpus Christi City limits and that portion of North Padre Island that is north of Kleberg County. Within this area, Nueces County maintains Dune Permitting authority through its Beach Management Plan. The Dune Permitting area is located 1,000 feet landward of mean high tide except for two exceptions: Mustang Island State Park; and land that is landward of the toe of the seawall on North Padre Island. This Erosion Response Plan will become an addendum to Nueces County's Beach Management Plan.

The City of Corpus Christi's jurisdiction, including inside city limits and the Extraterritorial Jurisdiction (ETJ), contain 25 miles of public beach. There are currently 20 miles of public gulf beach inside city limits and 5 miles of gulf beach in the City's five mile extraterritorial jurisdiction. Of the 25 miles of public beach only 6 miles or 24% of the City's beach frontage abuts private lands.

This plan is an addendum to the City of Corpus Christi Code of Ordinances, Chapter 10: Beachfront Management and Construction.. Chapter 10 addresses Beachfront Construction Certificates which are required by state statute for construction activities to protect the public's right of access to and along Gulf of Mexico Beaches. The Beachfront Construction area is generally located between mean high tide and the first paralleling public road or 1,000 feet landward of mean high tide, whichever is greater. There are two exceptions where a Beachfront Construction Certificate is not required: Mustang Island State Park; and the Padre Island National Seashore.

Chapter 10 also addresses protection of the beach dune system through the Dune Protection Permit. The City has been granted the authority to issue Dune Protection Permits in Kleberg County but Nueces County has not granted Dune Protection Permit authority to the City within Nueces County. However, Chapter 10 is constructed to automatically accommodate Dune Protection Permit authority should Nueces County authorize the City of Corpus Christi to issue Dune Protection Permits in Nueces County. The Dune Protection Permit area is an area that is 1,000 feet landward of mean high tide, except for the area adjacent to the North Padre Island sea wall. Adjacent to the seawall, the Dune Permit area is between mean high tide and the "toe" of the seawall. A Dune Protection Permit is not required for either Mustang Island State Park or the Padre Island National Seashore.

In order to develop the Erosion Response Plan, the Texas General Land Office (GLO), Nueces County and City Staff compiled a work plan and subsequently obtained a GLO grant. The City provided an in-kind match consisting of mapping, research, formulating the ERP and other tasks necessary for developing the ERP.

The primary reason for completing an Erosion Response Plan (ERP) is to reduce future storm damage and to protect public access to the Gulf Beach for future generations.

An important secondary reason for completing a local ERP is so that the City and County will continue to be eligible for Texas General Land Office CEPRAs grants. A criterion for the award of future grants is that the city must have an Erosion Response Plan approved by the Texas General Land Office. Texas Administrative Code 15.41 contains a two stage evaluation process for Coastal Erosion Studies and Projects with the second stage establishing whether a "...local government has implemented an Erosion Response Plan for reducing public expenditures due to erosion and storm damage losses."

The essential elements that are included in this Erosion Response Plan (ERP), per the work plan developed by the GLO and the City, include the following:

- A construction setback line landward of the Line of Vegetation (LOV);
- Criteria for establishing the setback line;
- Criteria for construction within the setback area;
- Allowances for exemptions to the setback criteria for existing structures or where there is no practicable alternative;
- Conditions for construction of exempt structures;
- An inventory of all existing and proposed public beach access amenities and access ways;
- Procedures for preserving and enhancing the public's right of access to and use of the public beach after a storm event;
- Post storm damage assessment and requirements for rehabilitation;

- Procedures for preserving, restoring and enhancing critical sand dunes for natural storm protection;
- Requirement for public input and public meetings prior to City Council action;
- Criteria for voluntary acquisition of property seaward of the building setback line; and
- Ensuring the City's Chapter 10 Beachfront Management and Construction code or any other City codes are changed for consistency with the Erosion Response Plan.

Creation of this plan required the City and the County to review the Bureau of Economic Geology's (BEG) 2007 erosion rates for consistency with the most recent natural or manmade beach erosion trends. The BEG's Erosion Rates for the area used by the GLO are based on data collected since 1937, a study period of 70 years. As part of this review staff obtained scientific assistance from local, state and national experts and or studies of sea level rise and coastal erosion.

Historical Conversion of Agriculture Island Usage to Urbanization and the Impact on Island Erosion

Land use on North Padre and Mustang Island prior to 1950 was for livestock grazing. From 1950 to 1971 land use went to development and recreation, first with the Nueces County portion of Padre Island in 1950, Mustang Island in 1968 and Kleberg County in 1971.¹ With this change of use the area of un-vegetated (active) dunes went from 6,732 acres to 614 acres.² Significant primary and foredune ridges were established on North Padre Island between Bob Hall Pier and White Cap Blvd and on Mustang Island between the current Packery Channel and the Mustang Island State Park Fish Pass.

¹ Small scale grazing still exists on Mustang Island

² Land and Water resources, historical changes, and dune criticality: Mustang & North Padre Islands. White et al 1978 University of Texas BEG

Figure 1: Bob Hall Pier to White Cap 1948, sand flats with coppice dunes

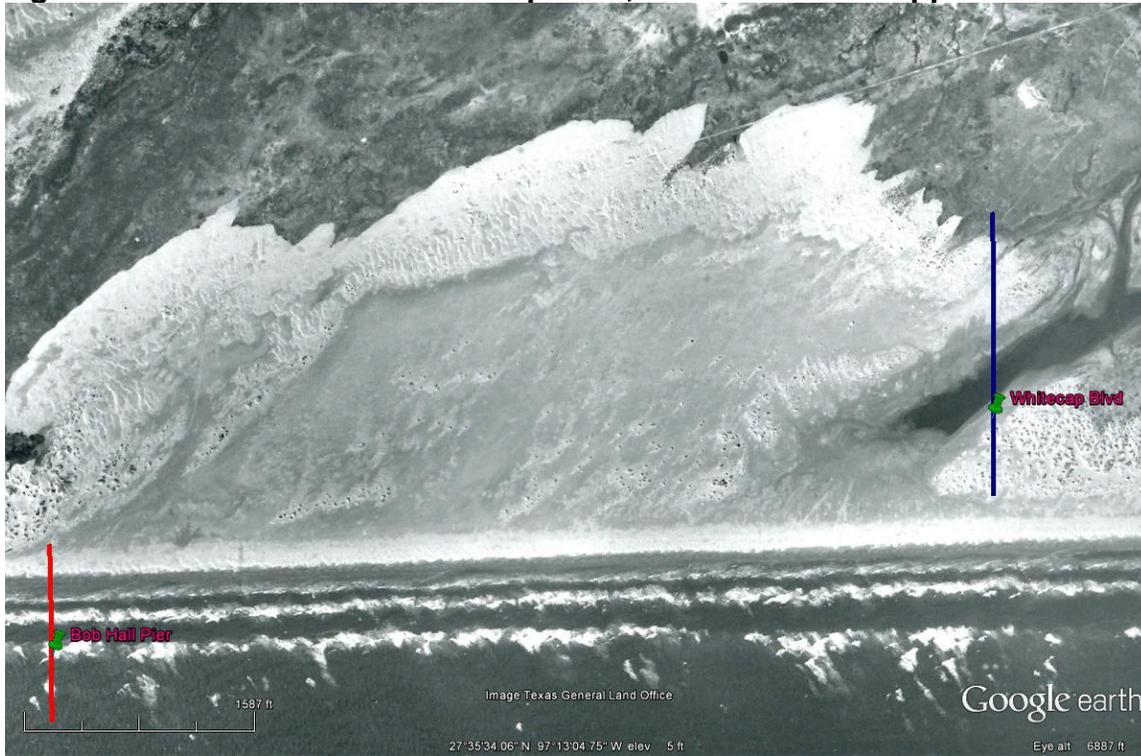


Figure 2: Bob Hall Pier to Whitecap Blvd. 2009 Aerial with 2005 Lidar Topography



Light green line 12' contour, green line 15' contour, yellow line 18' contour

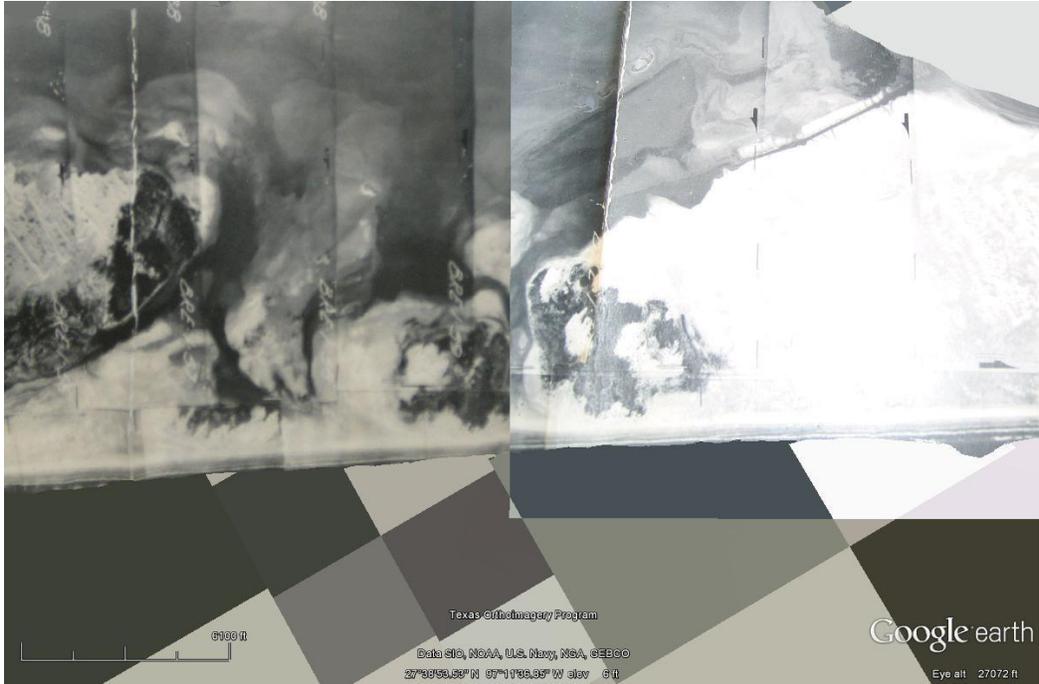


Figure 3: Mustang Island Packery Channel to Fish Pass 1938, Primarily San Flats



Figure 4: Mustang Island, Packery Channel to the Fish Pass 2009, Primarily Dunes

II. Setback Line Determination

A key finding of this plan is the determination of the setback line. The setback line is measured from the line of vegetation on the beach landward to a specified point which will become known as the Erosion Response Plan Setback Line. The purpose of the setback line is to minimize storm damage to structures on the island by preserving the area seaward of the Setback Line and minimizing the number of structures in the area. The plan is also intended to target for improvement, those foredune areas where the dune system is narrow or contains the lowest elevation of dunes, providing little protection against storm surge.

II.A. Setback Line Goals

- Minimize future erosion, storm and flood losses;
- Allow development to occur while providing sufficient seaward lands to accommodate public access along the gulf beach;
- Preserve dune system width to sustain the existing and future critical dune system;
- Identify criteria, uses and structures where no practicable alternative exists for construction seaward of the setback line.

II.B. Assessment of Erosion Rates

The criteria for establishing the setback line is based on scientific studies of the shoreline erosion along the Texas Coastline based during the last 70 years (Bureau of Economic Geology). State law provides that a determination of erosion rates shall be based on the University of Texas at Austin, Bureau of Economic Geology (BEG) or other sources approved by the Texas General Land Office. Along the Texas Coast the highest erosion rate by county is -2.80 meters or -9.19 feet per year in Jefferson County . The lowest average rate on the Texas Coast is-.28 meters or -0.92 feet per year for Nueces County. In Kleberg County the erosion rate is -0.54 meters or -1.77 feet per year.

Figure 5: Erosion Rates Comparison

Shoreline Trend	Mean Shoreline Change (average of all transects in ft/yr)	% of Coast Eroding	Erosion Rates (Ft/Yr)		Accretion Rates (Ft/Yr)		
			Max	Mean	% of Coast Accreting	Max	Mean
Texas Shoreline (1850's 2000)	-2.3	64	-30.2	-5.9	36	48.8	3
Mustang Island (Inside Corpus Christi City Limits)	-0.4	96.7	-4.4	-0.4	3.3	1.8	0.3
North Padre Island (ICL / OCL)	-2.6	96.7	-4.6	-3	3.3	1.9	0.9

Note: Erosion rate information for Mustang and North Padre Island is from the Bureau of Economic Geology, 2007 Erosion Rates. Mustang Is. is the area north of Packery Channel. North Padre Is. includes Nueces County and Kleberg County Areas in the City and ETJ.

Figure 5 is an adaptation from the State Erosion Response Plan modified to include a summary of Mustang Island and North Padre Island erosion and accretion rates.

An analysis of the shoreline erosion rates (BEG 2007) indicates that over 90% of the gulf shoreline in the City and its Extraterritorial Jurisdiction is eroding compared with 64% of the Texas Gulf Coast. However, the average erosion rate on Mustang Island at -0.4 is significantly less than the average rate of -2.3 feet per year for the Texas Coast. The following is a brief summary of the Bureau of Economic Geology's erosion rates depicted on 20 map exhibits in Appendix 2: Dune Assessment and Mitigation Maps.

II.B.1. Exhibits 1 thru 7:

Starting with the southern portion of the study area, Exhibits 1 thru 7 are located in Kleberg County with Exhibits 1 thru 4 encompassing a portion of the Padre Island National Seashore. Overall, Exhibits 1 thru 7 show a gradually increasing erosion rate in a south to north direction along the public beach. The most southerly point in Exhibit 1 shows the highest accretion rate in the first seven Exhibits with a change rate of +0.71 feet per year. Exhibit 1 also is the only exhibit in the study area with more accretion change rates than erosion change rates. However, erosion begins to dominate change rates starting with Exhibit 2 and continuing to Exhibit 7. Erosion rates gradually increase proceeding northward to a point in Exhibit 7 where erosion is over -4 feet per year.

II.B.2. Exhibits 8 and 9:

Exhibits 8 and 9 are located immediately south of the Kleberg and Nueces County Line. Erosion rates quickly increase to the -5 and -6.5 foot plus range. However, erosion rates begin to creep back downward at the northern end of Exhibit 9, where rates fall under -6 feet per year.

II.B.3. Exhibits 10 thru 12:

Exhibits 10 thru 12 encompass beaches abutting Padre Balli Park (Exhibit 10), the Padre Island Sea Wall (Exhibit 11 and 12), and Packery Channel / State land leased to the City (Exhibit 12). Erosion rates are generally in the -4 and -5 foot range with a few exceptions. The Erosion Rates published by the Bureau of Economic Geology for the areas on either side of Packery Channel do not take into account the 2003 construction of Packery Channel jetties. Recent studies of the area suggest that erosion south and north of the jetty has been reduced or even changed to an accreting beach. The City is monitoring beach erosion in the area and recent aerial photos of the jetties also depict accumulation of beach sand.

II.B.4. Exhibits 13 thru 17:

County park land is located in Exhibit 13 and Mustang Island State Park beaches appear in Exhibits 14 thru 17. Except for 0.25 miles on either side of the Fish Pass in Exhibit 16 showing accretion rates, the beaches in this area are eroding. Erosion rates north of the Fish Pass increase significantly from a low near the

Fish Pass of -0.17 feet per year to -1.94 feet per year at the north end of Mustang Island State Park.

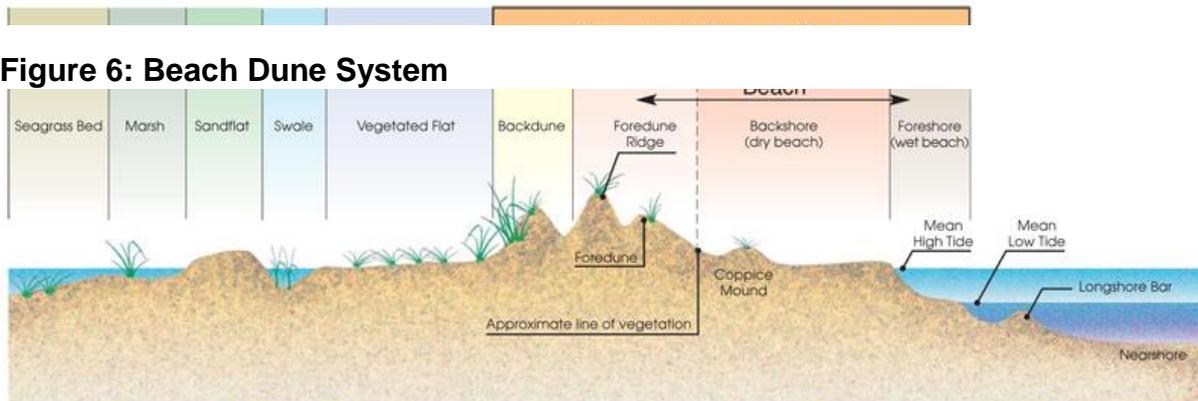
II.B.5. Exhibits 18 thru 20:

For Exhibits 18 thru 20 on Mustang Island, the erosion /accretion rates fluctuate from -1.0 to 1.5 feet per year. However, there are a few exceptions located on the northern edge of the study area (Exhibit 20) which exceed -1.5 feet with a maximum rate of -2.32 feet per year.

II.C. Projected Shoreline

The map exhibits in Appendix 2, contain the Bureau of Economic Geology's projected 2060 shoreline that incorporates predicted erosion rates and sea level rise data. Each of these data items provides an indicator of future change along the shoreline based on scientific data and begins to paint a picture of the future of the shoreline in terms of factual, measurable and quantitative data. For additional information, see the Texas Erosion Response Plan located on the Texas General Land Office website: <http://www.glo.texas.gov/what-we-do/caring-for-the-coast/documents/coastal-erosion/response-plans>.

II.D. Foredune Ridge Assessment



Typical cross section of a Texas barrier island. Actual conditions may vary.

While many factors impact the viability and strength of the dune system, this study addresses the minimum desired height, width and vegetative cover of the foredune ridge in the dune system and the minimum desired beach width. Studies have shown that a foredune ridge of approximately ten feet in height offers significant protection to beachfront construction.³ In a study prepared in 2009 for the Texas General Land Office (TGLO), one of the conclusions was that damage to beachfront construction will be minimal where there is a ten foot high foredune ridge with a

³ "Defining and Mapping Foredues, the Line of Vegetation, and Shorelines along the Texas Gulf Coast", James C. Gibeaut, Harte Research Institute for Gulf of Mexico Studies, Texas A & M University-Corpus Christi and Tiffany L. Caudle, Bureau of Economic Geology, Jackson School of Geosciences, The University of Texas at Austin.

width of approximately 200 feet. Figure 6, taken from the TGLO⁴ Dune Protection and Improvement Manual, illustrates a typical cross section of the dune system on the Texas coast. The barrier island, and in particular the near shore beach is the first line of defense and the foredune ridge is the second line of defense from the impact of a hurricane and associated storm surge.

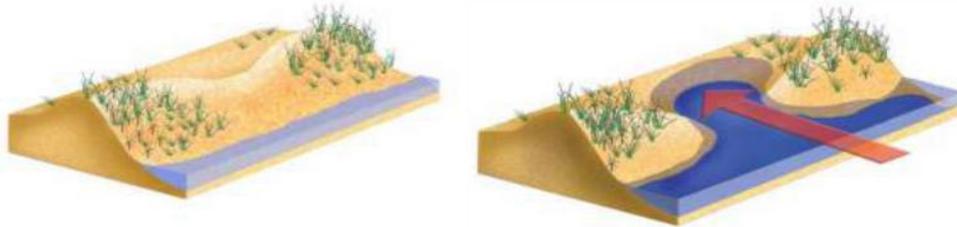


Figure 7: Washover Damage to the Dune System



Regarding beach width, a wide beach can keep the storm waters or storm surge from cutting away the base of the dune system. After Hurricane Ike in 2008, there was a clear shearing away of coppice mounds to the Line of Vegetation (LOV).

Figure 8: Hurricane Ike Dune Erosion

⁴ Texas General Land Office Dune Protection and Improvement Manual for the Texas Gulf Coast, Fifth Ed., page 4.

The beach typically will act as a buffer where sediment can be deposited and the wind can then transport the sediment toward the dune system. Where the beach has eroded away and is very narrow, normal wave action can erode away the base of the foredune ridge much like a sand castle on the beach is washed away with an incoming tide.

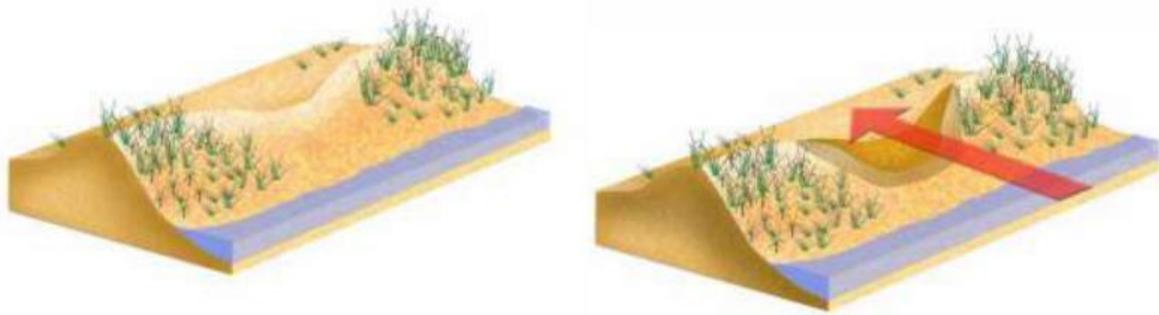


Figure 9: Blowing Wind Eroding the Dune System

Vegetative cover holds the dune system in place. Where the dune system contains less than 75% coverage, the dune system is much more susceptible to creation of a “blow out” from high winds. Figure 9, from the GLO Dune Protection and Improvement Manual helps to illustrate how a sparsely vegetated dune is eroding by coastal winds. Healthy dune vegetation helps to protect dunes, by catching blowing sand and creates biological diversity.

The following is a brief description of the height, width and vegetative coverage characteristics of the foredune ridge illustrated on Exhibits 1 thru 20. Aerial photos or field surveys were used to assess dune vegetative coverage.⁵

II.D.1. Exhibits 1 thru 7:

Exhibits 1 thru 7 show a nearly continuous line of dunes of 15 to 20 foot in height exist. The width of the dune system varies widely but is generally at least 200 to 400 feet or more in width.

II.D.2. Exhibits 8 and 9:

Dunes in Exhibits 8 and 9 are characterized by dune heights of 8 to 15 feet with an occasional dune of 20 feet in height. The width of the foredune ridge is approximately 200 to 300 feet in width and vegetative cover is over 75% or more based on 2009 aerial photos.

⁵Aerial photos were not available for Exhibits 1 and 2. 2003 aerial photos were used to evaluate vegetative cover for Exhibits 3-9. 2009 Aerial photos were used to evaluate vegetative cover in the dune system for Exhibits 10-20.

II.D.3. Exhibits 10 thru 12:

Except for the area behind the Padre Island Sea Wall, the dune system is approximately 15 feet in height with a trend toward a taller and wider dune system in Exhibit 12. The width of the foredune ridge is in the 200 to 350 foot width range. Vegetative cover appears to be over 75% except in the dune mitigation area on the north side of Zahn Road. The dune mitigation area is part of a Dune Protection Permit for the Preserve at Mustang Island subdivision. Currently, the vegetative cover is approximately 50% and expected to fill in over the next year as part of the compliance for the existing Dune Protection Permit.

II.D.4. Exhibits 13 thru 17:

Exhibits 13 - 17 encompass County Park land and Mustang Island State Park (Exhibits 14-17). Two historical washout areas also exist, Newport Pass (Exhibit 13) and Corpus Christi Pass (Exhibit 14). The foredune ridge in these exhibits is not as continuously parallel with the line of vegetation as in Exhibits 1-12. Exhibits 13 and 14 show a combination of dune heights from 8 to 20 feet in height with a foredune ridge of approximately 350 feet wide. A varying pattern in the foredune ridge can be observed in Exhibits 14 thru 17 with isolated 15 and 20 foot high dunes. In several areas a line of 15 to 20 foot high dunes have migrating in a finger like pattern to the west. North of the Fish Pass in Exhibits 16 and 17 the foredune ridge appears to grow in height with a slightly more defined 200 to 250 wide foredune ridge parallel with the Line of Vegetation. Vegetative cover appears to be nearly continuous at 75% coverage or more.

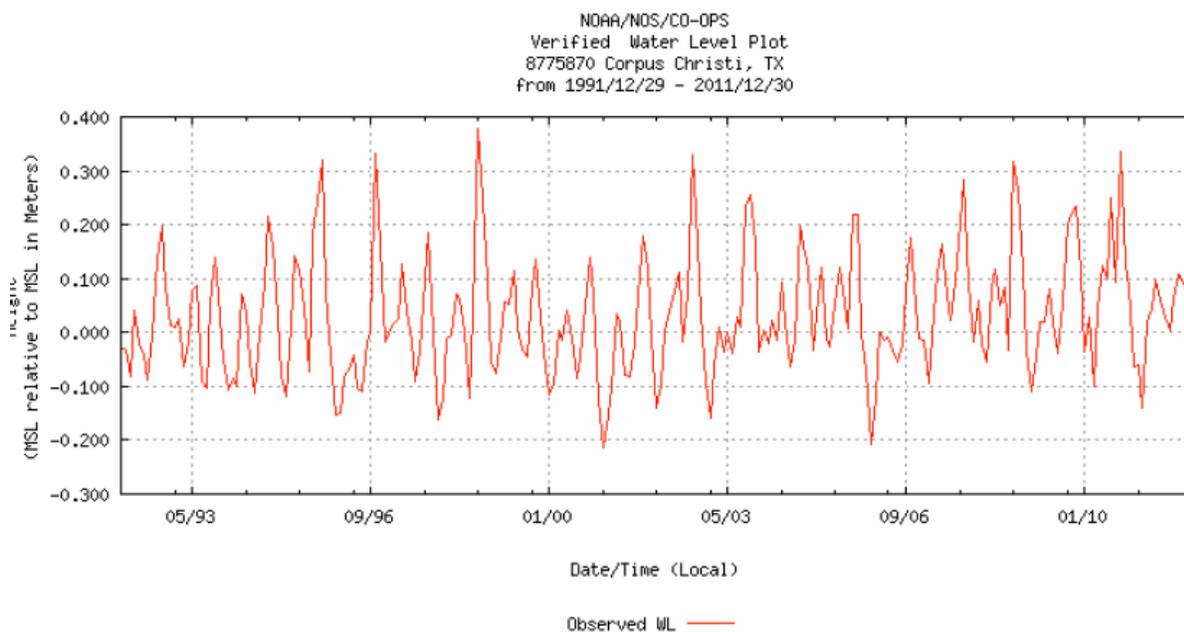
II.D.5. Exhibits 18 thru 20:

Exhibits 18 through 20 encompass private lands north of Mustang Island State Park. The foredune ridge is characterized by a shorter dune system in the south half of Exhibit 18 with dunes of about 8 to 10 feet in height with several isolated taller 15 to 20 foot dunes. About mid-point in Exhibit 18 the dune heights increase to 15 to 20 feet in height and continue thru Exhibits 19 and 20. The width of the Foredune Ridge appears less defined but ranging from 200 feet to 400 feet in width. The Foredune Ridge is not continuous, but contains several gaps or breaks with shorter dune heights. Vegetative cover appears to be 90 to 100% excluding areas of development.

II.E. Federal Emergency Management Agency (FEMA) and the National Oceanic and Atmospheric Administration (NOAA)

The Federal Emergency Management Agency (FEMA) flood zone determination maps indicate that the foredune ridge is located in a Velocity Zone 14 (Elevation 14 feet). A velocity zone is an area predicted by FEMA, to contain high velocity flowing flood water during a major storm event. Within a V-Zone along the Gulf Beach the minimum designated structural height, measured from the lowest horizontal structural member, is 14 feet above mean sea level.

Other factors to consider when assessing the risk to development in island areas are the potential impact from hurricane storm surge and sea level rise. Studies of storm surge by NOAA show that predicting storm surge is a complex series of factors dependent on a particular location. The wave height of a hurricane storm surge is sensitive to the “slightest changes in storm intensity, forward speed, size (radius of maximum winds-RMW), angle of approach to the coast, central pressure (minimal contribution in comparison to the wind), and the shape and characteristics of coastal features such as bays and estuaries.” However, one key factor is the width and slope of the continental shelf, which can double the size of a storm surge depending on the location. For example, an 8 or 9 foot storm surge where the continental shelf drops off quickly like Miami Beach, Florida could translate to a 20 feet high storm surge along the Louisiana coastline where there is a very wide and shallow continental shelf. One of the characteristics of Mustang and North Padre Island is a moderately sloping drop off that could magnify the storm surge height.⁶



Bob Hall 1993 - 2012

Figure 10: Water Levels at Bob Hall Pier 1992 - 2012

⁶NOAA, National Hurricane Center, Storm Surge Overview: <http://www.nhc.noaa.gov/surge/>

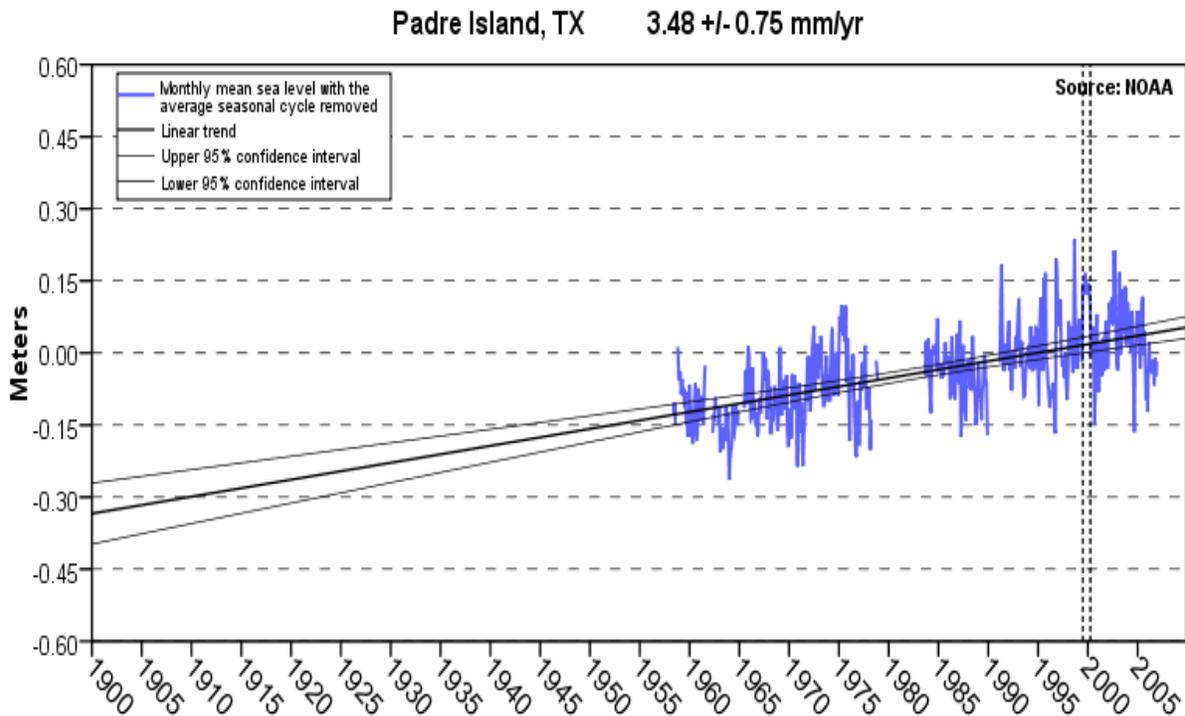


Figure 11: Bob Hall Pier Sea Level 1958 - 2006

The major findings of this study concerning the foredune ridge are:

- That a foredune ridge of at least 10 feet in height and 200 feet in width offers substantial protection from storm losses;
- That FEMA requires a minimum base flood elevation for structures of 13 to 14 feet in the V-Zones within the foredune ridge on Mustang and North Padre Island;
- That a moderately sloping continental shelf contributes to storm surge height; and
- That there is a 47 year historical trend of sea level rise of approximately 1.14 feet per 100 years.

Based on these findings, this plan establishes the minimum design criteria for a dune system as a dune system with a foredune ridge height of 14 feet mean sea level (msl) and a minimum desirable width of the dune system of 350 feet with at least 50% vegetative coverage. This criteria is defined as having been achieved if within any 100 foot segment, measured linearly along the public beach, there are dunes of the prescribed height, the dune system contains the required width, and the dune system is at least 50% vegetated.

Studies have shown that natural washouts provide a valuable function to allow flood waters to flow past the dune system or to allow flood waters to recede back out to the ocean. Where it can be demonstrated that an area's lack of a dune system meeting minimums for height, width and vegetative cover are due to the area being part of a natural washout, the area will not be targeted for mitigation.⁷

Primary historical washouts were located between the north Jetty and the current Packery channel. A 3,000' washover area existed from the beginning at the north Jetty of the Fish Path and running south 9,000' from the Packery Channel north and a 900' wash beginning 12,500' north of the Packery Channel. (See Figure 14)



Figure 12: 2007 Aerial Photo Overlaid with a 1948 Aerial Photo

II.F. Line of Vegetation (LOV)

The beach setback line in Nueces and Kleberg Counties within the Corpus Christi jurisdiction shall use the Line of Vegetation (LOV) obtained from the most current available registered aerial photos. For purposes of this study, 2003 and 2009 aerial

⁷ Mapping and Characterization of Significant Washover Features: Texas Gulf Shoreline, Kimberly K. McKenna, P.G., Final Report of the Texas General Land Office, August 2007.

photos have been used to delineate the Line of Vegetation for planning purposes. The LOV used in the ERP cannot be used for permit applications for construction.

II.G. Building Setback Line (SBL)

A 350 foot Building Setback is established by this plan to reduce future storm damage to public and private properties. The 350 foot Building Setback Line shall be measured landward of the Line of Vegetation but shall not extend beyond the 1,000 foot Dune Protection Line. In addition, the setback line shall not apply to exempted areas or landward of the toe of the seawall on North Padre Island.

II.H. Useable Public Beach

Sea level rise on the Gulf Mexico over the last 20 years has been estimated to be 1.6 millimeters per year for a total sea level rise of 32 millimeters or 1.2598 inches.

⁸Given the prediction of continued sea level rise and erosion of the public gulf beach, a minimum desired standard for public beach width is also established by this plan. Establishing the criteria for what is the public beach is also addressed in Gibeaut and Caudle's study⁹. According to the study, the useable portion of the public beach can generally be defined as that area between the Line of Vegetation¹⁰ and the wet/dry line of the aerial photography. Many studies¹¹ note that a wide beach in addition to a healthy dune system provides protection from erosion caused by seasonal high tide and storm surge events.

Using 2009 aerial photos for Nueces County and 2003 aerial photos for Kleberg County, a visual determination of the Line of Vegetation and the wet/dry line has been used to establish the area of useable beach on North Padre Island and Mustang Island. This determination is for planning purposes only and shall not be used for issuance of Beachfront Construction Certificates or Dune Permits.

In the study area the average width of the public beach, measured between the line of vegetation and wet/dry line, on Mustang Island is 126 feet wide (North of State Park 89 feet) and on North Padre Island is 117 feet wide (Nueces County only). For purposes of assessment of the beach, a minimum desirable beach width to protect the foredune ridge shall be at least 100 feet in width measured from the wet/dry line to the line of vegetation. It is noted however, that the minimum width established by this plan will not be used as a standard to allow mitigation and

⁸ Sea level history of the northern Gulf of Mexico coast and sea level rise scenarios for the near future, Department of Earth, Ocean and Atmospheric Science, Florida State University, Tallahassee, FL 32306, USA, Joseph F. Donoghue

⁹ Defining and Mapping Foredunes, the Line of Vegetation, and Shorelines along the Texas Gulf Coast James C. Gibeaut, Harte Research Institute for Gulf of Mexico Studies, Texas A&M University-Corpus Christi, Tiffany L. Caudle, Bureau of Economic Geology, Jackson School of Geosciences, The University of Texas at Austin, 2009.

¹⁰ Line of Vegetation - The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach.

Title 31. Natural Resources and Conservation Part 1.Chapter 15.Subchapter A.15.2(41)

¹¹ Shore Protection Manual Volume 1, Engineering Research Center, USACE 1984.

placement of beach maintenance materials in a method that will minimize the public beach easement. The minimum width standard will be used to assess areas where the beach has narrowed due to erosion and will assist the City in prioritizing areas where beach renourishment may be needed to widen the beach.

III. New Construction Guidelines

To the maximum extent practicable, all structures should be constructed landward of the building setback line.

Construction of structures landward of the building setback line must comply with mitigation sequence requirements for avoidance and minimization of effects on dunes and dune vegetation as specified in Texas Administrative Code (TAC) §15.4(f) Mitigation. The permittee is not exempt from compliance with compensatory mitigation requirements for unavoidable adverse effects on dunes and dune vegetation.

III.A. New Residential or Commercial Structures. Require new residential dwellings or commercial structures to be located at least 350 feet landward from the Line of Vegetation unless no practicable development alternatives are possible;

III.B. Restrict New Development Landward 200 feet to 350 feet. Restrict new development in the area between 350 and 200 feet landward of the Line of Vegetation to recreational amenities such as pools and picnic areas. In any case, applicants must demonstrate that every attempt has been made to minimize the use of impervious surfaces in this zone.

III.C. Community Benefit Projects. Application of these guidelines shall not prohibit public community benefit projects, including, but not limited to, water exchange passes, beach renourishment projects, recreational structures, or other projects in the public interest.

III.D. Exempt Projects and Properties. Dune walkovers, beach access roadways, public parking and associated public facilities shall be constructed in accordance with the GLO construction guidelines, to the extent applicable.

The City of Corpus Christi and Nueces County shall consider exemptions from the prohibition of residential and commercial construction seaward of the setback line for:

III.D.1. Properties Where There Is No Practicable Alternative

Properties for which the owner has demonstrated to the satisfaction of the City and County that no practicable alternatives to construction seaward of the building setback line exist. For purposes of this section, practicable means available and capable of being done after taking into consideration existing building practices, site alternatives, and the footprint of the structure in relation to the area of the buildable portion of the lot, and considering the overall development scheme for the property.

III.D.2. Pre-existing Permits, Certificates or Master Plan Developments

Projects for which construction is permitted, in the area seaward of the 350' Building Setback, under a Dune Permit, Beachfront Construction Certificate or Master Plan Development prior to the effective date of this Erosion Response Plan are exempt if there are no material changes to the site and provided the permit, certificate or Master Plan has not expired.

III.D.3 Existing Structures

Structures located seaward of the building setback line prior to the effective date of this section for which modifications are sought that do not increase the footprint of the structure. However, structures seaward of the building setback line that are damaged more than 50% or abandoned for a period of more than 12 months should be subject to Section III.E. Construction Requirements for Exempt Properties.

III.E. Construction Requirements for Exempt Properties

Where the City allows an exemption from the prohibition for building seaward of the building setback line, the City will require the following conditions of construction or provide a reasoned justification for a variance from the minimal standards that will demonstrate that the provisions will reduce public expenditures due to erosion and storm damage.

III.E.1. Sealed Plans. Plans and certifications for the structure shall be sealed by a registered professional engineer licensed in the State of Texas, providing evidence of the following:

III.E.1.i. Freeboard. A minimum of two-foot freeboard above FEMA's BFE to the finished floor elevation of the lowest habitable floor;

III.E.1.ii. Enclosures. No enclosures exceeding 300 square feet below BFE;

III.E.1.iii. Design Standards. Consistency with the latest edition of specifications outlined in American Society of Civil Engineers, Structural Engineering Institute, Flood Resistant Design and Construction, ASCE 24-05;

III.E.1.iv. Relocateable Structures. That habitable structures will be feasible to relocate; and

III.E.1.v. Hydrology. All construction shall be designed to minimize impacts to natural hydrology.

III.E.2. Location of Construction. Location of all construction should be landward of the landward toe of the foredune ridge and as far landward as practicable.

IV. Goals for Enhancement of the Dune System and Beach

IV.A. Dune Goals

Promote the formation of a continuous foredune ridge of at least 14 feet in height, with a minimum width of 350 feet wide measured perpendicular to the gulf beach and which contains at least 50% of vegetative cover. The methods used to achieve this goal will be determined by City and County beach maintenance operations on a case by case basis depending on various factors, including but not limited to, the current width of the dune system, access to the dune system (beach only or back access), beach width, and other appropriate on site criteria. The current methods of disposing of seaweed include: front stacking, back stacking and placement of seaweed in beach maintenance material storage areas. As new techniques for addressing seaweed maintenance evolve the City and County shall evaluate their potential use, benefits and limitations and incorporated these new techniques as appropriate.

IV.B. Beach Goals

Recognizing that the public beach is the first line of defense against storm surge, any efforts to widen the public beach should be promoted to reduce storm damage and to enhance public beach access. The minimum desirable width of the public beach should be at least 100 feet in width from the Line of Vegetation seaward to mean high tide.

IV.B.1. Minimum Two-Way Travel

Motor vehicles are not allowed to operate within 50 of the waters edge of any gulf beach and the minimum two-way travel width for motor vehicles is 24 feet provided that the two-way travel lanes are not within 20 feet of the Line of Vegetation.

IV.B.2. Corp of Engineers Permit.

Beach cleaning methods shall be in accordance with a Corp of Engineers Permit and use the least impactful method for removal of seaweed in order to prevent the grading down of the public beach and or narrowing of the public beach. Wherever possible, the City and County will seek permits that are as similar as possible. In addition, the ability to place sand below mean high tide, to widen the beach, should be pursued by the City and County in their respective permits.

IV.B.3. Low Beach Usage Areas.

Maintaining the public beach in a natural state without mechanized beach cleaning is encouraged in areas of low usage. The public goal for these areas should be to keep two travel lanes open for beach access.

IV.B.4. Periodic Beach Width Assessment.

The City should conduct an assessment of the public beach width at least every five years unless there is evidence of significant erosion then annual assessment maybe necessary. Portions of the public beach that currently warrant an annual assessment include the beach in front of the seawall and the beach between the Packery Channel and the State Park.

IV.C. Vegetation Goals (Seaward of the Setback Line)

Mowing / cutting of vegetation within the setback area will not be allowed except for exempt areas. For mitigation projects requiring revegetation appropriate dune vegetation includes:

IV.C.1. Seaward Face of Dunes: Bitter Panicum (grass), Sea Oats (grass), Marsh Hay Cordgrass (grass), beach morning glory (vine) and seagrapes (vine).

IV.C.2. Landward side of dunes: Low-growing plants and shrubs found on the back side of the dunes include seacoast bluestem, cucumber leaf sunflower, rose ring gallardia, partridge pea, prickly pear, and lantana. Many of these are flowering plants, an attractive alternative to dune grasses though less effective as dune stabilizers.¹²

IV.C.3. Native Hay: A sometimes more effective technique is to place a layer of native hay, composed of the above listed dune vegetation, on bare sand areas. This technique provides immediate protection from blowing sand and will start the natural process of re-seeding from the seeds in the hay. The best time to cut the hay and place the layer of hay is in the fall and winter. This technique is generally less costly and more effective than traditional methods since the grass is readily available on the island and due to the large quantity of seeds compared to individual hand plantings.

IV.D. Sand Fencing

Encourage the use of sand fencing, in limited applications, to build up the dunes were revegetation alone is unlikely to be sufficient to create the appropriate height and width of the dune system. Sand fencing should be used as a first step toward building up low areas and creating coppice dunes, prior to revegetation.

V. Mitigation

V.A. Definition of Mitigation

Mitigation may be any construction project which either enhances the dune system or beach access, consistent with this plan.

¹² Coastal Dunes: Dune Protection and Improvement Manual for the Texas Gulf Coast.

V.B. Scope of Mitigation

Mitigation construction projects will usually result in the enhancement or building up of the dune system. However, a mitigation project may also be for enhancement of public beach access or to provide public education benefits concerning proper care of the public beach, i.e., litter pick-up, proper disposal of fishing bait, information on protecting wildlife and native habitats contained in the beach/dune system or other beneficial projects which meet to goals of the Erosion Response Plan.

V.C. Mitigation Location

A mitigation construction project shall be located within the 1,000 foot Dune Protection Area except where a mitigation project will enhance public access, then the limits of the project may extend to the first paralleling public road.

V.D. Dune System - Mitigation Prioritization

An assessment of the beach / dune system was based on on-site inspections, local historical knowledge, and the data contained on the Exhibits in this plan (contours, 2009 aerial photos, etc.).

V.D.1. Mitigation Prioritization.

Opportunities for mitigation to enhance the dune system or public beach are prioritized based on the following criteria.

Priority 1: Protection of existing development seaward of the erosion area line.

Priority 2. Protection of existing vacant platted lots located seaward of the erosion area line.

Priority 3. Protection of existing development landward of the erosion area line.

Priority 4. Protection of existing vacant lots platted landward of the erosion area line.

V.D.2. Beach / Dune System Criteria.

Under these four priorities the dune system has been evaluated to look for portions of the dune system where the foredune ridge is:

- Is less than 14 feet in height¹³;
- Is less than 350 feet wide;
- Contains less than 50% vegetated coverage;
- Is not a historical washover area.

In addition, a primary concern is where the Gulf beach is narrower than 100 feet measured from the mean high tide to the Line of Vegetation.

Appendix 2 identifies areas for dune enhancement based on the above criteria.

¹³ Fourteen feet exceeds 75% of the FEMA Base Floor Elevation

V.E. Funding for Dune Mitigation Projects

The City will seek funding in partnership with Nueces County or other agencies to promote protection of or enhancement of the dune system within the City's area of jurisdiction. (Nueces County inside city limits and Kleberg County inside city limits and in the Five Mile Extraterritorial Jurisdiction)

The City will pursue grants for Dune Mitigation Projects from the GLO or other state and federal agencies if local matching funds can be identified.

VI. Enhancement of Public Beach Access

VI.A. Existing Public Beach Access Inventory

Within Corpus Christi's Beachfront Construction Certificate authority and the Nueces County's Dune Permitting authority there are 12 existing public beach access roads and three (3) beach parking lots. (See Appendix 3) These beach access points are composed of:

VI.A. 1. City Owned Public Beach Access

Four (4) City owned/maintained public beach access roads and, one (1) beach parking lot on the Padre Island Seawall

- **Beach Access Road 2** is located 7.3 miles south of City of Port Aransas Beach Access Road 1A on Mustang Island
- **Zahn Road**, is located 1.2 miles south of Newport Pass Road on the north side of Packery Channel
- **Beach Access Road 3-A** is located on the south side of Packery Channel via Windward Drive
- **Whitecap Boulevard** is located 0.8 miles south of Beach Access Road #3-A at the south end of the concrete seawall on North Padre Island
- **The Sea Wall Beach Parking Lot** is located between Beach Access Road #3-A and Whitecap Boulevard on North Padre Island

VI.A.2. County Owned Public Beach Access.

Five (5) County owned/maintained public beach access roads and, one (1) beach parking lot at Padre Balli Park

- Newport Pass Beach Access Road is located 1 mile south of Mustang Island State Park Beach Access Road 3 on Mustang Island
- Beach Access Road 4 is located 0.3 miles south of Whitecap Boulevard on North Padre Island, within Padre Balli Park
- Beach Access Road 5 is located 0.4 miles south of Beach Access Road #4 on North Padre Island, within Padre Balli Park
- Padre Balli Park entrance road is located 0.3 miles south of Beach Access Road Five on North Padre Island
- Beach Access Road 6 is located 0.4 miles south of the Padre Balli Park entrance road on North Padre Island, within Padre Balli Park

- Padre Balli Beach Parking Lot is located between the Padre Balli Park entrance road and Beach Access Road #6 on North Padre Island

VI.A.3. State Owned Public Beach Access.

Two (2) State owned/ maintained public beach access roads and one beach parking lot are located on Mustang Island State Park

- Mustang Island State Park Entrance Road is located 206 miles south of Beach Access Road 2 on Mustang Island and terminates at beach parking lot.
- Beach Access Road 3 is located 2.2 miles south of the Mustang Island State Park entrance on Mustang Island

VI.A.4. Federally Owned Public Beach Access.

One (1) Federally owned/maintained beach access road is located on North Padre Island and is located 7.5 miles south of Beach Access Road #6 in Padre Balli Park.

VI.B. Existing Standard for Access along the Public Beach

For the foreseeable future the County and the City have no intention of closing any public beach access roadways. However, temporary closure of public beach access is allowed for the purpose of protecting the public during times of seasonal high tides, proceeding landfall of a tropical storm or during times of any other public emergency where travel on the public beach presents a public risk.

By Chapter 10 of the City Code the public beach is safely passable if there is sufficient room for two travel lanes and provided that the travel lanes cannot be closer to mean high tide than 50 feet and not closer to the Line of Vegetation than 25 feet.

VI.C. Beach Access Road Assessment

VI.C.1. Beach Access Road #2

Beach Access Road #2 is located approximately 7.2 miles south of Beach Access Road 1A in the City of Port Aransas. Beach Access Road #2 connects directly with State Highway 361 and the gulf beach for a total length of approximately 1,450 feet. The road contains asphalt pavement with a width of 20-24 feet and 5 foot to 8 foot wide gravel shoulders. There is a slight rise in elevation of the roadway cresting approximately 300 feet landward of the public beach. The roadway then gradually slopes to its terminus at the Gulf Beach. The slight elevation of Beach Access Road #2 at its approach to the beach provides protection to inland properties during a storm surge.



Figure 13: Beach Access Road 2 on Mustang Island



Figure 14: Beach Access Road 2, Seaward View Near State Highway 361

Beach Access Road 2 does not contain a GLO recommended “switch back” that turns away from the prevailing winds at the approach to the beach. If the roadway were improved with the necessary turn away from prevailing winds, the

accumulation of sand in the roadway would be reduced. Vacant privately owned properties are located on either side of Beach Access Road #2, which when platted may allow the realignment of the roadway to include a small switchback. The construction of the switch back may require public grant funding with a local match.



Figure 15: Mustang Island State Park Entrance, Google Aerial

VI.C.2 Mustang Island Park Entrance Road

Mustang Island Park Entrance Road connects State Highway 361 with a beach parking lot. The entrance road has a length of approximately 0.30 miles and a width of 22 feet with several pull out parking areas along its length. The roadway also connects with an Recreation Vehicle Park. The roadways contains a switch back but does not have a raised speed hump elevation for storm surge protection at the approach to the beach. The entrance roadway is owned and maintained by the state and is exempt from the Erosion Responses Plan.



Figure 16: Beach Access Road 3, Mustang Island State Park

VI.C.3 Beach Access Road 3

Beach Access Road 3 is located on Mustang Island State Park and connects State Highway 361 with the gulf beach. Beach Access Road #3 is not subject to the Erosion Response Plan. The approximate length of the Beach Access Road #3 is 0.50 miles. The roadway consists of two travel asphalt lanes with a width of 20 to 24 feet, 5 to 8 foot wide gravel shoulders and roadside drainage. The roadway does not have the GLO recommended switch back alignment away from prevailing winds and does not have an “elevated hump” at the approach to the beach. Beach Access Road 3 is owned by the State of Texas and is exempt from the Erosion Response Plan.

VI.C.4 Newport Pass Road

Newport Pass Road connects with State Highway 361 and the gulf beach and is located approximately 1 mile south of Beach Access Road #3. The total length of the roadway is approximately 0.50 miles. The roadway is composed of asphalt pavement with a width of 20 feet for two travel lanes. The roadway contains two switch-backs consistent with GLO design guidelines.



Figure 17: Newport Beach Access Road, Photos and Google Aerial

While the roadway does not contain the GLO recommended roadway hump at the approach to the beach, there is a moderate elevation grade leveling off roughly 100 feet before connecting with the beach. Damage to the roadway from previous hurricanes and tropical storms has been minimal. The possibility of future damage to commercial or residential property adjacent to the roadway is negligible as the County owns all adjacent property. However, if the roadway sustains major storm damage in the future, the County would address a more prominent elevation similar to that of an exaggerated speed hump if funding were available.

VI.C.5 Zahn Road



Figure 18: Zahn Road at Packery Channel, Google Aerial



Figure 19: Zahn Road at Packery Channel

Zahn Road is located approximately 1 mile south of Newport Pass Road and connects State Highway 361 to the beach. Roadway length is 950 feet with a right-of-way of 85 feet and two travel lanes. A five foot sidewalk is located on the northern edge of the right-of-way. The roadway does not have a GLO

recommended switchback or an elevated section near the approach to the beach. In the future, if the roadway is substantially damaged then an elevated section would be pursued if funds are available. Due to the adjacent residential subdivision and dune system, a realignment to include a switch back may not be feasible.

VI.C.6 Beach Access Road 3A



Figure 20: Beach Access Road 3A, Google Aerial

Beach Access Road #3A on North Padre Island is located immediately south of the Packer Channel and connects with the gulf beach via Park Road 22, Whitecap Boulevard and Windward Drive. The approximate length of the Beach Access Road #3A is 0.14 miles or 750 feet. The roadway consists of two asphalt travel lanes with a width of 20 feet. The roadway alignment is generally consistent with GLO standards with a steep drop off within 100 feet of the beach. In addition, there is at least 10 feet of elevation from the beach landward to Beach Access Road 3A's connection with Windward Drive.



Figure 21: Beach Access Road 3A, Seaward View

VI.C.7 Seawall Parking Lot



The seawall parking lot was constructed in 2006 and contains approximately 300 parking spaces. Since construction the parking lot has been improved with several enhancements that include public restrooms, landscaping and an ADA beach access ramp from the seawall to the beach.

Figure 22: Seawall Parking Lot

VI.C.8 Whitecap Boulevard

Whitecap Boulevard on North Padre Island is located 0.85 miles south of the Beach Access Road 3A and connects the gulf beach with Windward Drive. The approximate length of the Whitecap Boulevard between the beach and Windward Drive is 1,100 feet. The roadway pavement consists of two asphalt travel lanes, parallel on street parking with a width of approximately 44 feet. The roadway contains curb and gutters with sidewalks on both sides of the street, ranging in width from 10 feet to five feet at the approach to the beach. The roadways length and alignment are generally consistent with GLO standards. The msl elevation at Windward Drive is 7 feet with a gradual slope to the sea level at the beach. In the event of storm damage, if funds are available, the City would reconstruct the roadway with an exaggerated speed hump at the approach to the beach per GLO design guidelines.



Figure 23: Whitecap Boulevard, Google Aerial



Figure 24: Whitecap Boulevard, Seaward View

VI.C.9 Beach Access Roads 4, 5, 6 and Padre Balli Park Entrance/Exit Road

These access roads connect directly to State Highway Park Road 22, providing public access within the park along North Padre Island. (Figure 27)

Figure 25: Beach Access Roads 4, 5, 6 and Padre Balli Park Entrance / Exit Road



Beach Access Road 4 is located approximately 0.20 miles south of Whitecap Road and connects the beach with Park Road 22. Beach Access Road 4 is 0.5 miles in length and 24 feet in width and contains two travel lanes. Elif Road

intersects Beach Access Road 4 approximately 950 landward of the Gulf Beach to form a T-intersection. Beach Access Road 4 has a straight alignment without switchbacks but is oriented at an angle to the prevailing winds.

Due to Beach Access Road 4's relatively flat grade and low elevation, if the roadway sustained major storm damage, then Nueces County would seek funding to address construction of a more prominent elevation and possibly a switchback consistent with GLO design guidelines.



Figure 26: Beach Access Road 4, Seaward View at the Intersection of Elif Road

VI.C.10 Beach Access Road 5

Beach Access Road 5 is located approximately 0.5 miles south of Beach Access Road 4 and also connects the beach with Park Road 22. The total length of the roadway is 0.4 miles and contains a width of 24 feet. The roadway is not consistent with GLO design guidelines for a switchback and an elevated hump at the approach to the beach. If

Beach Access Road 5 sustained major storm damage, the county would seek funding to address construction of a more prominent elevation similar to that of

the exaggerated speed hump and some road realignment to ensure that its culminating point onto the beach was at more prominent angle to the prevailing wind direction. Because Beach Access Road 5 is within the Park, there are no impacts to private property.

Figure 27: Beach Access Road 5, Seaward View



VI.C.11 Padre Balli Park Entrance/Exit

The Padre Balli Park Entrance/Exit is located approximately 0.28 miles south of Beach Access Road 5 and also connects the beach with Park Road 22. The total length of the roadway is 0.38 miles. The entrance and exists along this roadway are divided by a large median. The entrance and exit roadways are each 24 feet in width.

As the park entrance, the roadways connects to the beach, beach parking facilities, RV Camping facilities, County Park Offices, and Bob Hall Pier. Reorientation of the access road would require major redesign of the park.



Figure 28: Padre Balli Park Entrance/Existing Road, Seaward View

In order to deflect a direct storm surge a large grassy area has been highlighted in Figure 31 with the recommendation to create a large dune on this site. The unused grassy surface is 51,340 or about 1.1 acres. Dunes could be built on the area by placing sargassum seaweed from nearby beach areas.



Figure 29: Padre Balli Park Entrance - Potential 1.1 Acre Dune Construction Site

VI.C.12 Beach Access Road 6

Beach Access Road 6 is located 0.45 miles south of the Padre Balli Park Entrance/Exit Road and is very near the southern most boundary of Padre Ballie Park. The roadway connects with Park Road 22 and has a total length of 0.4 miles and contains a switchback alignment but at its approach to the beach faces into the prevailing wind. While there is a gentle rise in elevation as the roadway approaches the beach, there is not the pronounced rise in road elevation suggested by GLO guidelines.



Figure 30: Beach Access Road 6, Google Aerial



Figure 31: Beach Access Road 6, Seaward View

VI.C.13 Padre Island National Sea Shore North Beach Access Road

Padre Island National Sea Shore North Beach Access Road located 7.5 miles south of Beach Access Road 6. The roadway connects with Park Road 22 and has a total length of 0.42 miles and contains a switchback alignment but at its approach to the beach faces into the prevailing wind. The orientation of the roadway at the beach is facing into the wind and not consistent with GLO Guidelines. There is a gradual elevation up to the foredune ridge with a sloping drop off to the beach. The roadway is owned and maintained by the U.S. Park Service.



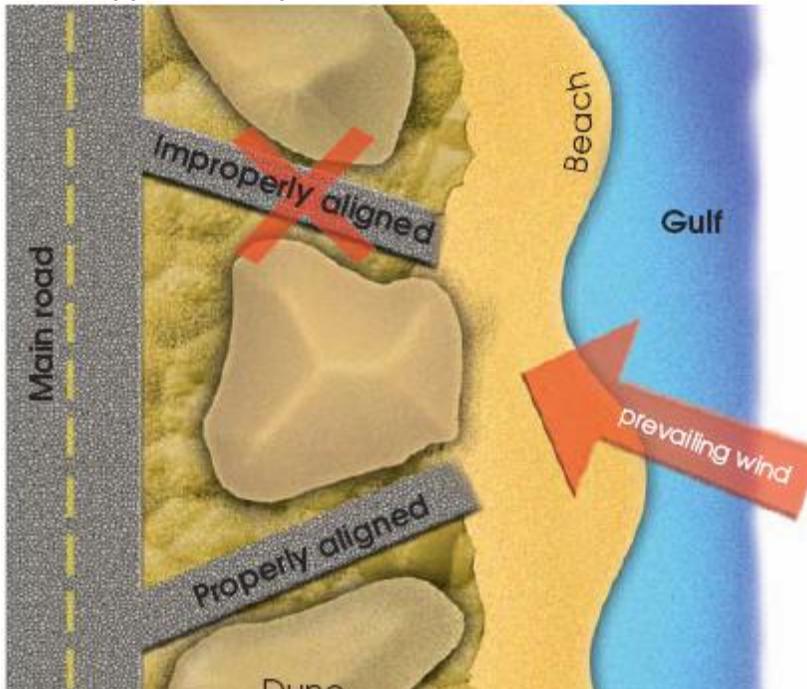
Figure 32: Padre Island National Sea Shore North Beach Access Road

VI.D. Recent Enhancements to Public Beach Access

Recent city improvements to enhanced beach access include reconstruction of a portion of Zahn Road, beach renourishment in front of the seawall, the Padre Island Sea Wall Parking lot, resurfacing /sidewalk improvements to Whitecap Boulevard and Packery Channel recreational improvements.

VI.D.1 Zahn Road Improvements

Zahn Road, located immediately north of Packery Channel, was reconstructed in 2009 as part of a development agreement between the developer of Tortuga Dunes Subdivision and the City. Total project costs for the City were approximately \$1,291,538 and \$523,837 for the developer. Improvements made



to the street included: a gravel sidewalk along the northern edge of the roadway, resurfacing, etc.

VI.D.2 Beach Renourishment / Padre Island Seawall

As part of the Packery Channel Project, the beach in front of the Padre Island Sea Wall was renourished with a grant from the Texas General Land Office in 2003. The cost of the renourishment was \$1.3 million.

VI.D.3 Seawall Parking Lot

A 300 space seawall parking lot was constructed

Figure 33: Beach Access Road Alignment

in 2006. The parking lot is landscaped, contains an ADA access ramp from the sea wall to the beach and in 2008 public restrooms and outdoor showers were added to the facility. The cost of the parking lot, ADA access ramp and the restrooms was \$1.2 million.

VI.D.4 Whitecap Boulevard Resurfacing and Sidewalk Improvements

In 2010, Whitecap Boulevard was resurfaced and curbs were repaired. The project also included a new 10 foot wide stamped concrete sidewalk from Windward Drive to the 200 foot Erosion Area Line Boundary. Seaward of the Erosion Area Boundary the existing five foot wide brick paver sidewalk was repaired and refurbished. The cost of the project was approximately \$540,000.

VI.D.5 Packery Channel Recreational Improvements

The Packery Channel was constructed in 2002-2005. The Packery Channel project was a 21.4 million dollar project to dredge a channel between the Laguna Madre and the Gulf of Mexico and to construct two 1,400 foot jetties.

In addition, 1.1 million was spent to provide an access road, large car and trailer parking and two boat ramps.

Parking, overlooks, restroom facilities, ADA access ramps and a pavilion are planned for construction by 2014. Costs for these improvements are estimated to be approximately \$4.8 million dollars.

The City of Corpus Christi also has other significant costs associated with the beach including beach cleaning at an annual cost of over \$700,000 per year, fire protection costs include the city newest Fire Station at the north end of Mustang Island State Park and police patrol for the beach area.

VI.E. Priority for Beach Access Road Improvements

The prioritization for beach access improvements should be based on:

VI.E.1 Enhancing Public safety.

VI.E.1.i Beach Access Road Spacing. Spacing of beach access roadways to allow quicker access to on beach emergencies – where beach access roadways are spaced at intervals of greater than 1 mile

Signage at beach access points to warn the public of natural hazards, rip tides, etc.

VI.E.1.ii Beach Access Road Realignment and Raised Humps.

Improvements to protect the access and surrounding developed property from storm surge damage By realignment of the beach access in accord with GLO Guidelines; and by placing a raised hump in the roadway landward of the beach per GLO Guidelines.

VI.E.1.iii Beach Renourishment. Beach Renourishment where the narrow width of the beach becomes a safety hazard and/or is less than 100 feet wide.

VI.E.1.iv Beach Amenities.

Amenities to benefit the general public's beach access experience at high use areas including public showers and restrooms landward of the public beachPackery Channel improvements for access to the channel walkway, outlooks, channel fishing amenities, etc.

Based on the criteria above the following is a list of beach access improvements.

VI.E.2. Short Term Goals (Three years or less)

VI.E.1.i. New Beach Access Road on Mustang Island. Obtain right-of-way for a new beach access roadway north of Mustang Island State Park.

Currently there is a 7.3 mile distance between Beach Access Road 1 in City of Port Aransas and the Beach Access Road 2 in the City of Corpus Christi.

VI.E.1.ii New Beach Access Road on North Padre Island. Obtain right-of-way for a new beach access roadway south of Access Road 6. Currently, there is 7.5 mile spacing between Beach Access Road 6 and the National Sea Shore Beach Access Roadway.

VI.E.1.iii. Beach Monitoring. Continue monitoring of the beach at Packery Channel.

VI.E.1.iv. Packery Channel. Packery Channel Improvements – parking, outlooks, restrooms, ADA access improvements, etc.

VI.E.1.v. Corp of Engineers Permit for Beach Cleaning. Propose revisions to the existing Corp of Engineers permit for beach cleaning which allows widening of the beach by placement of beach sand seaward of mean high tide.

VI.E.1.vi. Beach Bollards. Install beach bollards in front of the seawall to delineate vehicular and non-vehicular beach access areas.

VI.E.3. Long Term Goals (greater than two years)

VI.E.3.i. Construct New Beach Access Road on Mustang Island. Construct a new beach access roadway north of Beach Access Road 2 to reduce emergency response times to beach emergencies at the northern end of Mustang Island inside the City of Corpus Christi.

VI.E.3.ii. Construct New Beach Access Road on North Padre Island. Construct a new beach access roadway south of Beach Access Road 6 to reduce emergency response times to beach emergencies between Beach Access Road 6 and the National Sea Shore Beach Access Roadway.

VI.E.3.iii. Seawall Beach Renourishment. Renourishment of the beach in front of the Padre Island Seawall.

VI.E.3.iv. Monitoring Mustang Island Beaches. Monitoring and renourishment of the beach north of Mustang Island State Park.

VI.E.3.v. Packery Channel Improvements. Packery Channel fishing and outlook amenities.

VII. Acquisition of Property Seaward of Setback Line

The City of Corpus Christi and Nueces County have developed criteria for identifying properties for voluntary acquisition of fee simple title or a lesser interest acquisition by donation or potential purchase. These properties, which may have structures located entirely seaward of the building setback line, experience severe damage during storms,

impede the development of a natural dune system and restrict the use of the public beach. To be considered for acquisition, a structure must:

- be entirely seaward of the building setback line,
- impede beach access,
- be more than 25% on the public beach,
- affect hydrology as determined by a registered professional geologist/engineer licensed in the State of Texas,
- deemed to be a hazard to health and safety, or
- cause erosion of adjacent property.

Property to be acquired will be prioritized based on the severity and amount of criteria met. Acquisition strategy will consist of:

- acquisition by voluntary donation to the City or County,
- identification of potential property,
- negotiation of acquisition,
- available funding including potential grants,
- agreement execution, and
- removal or relocation of structure.

VIII. Post Storm Recovery

Following the land fall of a hurricane, City staff will conduct the following measures to ensure public access to and use of the public beach.

VIII.A. Inspections

Conduct inspections of all designated beach access points to determine whether the public is able to access the beach.

VIII.B. List Required Repairs

Compile a list of required repairs and replacements, including but not limited to parking areas, pedestrian pathways, vehicular access ways, and signage.

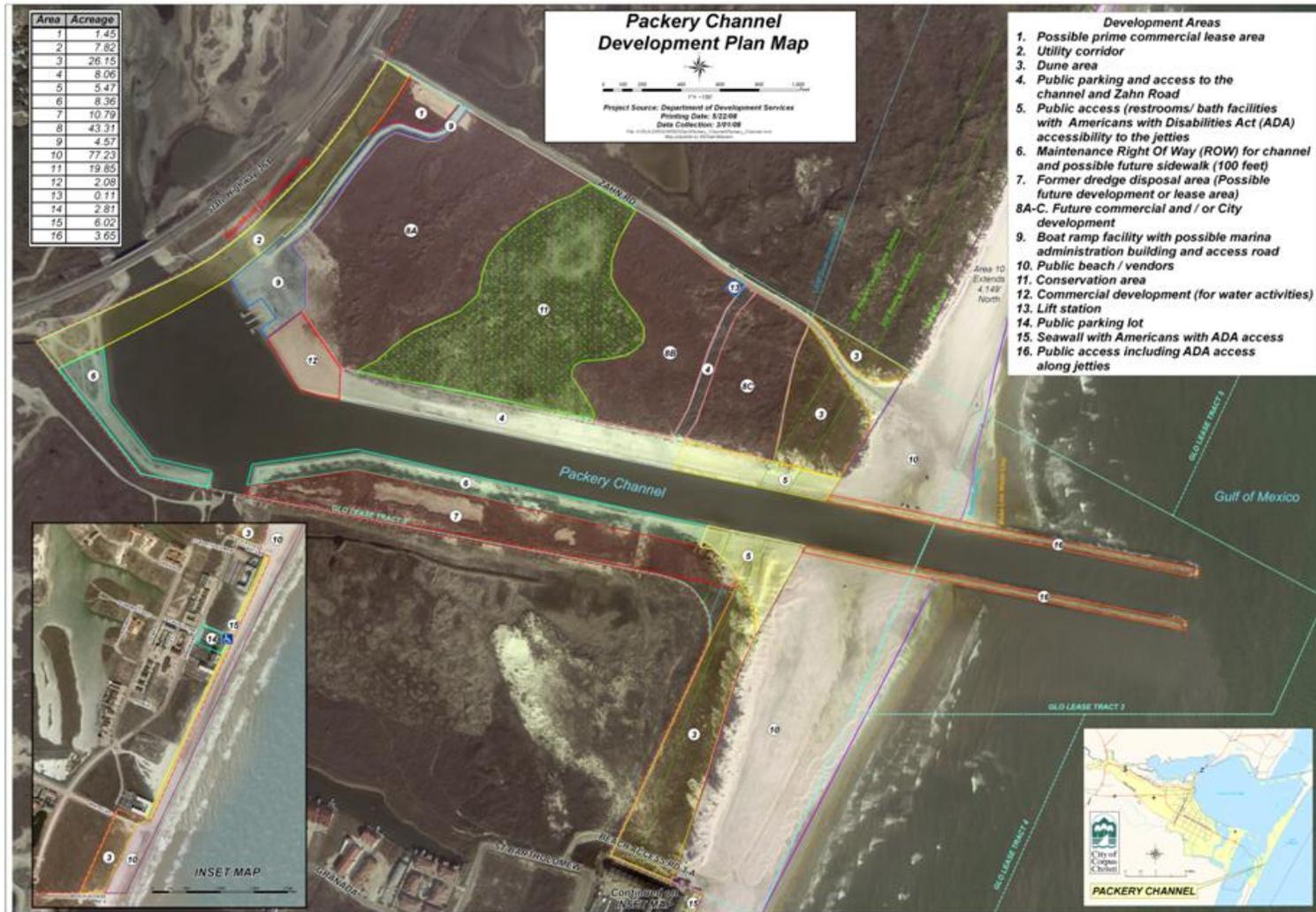
VIII.C. Repair Schedule

Create schedules for public access area repairs and replacements based on local funding and grant requests.

Appendix 1: Packery Channel Development Plan

Packery Channel Development Goal - to facilitate development of a world-class recreational destination on the Texas Gulf Coast.

Development of the area will provide a significant economic stimulus to the island, the city, the region and the State of Texas.



Development of the Packery Channel area (Packery Channel Development Plan, will be in a manner that is consistent with this Erosion Response Plan, Nueces County Dune Protection and Beach Access Regulations and all other applicable city, state and federal requirements.

Appendix 2: Dune Assessment and Mitigation Map Exhibits 1-20

Appendix 3: Beach Access Assessment and Mitigation Map Exhibit 21



