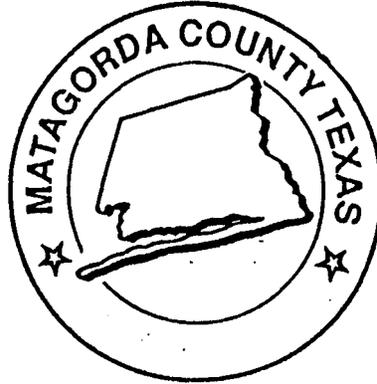


# MATAGORDA COUNTY



## DUNE PROTECTION AND BEACH ACCESS PLAN

### PURPOSE

THE PURPOSE OF THIS PLAN IS TO IMPLEMENT TITLE 31, CHAPTER 15 OF THE NATURAL RESOURCES AND CONSERVATION CODE. THE GOALS ARE AS STATED IN SECTION 15.1 "POLICY", AS INDICATED IN THE TEXAS REGISTER, FEBRUARY 01, 1993, PAGE 688.



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**SECTION 1. DEFINITIONS.** The following words and terms, when used in this order, shall have the following meanings, unless the context clearly indicates otherwise.

**Affect** - To produce an effect upon dunes, dune vegetation, or public beach use and access.

**Amenities** - 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 144 square feet in area), underground storage tanks, and similar structures.

**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.

**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.

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

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

**Beachfront Protection Certificate** - The document issued by a local government that certifies that the proposed construction either is or is not consistent with its Beach Access Plan. If inconsistent, the local government must specify how the construction is inconsistent with the Plan as required by the Open Beaches Act, §61.015.

**Blowout** - A breach in the dunes caused by wind erosion.

**Breach** - A break or gap in the continuity of a dune caused by wind or water.

**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.

**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.

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.

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.

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.

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.

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. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

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 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 - 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 - Texas Natural Resources Code, §63.001, et seq.

Dune Protection Permit - The document issued by a local government to authorize activities that would be consistent with the Dune Protection Plan.

Dune vegetation - Flora indigenous to natural dune complexes on the Texas coast and can include coastal grasses and herbaceous and woody plants.

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 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 this order 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.

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.

Erosion response structure - 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.

FEMA - The United States Federal Emergency Management Agency.

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 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 - 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 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.

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 order, 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 order.

**Line of vegetation** - 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 Sec. 61.016 and Sec. 61.017, Texas Natural Resources Code.

**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.

**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 shall be repaired, restored or replaced. Fourth the Dunes and Vegetation shall be replaced or substituted to compensate for adverse effects.

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

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

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

**Non-exempt Pipelines** - Any pipelines other than those subject to exemption because of their utilization in the exploration for and production of oil and gas located in a Critical Dune Area or which will serve wells located outside a Critical Dune Area provided that facilities are located no further than two miles from a well being served.

**Open Beaches Act** - Texas Natural Resources Code §§61.001 et seq.

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

**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.

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

**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.

**Public beach** - As used in this order, "public beach" is defined in the Texas Natural Resources Code, Sec. 61.013(c).

**Recreational activity** - Includes, but is not limited to, hiking, sunbathing, and camping for less than 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 (RV)** - A dune buggy, marsh buggy, mini-bike, trail bike, jeep or any other mechanized vehicle used for recreational purposes.

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

**Retaining wall** - A structure designed primarily to contain material and to prevent the sliding of land.

**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.

**Seawall** - An erosion response structure that is specifically designed to withstand wave forces.

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

**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** - 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.

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.

## SECTION 2. ADMINISTRATION.

### I. Adoption, Compliance, and Modification.

A. This order is 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, and other statutes of general applicability.

B. All county officers, employees, and contractors shall comply with this order in authorizing or undertaking any activity affecting dunes seaward of the dune protection line or public use of and access to and from the public beach.

C. Amendments to this order shall be effective only upon approval by the General Land Office.

### II. Areas Exempt.

A. This order applies to all private and public land within the county that lies seaward of the dune protection line and the beachfront construction line except state or national parks, wildlife refuges, preserves, or similar state or federal areas.

B. Other than state or national parks, wildlife refuges, preserves, and similar areas, this order applies to land owned by state agencies, subject to the provisions of the Texas Natural Resources Code, Sec. 31.161 et seq.

### III. Dune Protection Line & Beachfront Construction Line.

A. The commissioners court establishes the following line as the **Dune Protection Line** for the purpose of protecting critical dune areas:

1. Sargent Beach. (See Map appendix A)

a. For accessible portions of the beach, the Beach Dune Protection Line shall correspond to the landward boundary line of the Corps of Engineers right of way established for the Sargent Beach/GIWW seawall from "Mark S1" (N352,650/E3,072,975), 420,000 feet, to "Mark S2" (N373,173/E3,109,172). The line for Beach Dune Areas beyond the right of way shall be landward at 1000 feet from mean high tide.

2. Matagorda Beach. (See map Appendix B)

For accessible portions of the beach, the Beach Dune Protection Line shall start at the point M1 in the Jetty Park Parking Lot (N290,369/E2,969,696) and extend in a Northeasterly direction (N 27° 46' 52" E) a distance of 11067' to point M2 (N294,937/E2979,764). Then landward a distance of 651' to a point (M3) which is 1000' from MHT (N295,527/E2,979,488). The line shall then extend the length of the peninsula parallel to and at a distance of 1000' feet landward of MHT.

B. The commissioners court establishes the following as the Beachfront Construction Line for the purpose of delineating areas in which construction is likely to affect beach access and use:

1. Sargent Beach. (See Map Appendix A)

a. For accessible portions of the beach, The Beachfront Construction Line shall correspond to the landward boundary line of the Corps of Engineers right of way established for the Sargent Beach/GIWW seawall from "Mark S1" (N352,650/E3,072,975) 420,000 feet to "Mark S2" (N373,173/E3,109,172). The line for Beach Areas beyond the right of way shall be landward at 1000 feet from mean high tide.

2. Matagorda Beach. (See map Appendix B)

For accessible portions of the beach, the Beachfront Construction Line shall start at the point M1 in the Jetty Park Parking Lot (N290,369/E2,969,696) and extend in a Northeasterly direction (N 27° 46' 52" E) a distance of 11067' to point M2 (N294,937/E2,979,764). Then landward a distance of 651' to a point M3 (N295,527/E2,979,488) which is 1000' from MHT. The line shall then extend in a Northeasterly direction the length of the peninsula parallel to and at a distance of 1000' feet landward of MHT.

C. The commissioners court shall review the location of the dune protection line and beachfront construction line at least once every five years to determine whether the lines are adequately located to achieve their stated purposes. In addition, the commissioners court shall review the adequacy of the location of the lines within 90 days after a tropical storm or hurricane affects the portion of the coast lying within the county's

jurisdiction. The commissioners court shall amend this order to adjust the lines whenever necessary to achieve their stated purposes.

D. Prior to acting on any amendment to this order that would modify either line, the commissioners court shall hold a public hearing to consider the modifications. Not less than one week nor more than three weeks before the date of the hearing, the commissioners court shall both publish notice of the hearing at least three times in the newspaper with the largest circulation in the county and notify the General Land Office in writing. 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).

#### IV. Alteration of Dunes Prohibited Without Permit.

A. Unless the commissioners court properly issues a dune protection permit authorizing the conduct, no person shall 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.

B. The following activities are exempt from the requirement for a permit, but may nevertheless require a beachfront construction certificate or a permit pursuant to other county orders:

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 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.

V. Construction Affecting Beach Access Prohibited Without Certificate.

Unless the commissioners court properly issues a beachfront construction certificate authorizing the conduct, no person shall cause, engage in, or allow construction seaward of the beachfront construction line. Construction not affecting public beach access and use may nevertheless require a dune protection permit or a permit pursuant to other county orders.

VI. Master Planned Developments.

A. "Master planned development" means proposed development for which approval is requested by submission of a comprehensive 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, stormwater 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.

B. At least 60 days prior to acting on a request for approval of a master planned development within the area subject to this order the county shall send the plan to the General Land Office and the Attorney General's Office for review.

C. When acting on a request for approval of a master planned development, the commissioners court shall 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.

D. If the commissioners court determines that all development contemplated by the plan complies with all requirements of this order, a permit and/or certificate for the development may be issued after holding a public hearing.

E. If the commissioners court determines that any development contemplated by the plan does not comply with the requirements of this order and therefore can not be approved without an amendment

to this order, the commissioners court shall not issue a permit and/or certificate, but shall submit the plan to the General Land Office and the Attorney General's Office for approval as an amendment to this order.

#### VII. Beach/Dune Committee.

The commissioners court establishes the Beach/Dune Committee to serve as an advisory body on matters within the scope of this order. The Beach/Dune Committee shall be composed of five (5) members appointed by majority vote of the commissioners court. The commissioners court shall appoint members so as to achieve the broadest possible representation of community views and interests. At least one member shall be selected from the Matagorda area and one member from the Sargent area.

#### VIII. Application Process.

A. Potential applicants may submit descriptions of proposed construction to the county for a determination of whether a permit or certificate would be required for the construction. If the potential applicant seeks to establish that no permit or certificate is required, the description shall demonstrate that the proposed construction will not adversely affect dunes or public beach use and access. The description must show that the proposed construction will be landward of the Beachfront Construction Line to warrant that a certificate is not required. The county shall send notice of any proposed determination that the construction does not require a permit or certificate to the Beach/Dune Committee and the General Land Office for review at least 10 working days before the determination is made. Upon making the determination, the county shall notify the potential applicant whether the proposed construction requires a permit or certificate.

B. If proposed construction requires a permit or certificate, an application shall be submitted to the county, which shall forward the application to the Beach/Dune Committee for review. Within 30 days of receiving the application, the Beach/Dune Committee shall submit its comments on the application to the commissioners court.

#### IX. Contents of Applications.

A. "Large-scale construction" means 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.

B. "Small-scale construction" means 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.

C. For all proposed construction (large- and small-scale), applicants shall submit the following items and information:

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 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;

13. proof of financial capability to mitigate or compensate for adverse effects on dunes and dune vegetation (i.e., an irrevocable letter of credit or a performance bond) or , to fund eventual relocation or demolition of structures (i.e., Upton-Jones coverage in the National Flood Insurance Program);

14. an accurate map 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; and

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.

D. For all proposed large-scale construction, applicants 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 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.

E. 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:

1. a copy of a blueprint of the proposed construction;

2. a copy of a topographical survey of the site;

3. 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

4. a copy of the FEMA "Elevation Certificate."

F. For all proposed construction (large- and small-scale), the county shall provide to the state the following information:

1. a copy of the county'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 county's dune protection and beach access plan;

3. the activity's potential impact on the county's natural flood protection and protection from storm surge; and

4. how the proposed beachfront construction complies with and promotes the county'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.

#### X. State Agency Comments.

The county shall forward the complete application, including any associated materials, to the General Land Office and the Attorney General's Office. The commissioners court may not act on the application until 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.

#### XI. Issuance or Denial of Permit/Certificate.

A. To determine whether to issue or deny a permit or certificate, the commissioners court shall review and consider:

1. the information in the permit or certificate application;

2. the proposed activity's consistency with 31 TAC §§ 15.1-15.10 and this order;

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 Beach/Dune Committee, the General Land Office, and the Attorney General's Office;

5. with respect to dunes and dune permits:

a. cumulative and indirect effects of the proposed construction on all dunes and dune vegetation seaward of a dune protection line;

b. cumulative and indirect effects of other activities on dunes and dune vegetation located on the proposed construction site;

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 commissioners court considers useful, including resource information made available to them by federal and state natural resource entities.

B. The commissioners court shall not issue a permit or certificate that is inconsistent with this order, General Land Office rules for Management of the Beach/Dune System (18 Tex. Reg. 661 [1993] Codified at 31 TEXAS ADMINISTRATIVE CODE Sec. 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 this order by reference.

## XII. Terms and Renewal of Permits/Certificates

A. Permits or certificates shall be valid for three years from the date of issuance.

B. The commissioners court 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 this order and the permittee supplements the original application materials with additional information indicating any changes to the activity or information. The commissioners court shall issue only two renewals 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.

## XIII. Termination of Permits/Certificates.

A. The commissioners court may void a permit or certificate if:

1. a material change occurs after the permit or certificate is issued; or
2. a permittee fails to disclose any material fact in the application.
3. a permit or certificate is not consistent with this Plan at the time of issuance.

B. "Material change" includes 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 commissioners

court 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.

#### XIV. Administrative Record.

A. The county 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 the commissioners court meeting during which a final decision regarding the permit or certificate was made; and
3. all comments received regarding the permit or certificate.

B. The county shall keep the administrative record for three years from the date of a final decision on a permit or certificate. The county 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 county shall provide to the permittee upon request copies of any materials in the administrative record regarding the permit or certificate not submitted to the county by the permittee in the application.

### SECTION 3. REQUIREMENTS FOR DUNE PROTECTION PERMITS.

#### I. Required Findings.

Before issuing a permit, the commissioners court must find that:

A. the proposed activity is not a prohibited activity as defined in Subsection II of this section (Prohibited Activities);

B. the proposed activity will not materially weaken dunes or materially damage dune vegetation seaward of the dune protection line based on substantive findings under Subsection III of this section (Material Weakening);

C. there are no practicable alternatives to the proposed activity and adverse effects cannot be avoided as provided in Subsection IV of this section (Mitigation of Other Adverse Effects);

D. the applicant's mitigation plan will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects, as provided in Subsection IV of this section (Mitigation of Other Adverse Effects); and

E. the proposed activity complies with any applicable requirements of Section 4 (Requirements for Beachfront Construction Certificates), Section 5 (Concurrent Requirements for Both Dune Protection Permits and Beachfront Construction Certificates), and Section 6 (Management of the Public Beach) of this order.

## II. Prohibited Activities.

The commissioners court shall not issue a permit authorizing the following actions seaward of the dune protection line:

A. 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:

1. moving sand to a location landward of the dune protection line; and

2. 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 foot per year, and the project does not cause any adverse effects on the sediment budget;

B. depositing sand, soil, sediment, or dredged spoil which contains any of 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;

C. 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);

D. creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits;

E. constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of this order;

F. operating any vehicles, except emergency vehicles, in the Critical Dune Area;

G. mining dunes;

H. constructing concrete slabs or other impervious surfaces within 200 feet landward of the 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 5% of the footprint of the permitted habitable structure it serves;

I. depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction;

J. constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields; and

K. detonating bombs or explosives.

### III. No Material Weakening.

The commissioners court 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. To find that there will be no such material weakening or damage, the commissioners court must find that:

A. the activity will not result in the potential for increased flood damage to the proposed construction site or adjacent property;

B. the activity will not result in runoff or drainage patterns that aggravate erosion on or off the site;

C. 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;

D. the activity will not disturb unique flora or fauna or result in adverse effects on dune complexes or dune vegetation; and

E. the activity will not significantly increase the potential for washovers or blowouts to occur.

#### IV. Mitigation of Adverse Effects.

A. If the commissioners court finds that no material weakening of dunes or material damage to dunes will occur, the commissioners court shall then determine whether any adverse effects will result from the activity. If the commissioners court finds there will be adverse effects on dunes or dune vegetation seaward of the dune protection line, the commissioners court may issue a permit only if the applicant demonstrates that adverse effects can be mitigated as required by the mitigation sequence. If the commissioners court issues a permit, it shall include appropriate permit conditions incorporating the requirements of this section.

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. The commissioners court shall not issue a permit 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.

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

i) construct a non-exempt pipeline unless there is no practicable alternative;

ii) 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;

iii) construct any road parallel to the beach within 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;

iv) construct new artificial channels, including stormwater runoff channels, unless there is no practicable alternative; or

v) cause any such adverse effects for which the commissioners court determines there is a practicable alternative that avoids adverse effects.

2. Minimization. (a) Minimization means minimizing adverse effects by limiting the degree or magnitude of the action and its implementation. If the commissioners court determines that there is no practicable alternative that would have fewer adverse effects on dunes or dune vegetation seaward of the dune protection line, it shall set appropriate permit conditions requiring the permittee to minimize such adverse effects to the greatest extent practicable.

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

i) locate pipelines across previously disturbed areas, such as blowout areas, and minimize disturbance of dune surfaces where use of previously disturbed areas is not practicable;

ii) 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;

iii) 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;

iv) 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 access way. In determining the appropriate grouping of access ways, the commissioners court shall consider the size and scope of the development;

v) post signs in areas where pedestrian traffic is high explaining the functions of dunes and the importance of vegetation in preserving dunes;

vi) where practicable, provide vehicular access to and from beaches by using existing roads or from roads constructed in accordance with Subdivision (B)(1)(b)(iii) of this subsection, unless public beach access is restricted, and where possible, improve existing access roads with elevated berms near the beach that prevent channelization of floodwaters;

vii) 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;

viii) where practicable, locate new beach access roads at an oblique angle to the prevailing wind direction;

ix) prohibit persons from using or parking any motor vehicle on, through, or across dunes outside designated access ways;

x) maximize use of natural or existing drainage patterns when providing for stormwater runoff and retention;

xi) locate and construct new artificial stormwater 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; and

xii) not cause any adverse effects that the commissioners court finds can be minimized.

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 commissioners court 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 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.

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

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 a commissioners court 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 as or greater capability than the surrounding natural dunes.

(c) In authorizing or requiring restoration of dunes, the commissioners court shall give priority to stabilization of blowouts and breaches rather than washover areas. Before permitting stabilization of washover areas, the commissioners court 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. (a) Compensation means compensating for adverse effects on dunes and dune vegetation by replacing or providing substitute dunes and dune vegetation. The commissioners court 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 commissioners court shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts.

(b) Permittees shall follow the requirements of Subdivisions (3)(b - c) and (4)(e)(iii - v) of this section when replacing dunes or dune vegetation.

(c) On-site compensation consists of replacing or restoring the affected dunes or dune vegetation on the site where the dunes and dune vegetation were originally located. Permittees shall locate compensation work on the construction site, where practicable.

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

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 off-site compensation has achieved a 1:1 ratio of proposed adverse effects on successful, completed, and stabilized restoration prior to beginning construction; and

iv) 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:

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 the sand and dune vegetation to be used;

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.

(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 commissioners court.

(h) Permittees shall notify the county in writing of the actual date of initiation within 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 commissioners court 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 have reached a level that matches or exceeds the pre-existing dunes.

(k) The county shall provide written notification to the General Land Office upon determining that the compensation is complete. If the county 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 county 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 years after the beginning of compensation efforts.

#### SECTION 4. REQUIREMENTS FOR BEACHFRONT CONSTRUCTION CERTIFICATES.

##### I. Required Findings.

Before issuing a certificate authorizing proposed construction, the commissioners court must find that the construction is consistent with this order. Construction is inconsistent with this order if it:

A. reduces the size of the public beach or encroaches on the public beach in any manner, except for man-made vegetated mounds and dune walkovers constructed in compliance with the requirements of this order;

B. 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;

C. closes any existing public beach access or parking area, unless equivalent or better public access or parking is established as required in Subsection II of this section (Dedication of Equivalent or Better Access);

D. cumulatively 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 Section 6 of this order (Management of the Public Beach) unless equivalent or better access or parking is established as required in Subsection II of this section (Dedication of Equivalent or Better Access); or

E. fails to comply with any requirements of Section 3 of this order (Requirements for Dune Protection Permits) or Section 5 of this order (Concurrent Requirements for Dune Protection Permits and Beachfront Construction Certificates).

## II. Dedication of Equivalent or Better Access.

A permittee shall dedicate to the public new public beach access or parking areas if the permittee's activities will close any existing public beach access or parking area, will impair or adversely affect public use of or access to and from the beach, or if dedication is necessary to comply with any requirements of Section 6 of this order. 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 this order regarding beach access and use, vehicular controls, and beach user fees. Dedication shall be by restrictive covenant, permanent easement, or fee simple conveyance.

## SECTION 5. CONCURRENT REQUIREMENTS FOR BOTH DUNE PROTECTION PERMITS AND BEACHFRONT CONSTRUCTION CERTIFICATES.

### I. General Erosion and Flood Protection Requirements.

Permittees shall:

A. locate all construction as far landward as is practicable;

B. not engage in any construction which may aggravate erosion;

C. not construct any new erosion response structure, except a retaining wall located greater than 200 feet landward of the line of vegetation;

D. not maintain or repair an existing erosion response structure located on the public beach;

E. not enlarge or improve an existing erosion response structure located less than 200 feet landward of the vegetation line;

F. not maintain or repair an existing erosion response structure located less than 200 feet landward of the vegetation line that is more than 50% 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;

G. not engage in construction that does not comply with FEMA's regulations governing construction in flood hazard areas; and

H. 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.

## II. Variances from Federal Requirements.

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

## III. Special Requirements for Eroding Areas.

A. "Eroding areas" are portions of the shoreline experiencing a 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.

B. In addition to the other requirements of this order, in eroding areas, permittees shall:

1. elevate all structures on pilings in accordance with FEMA minimum standards or above the natural elevation (whichever is greater);

2. design structures located on property adjacent to the public beach so that they can be relocated;

3. not pave or alter the ground below the lowest habitable floor, except stabilization of driveways using gravel or crushed limestone; and

4. demonstrate and assure financial ability to fund eventual relocation or demolition of the proposed structure.

B. If there is any conflict between the requirements of this subsection and the requirements of any other provision of this order, this subsection controls.

## SECTION 6. MANAGEMENT OF THE PUBLIC BEACH.

### I. General Access Standards.

The commissioners court shall comply with the following standards when authorizing activities affecting or relating to public beach access and use.

A. Parking areas on or adjacent to the beach shall accommodate one car for each 15 linear feet of beach or as determined by the Commissioners Court.

B. Where vehicles are prohibited from driving on and along the beach, access ways providing both ingress and egress shall be no farther apart than 1/2 mile.

C. Signs shall be posted which conspicuously explain the nature and extent of vehicular controls, parking areas, and access points.

### II. Designation of Access Ways, Parking Areas, and Beaches Closed to Motor Vehicles.

A. The following areas may be maintained as public vehicular access ways to and from the public beach [as defined in the TEXAS NATURAL RESOURCES CODE, SEC. 61.013(c)]:

The extension of the existing FM roads. In addition, The Sargent area beach may utilize the four branch roads extending seaward from Canal Drive.

B. The following areas shall be maintained as public pedestrian access ways to and from the public beach:

None

C. The following areas shall be maintained as public beach access parking areas:

The hard surfaced parking area at Jetty Park at Matagorda Beach.

D. Provisions facilitating access to the beach for disabled persons shall be maintained at each of the above areas as needed to comply with the Americans with Disabilities Act.

E. The following areas of the public beach are closed to vehicles:

None

F. The areas set out in this subsection are shown on Appendix III attached to this order.

### III. Abandonments of Public Access or Parking Areas Prohibited.

—> The county shall not abandon, relinquish, or convey any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access or parking area, unless an equivalent or better beach access or parking area is first provided consistent with this order.

### IV. Interfering with Access Prohibited.

A. No person shall create, erect, construct or maintain 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.

### V. Post-Storm Assessment.

The commissioners court shall 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, the county shall inform the General Land Office and the Attorney General's Office of any encroachments on the public beach within 10 days of completing the assessment.

### VI. Beach Closures.

A. The commissioners court may by order close areas of the public beach in cases of public necessity. "Public necessity" shall be 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 commissioners court shall limit the closure to the smallest possible area and the shortest possible time necessary.

B. This order does 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.

C. The commissioners court may by order close part of the public beach for a maximum of three days each year to allow a nonprofit organization to hold an event on the beach to which the public is invited and to which the organization charges no more than a nominal admission fee.

#### VII. 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.

#### VIII. Camping.

No person shall camp on any public beach for a period greater than 72 hours. "Camp" means to use for habitation any tent, lean-to, sleeping bag, blanket, automobile, trailer, camper, motor homes or other means of shelter.

#### IX. Animal Control.

A. No person shall intentionally, knowingly, or recklessly allow a dog or other animal to attack or threaten any other animal or any person on a public beach.

B. No person shall possess a horse, pony, mule, or donkey on a public beach unless it is controlled by means of a headstall, bridle, lead rope, reins, or similar device. No person shall allow a horse, pony, mule, or donkey to run at large on a public beach or ride it on a public beach in willful and wanton disregard for the safety of persons or property or if the person is under the influence of alcohol.

#### X. Monitoring.

The commissioners court may, or at the request of the General Land Office shall, 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, and shall require the permittee to notify the General Land Office and the county of any discernible change in the erosion rate caused by the project.

#### XI. Beach Nourishment Standards.

The commissioners court shall not authorize a beach nourishment project unless it finds and the project sponsor demonstrates that:

A. the project is consistent with all applicable requirements of this order;

B. the sediment to be used is of effective grain size, mineralogy, and quality or is the same as the existing beach material;

C. the proposed nourishment material does not contain any 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 toxic county standards established by the local, state, and federal governments;

D. there will be no adverse environmental effects on the property surrounding the area from which the sediment will be taken or on the site of the proposed nourishment;

E. the removal of sediment will not have any adverse impacts on flora and fauna; and

F. there will be no adverse effects from transporting the nourishment material.

#### XII. Dune Restoration Standards.

Except as otherwise expressly provided in this order, the commissioners court shall not authorize restoration of dunes on a public beach unless it finds and the project sponsor demonstrates that the following requirements are met.

A. Except as provided in Subdivision (B) of this subsection, restored dunes:

1. shall extend no more than 20 feet seaward of the vegetation line and shall follow the natural migration of the vegetation line; and

2. shall not restrict or interfere with public use of the beach at normal high tide.

B. Restored dunes may be located farther seaward than 20 feet of the vegetation line only upon:

1. an affirmative demonstration by the sponsor that substantial dunes would likely form farther seaward naturally; and

2. prior written approval of the General Land Office and the Attorney General's Office.

C. All restored dunes shall be continuous with any surrounding naturally formed dunes; shall approximate the natural position, contour, volume, elevation, vegetative cover, and sediment content of any naturally formed dunes in the proposed dune restoration area; and shall be planted with indigenous vegetation that will achieve the same protective capability as the surrounding natural dunes.

D. The following methods or materials may be used to restore dunes:

1. piles of sand having similar grain size and mineralogy as the surrounding beach;

2. temporary sand fences conforming to General Land Office guidelines;

3. organic brushy materials such as used Christmas trees; and

4. 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.

E. The following methods or materials shall not be used to restore dunes:

1. hard or engineered structures;

2. materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;

3. fine, clayey, or silty sediments;

4. 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 toxic county standards established by the local, state, and federal governments; and

5. sand obtained by scraping or grading dunes or the beach.

F. Activities affecting restored dunes shall be subject to the requirements of this order. Permittees shall not construct or maintain private structures on restored dunes, except for dune walkovers or similar access ways meeting the requirements of this order.

G. 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 10 working days prior to the decision on the application.

#### XIII. Dune Walkover Standards.

The commissioners court shall not authorize construction of dune walkovers or other beach access mechanisms unless it finds and the project sponsor demonstrates that the following requirements are met.

A. The walkover is restricted, to the greatest extent possible, to the most landward point of the public beach.

B. 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.

C. 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.

#### XIV. Standards for Beach Maintenance and Other Activities.

A. The commissioners court shall not authorize or undertake 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. All sand moved or redistributed due to beach maintenance activities of the county

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. The commissioners court authorizes the following beach maintenance and management measures:

The county shall maintain the beaches by a combination of hand labor to "police" the beach, custom built seaweed rake (to collect seaweed for disposal without including sand), road maintainers and the beach cleaning machine to be provided by the Oil Spill Response Program. Front end loaders and dump trucks are also utilized for disposal of excess seaweed and/or litter.

## SECTION 7. MOTOR VEHICLES.

### I. Operation of Motor Vehicles.

A. No person shall operate or cause to be operated any vehicle at a speed in excess of 20 miles per hour on any public beach.

B. Pedestrians shall have the right of way and vehicles shall stop and allow pedestrians to cross to and from the beach.

C. No person shall operate or cause to be operated any vehicle on any beach designated in this order as closed to vehicular traffic.

D. No person shall drive or operate for recreational purposes any dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle on a dune seaward of the dune protection line.

### II. Emergency Vehicles.

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

## SECTION 8. BEACH USER FEE PLAN.

### I. Beach User Fee.

A. Beach user fees may be initiated in the future. If such fees are proposed, input will be sought through public hearings and approval will be obtained from the General Land Office.

B. No fee shall be charged in the following areas:

To be designated

## II. 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; lifeguarding 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.

## III. Indirect Costs and Accounting.

A. No more than 10% of beach user fee revenues shall be expended on reasonable indirect costs related to beach-related services.

B. "Indirect costs" means costs of administrative programs, services, or personnel that partially support beach-related services and to which beach user fee revenues are applied using a general rather than detailed method of apportionment.

C. The county 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. 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.

## SECTION 9. PENALTIES.

Any person who violates either the Dune Protection Act, the Open Beaches Act, this order, 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 for the same act or omission. 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. The commissioners court shall consider the following mitigating circumstances when referring violations for assessment of penalties: 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.

## SECTION 10. GENERAL PROVISIONS.

### I. Construction.

A. This order and all orders, resolutions, or other enactments related or pursuant this order shall be read in harmony with county orders of general applicability. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this order controls.

B. This order and all orders, resolutions, or other enactments related or pursuant to this order shall be read in harmony with the Open Beaches Act, the Dune Protection Act, and General Land Office rules implementing them. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, state law provisions control.

### II. Boundary Determinations.

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, Sec. 61.016 and Sec. 61.017. The county shall consult with the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

### III. Beaches Presumed to be Public.

The commissioners court shall presume that any beach fronting the Gulf of Mexico is a public beach, except as noted in Title 31 Natural Resources and Conservation, Part 1, Chapter 15, Section 15.3(q), unless the owner of the adjacent land obtains a











**MATAGORDA COUNTY COMMISSIONERS' COURT**

**RESOLUTION**

**Concerning the Proposed Amendment to the  
Matagorda County Dune Protection  
and Beach Access Plan**

**WHEREAS**, after notice and public hearing, on July 28, 2003 and approval of Revisions on September 15, 2003, Matagorda County adopted a Proposed Amendment to the Matagorda County Dune Protection and Beach Access Plan; and

**WHEREAS**, Matagorda County, in accordance with Chapter 61 of the Natural Resources Code (also known as the Texas Open Beach Act), and section 61.015, Matagorda County did thereafter submit the proposed amendment to the commissioner of the General Land Office for comment; and

**WHEREAS**, the General Land Office made comments and suggestions by letter dated October 15, 2003, from Shawn Hardeman to County Judge Greg B. Westmoreland; and

**WHEREAS**, Matagorda County has determined that the comments and suggestions of the General Land Office should be implemented and are non-substantive in nature;

**NOW, THEREFORE BE IT RESOLVED** at this meeting of the Commissioners Court of Matagorda County, Texas, on this 20th day of October, 2003, on motion by Commissioner Cornier and seconded by Commissioner Carroll that the county adopts the attached Proposed Amendment to the **Matagorda County Dune Protection and Beach Access Plan**, which includes revisions based upon the October 15, 2003 comments of the General Land Office.

**PASSED IN OPEN COURT**, this the 20<sup>th</sup> day of October, 2003.

**Attest:**

Gail Denn  
Gail Denn, County Clerk

**Approved:**

Greg B. Westmoreland  
Greg B. Westmoreland, County Judge

Mike Pruett  
Mike Pruett, Commissioner Precinct #1

George Deshotels  
George Deshotels, Commissioner, Precinct #2

Leonard Lamar  
Leonard Lamar, Commissioner, Precinct #3

Percy Carroll  
Percy Carroll, Commissioner, Precinct #4



**Proposed Amendment to the  
Matagorda County Beach Access and Dune Protection Plan**

**October 20, 2003**

1. Revised Dune Protection Line and Beachfront Construction Line, as Appendix II (B), Maps B-2 and B-3.
2. Creation of one-half mile pedestrian beach area on Matagorda Beach, (See Amendment to Section 6, Management of the Public Beach, Subsection II, Paragraph E, and see Appendix II (B), Map B-1, Element 4).
3. Designation of Matagorda Beach Public Vehicle Access Roads in Section 6, Management of the Public Beach, Subsection II, Paragraph A as follows:
  - a. Designation of existing access road as an emergency vehicle access road (see Appendix II (B), Map B-1, Element 6)
  - b. Creation and designation of new Matagorda Beach Public Vehicle Access Road #1, (See Appendix II (B), Map B-1, Element 2)
  - c. Creation and designation of new Matagorda Beach Public Vehicle Access Road #2, (See Appendix II (B), Map B-1, Element 1)
4. Creation of area for 50 free on-beach parking spaces on Matagorda Beach, (See amendment to Section 6, Management of the Public Beach, Subsection II, Paragraph C, and see Appendix II (B), Map B-1, Element 5).
5. Creation of 75 free public parking spaces adjacent to Jetty Park and preservation of 175 existing free public parking spaces at Jetty Park (See amendment to Section 6, Management of the Public Beach, Subsection II, Paragraph C, and see Appendix II (B), Map B-1).
6. Provision for mandatory installation of beach access signage in accordance with 31 TAC §15.7(h)(1)(C). (See Appendix II (B), Map B-1 for signage locations).

1. SECTION 2, ADMINISTRATION, Subsection III, Dune Protection Line & Beachfront Construction Line, Paragraphs A and B (See current Matagorda Plan, pages 12-13:

A. In accordance with Section 2(III)(D) of the Matagorda County Dune Protection and Beach Access Plan, the commissioners court establishes the following line as the Dune Protection Line for the purpose of protecting critical dune areas:

1. Sargent Beach (see map, Appendix II(A))

*(No change to DPL in Sargent Beach)*

2. Matagorda Beach (see Appendix II, Appendix B, Maps B-2 and B-3)

“For accessible portions of the Matagorda Beach, the Beach Dune Protection Line (DPL) shall be the line depicted on the maps in Appendix II, Appendix B, Maps B-2 and B-3.

The DPL can generally be described as follows: The DPL begins at point M0 located at the landward extent of the public beach on the Colorado River channel, then generally extending southward parallel to the river, then northeasterly and southerly to the point designated M1 in the Jetty Park Parking Lot (N290,369/E2,969,7696). The DPL then extends in a northeasterly direction along the seaward property line of the Sterling Shores Subdivision to the western boundary of the Bahia De Matagorda Subdivision, a point designated M2. The DPL then extends generally northward following along the Bahia De Matagorda Subdivision boundary to a point designated M3, which is approximately 550 feet from line of MHT. The DPL then continues in a northeasterly direction, generally parallel to the shoreline, to the eastern boundary of the Matagorda Dunes Homesites Subdivision (a point designated M4), then landward along the subdivision boundary to a point (designated M5) 1,000 feet landward of MHT. extend in a Northeasterly direction (N 27 46' 52") a distance of 11,067" to a point M2 (N295,527/E2,979,488). Then landward a distance of 651' to a point M3, which is 1,000' from MHT (N295,527?E2,979,488). The line shall then extend to length of the peninsula parallel to and at a distance of 1,000 feet landward of MHT.

B. Identical to the Dune Protection Lines established in Section 2, Subsection III of this plan, the commissioners court establishes the following as the Beachfront Construction Lines (BCL) for the purposes of delineating areas in which construction is likely to affect beach access and use:

1. Sargent Beach (see map, Appendix II(A))

*(No change to BCL in Sargent Beach)*

2. Matagorda Beach (see Appendix II, Appendix B, Maps B-2 and B-3)

“For accessible portions of the Matagorda Beach, the Beachfront Construction Line (BCL) shall be the line depicted on the maps in Appendix II, Appendix B, Maps B-2 and B-3.

The BCL can generally be described as follows: The BCL begins at point M0 located at the landward extent of the public beach on the Colorado River channel, then generally extending southward parallel to the river, then northeasterly and southerly to the point designated M1 in the Jetty Park Parking Lot (N290,369/E2,969,7696). The BCL then extends in a northeasterly direction along the seaward property line of the Sterling Shores Subdivision to the western boundary of the Bahia De Matagorda Subdivision, a point designated M2. The BCL then extends generally northward following along the Bahia De Matagorda Subdivision boundary to a point designated M3, which is approximately 550 feet from line of MHT. The BCL then continues in a northeasterly direction, generally parallel to the shoreline, to the eastern boundary of the Matagorda Dunes Homesites Subdivision (a point designated M4), then landward along the subdivision boundary to a point (designated M5) 1,000 feet landward of MHT. extend in a Northeasterly direction (N 27 46' 52") a distance of 11,067" to a point M2 (N295,527/E2,979,488). Then landward a distance of 651' to a point M3, which is 1,000' from MHT (N295,527/E2,979,488). The line shall then extend to length of the peninsula parallel to and at a distance of 1,000 feet landward of MHT.

2. AMEND SECTION 6, MANAGEMENT OF THE PUBLIC BEACH, Subsection II, Paragraphs A, B, C, E (See Current Matagorda Plan, pages 33-34) as follows:

“II. Designation of Access Ways, Parking Areas, and Beaches Closed to Motor Vehicles.

A. The following ~~areas may~~ entry roads shall be maintained as free and unrestricted public vehicular access ways to and from the public beach [as defined in the TEXAS NATURAL RESOURCES CODE, SEC. 61.013( c):

1. For Matagorda Beach:

- a. Public Beach Access Road #1, generally extending from the northwest side of Jetty Park to the Colorado River; as depicted in Appendix II(B), Map B-1, Element 2;
- b. Public Beach Access Road #2, generally extending from a point approximately midway along the Bahia De Matagorda entry road to a beach access entry point northeast of the

Matagorda Dunes Homesites Subdivision, as depicted in Appendix II(B), Map B-1, Element 1;

- c. If the County determines that Public Vehicle Access Road # 2 is impassable or closed to vehicles for a period exceeding 24 hours, the Emergency Vehicle Access Entry Road adjacent to Jetty Park, as depicted in Appendix II(B), Map B-1, Element 6, shall be temporarily opened as a free, public vehicle beach access road for the specific period that Beach Access Road #2 remains impassable to vehicles.

2. For Sargent Beach, as indicated on Appendix II(A), Maps A-5, A-6, A-8, A-9, and A-10:

~~Four~~ Five branch roads extending seaward from Canal Drive.

- B. As depicted in Appendix II(B), Map B-1, the following areas shall be maintained as public pedestrian access ways to and from the public beach:  
None

1. For Matagorda Beach:

- a. Pedestrian Access Point # 1, extending from the western portion of Jetty Park to the Gulf/Colorado River beach; and
- b. Pedestrian Access Point # 2, extending from the southeastern portion of Jetty Park to the Gulf beach.

2. For Sargent Beach: None.

- C. As depicted in Appendix II(B), Map B-1, the following areas shall be maintained as free public beach access parking areas:

1. For Matagorda Beach:

- a. Parking Area # 1: Not less than 175 public parking spaces on the existing hard-surfaced parking area at Jetty Park at Matagorda Beach;
- b. Parking Area # 2: Not less than 75 multi-use, public parking spaces along the entry road to Jetty Park and generally seaward of the Public Beach Boundary Line on the Colorado River channel; and
- c. Parking Area # 3: Not less than 50 on-beach public parking spaces incorporated into the northeast end of the pedestrian beach in a designated and marked area of the beach (See Appendix II(B), Map B-1, Element 5).

2. For Sargent Beach: None.

- a. Sargent Chamber of Commerce Park parking lot, as Depicted in Appendix 2(A), Map A-5).

D. *(No amendments)*

E. As depicted in Appendix II(B), Map B-1, the following areas of the public beach are closed to vehicles: None

1. For Matagorda Beach:

a. Pedestrian Beach, extending from Jetty Park pier along the beach, as measured from Pedestrian Beach Access # 2 at Jetty Park and extending northeasterly a distance of 2,940 feet. The distance between Pedestrian beach Access Point #2 and the northeastern terminus of the pedestrian beach shall be 2,640 feet.

2. For Sargent Beach: None.

TEXAS



GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

October 15, 2003

Via Fax and Regular Mail

COPY

The Honorable Greg B. Westmoreland  
Matagorda County Judge  
1700 Seventh St.  
Bay City, TX 77414-5080

Re: Proposed Dune Protection and Beach Access Plan

Dear Judge Westmoreland:

We have completed our review of the latest draft amendment to the Dune Protection and Beach Access Plan for Matagorda County, submitted to our office on September 15, 2003. Based on the most recent draft submitted, we offer the following comments.

- Section 2(III)(B)(2) is intended to describe the Beachfront Construction Line (BCL), but describes the Dune Protection Line (DPL). This section needs to have "DPL" replaced with "BCL" in the text.
- Section 2(III)(A)(2) and Section 2(III)(B)(2). An additional recommendation for the text describing both the DPL and BCL is to remove the text "For purposes of explanation only" since these should be specific descriptions of the legal boundaries of the County's exercised authority under the Open Beaches Act and the Dune Protection Act.
- Section 6(II)(C)(1)(b) refers to the "Open Beaches Act Jurisdiction line" that was changed to "Public Beach Boundary Line" based on our August 22, 2003 comment letter. We recommend replacing "Open Beaches Act Jurisdiction Line on" with "Public Beach boundary line along" to read "Parking Area#2: Not less than 75 multi-use public parking spaces along the entry to Jetty Park and generally seaward of the Public Beach boundary line along the Colorado River; and."

Stephen F. Austin Building • 1700 North Congress Avenue • Austin, Texas 78701-1495

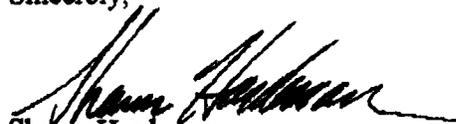
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Thank you for taking the time this morning to discuss our comments. If we can be of any further assistance or if you have any questions, please call Eddie Fisher at (512) 463-9215, or me at (512) 463-5050.

Sincerely,

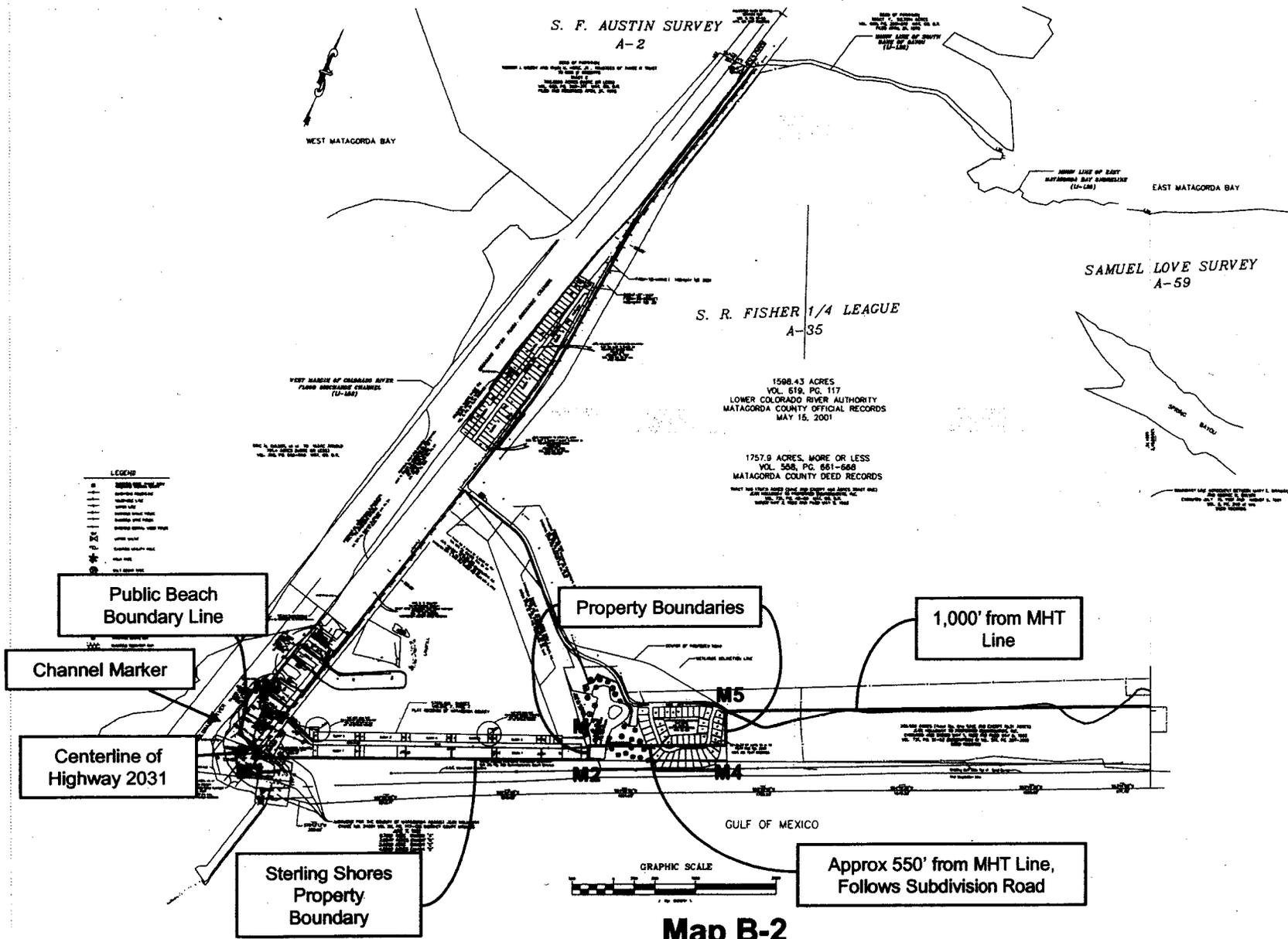


Shawn Hardeman  
Coastal Stewardship Division  
Coastal Resources Program

cc: The Honorable George Deshotels, County Commissioner Precinct 2

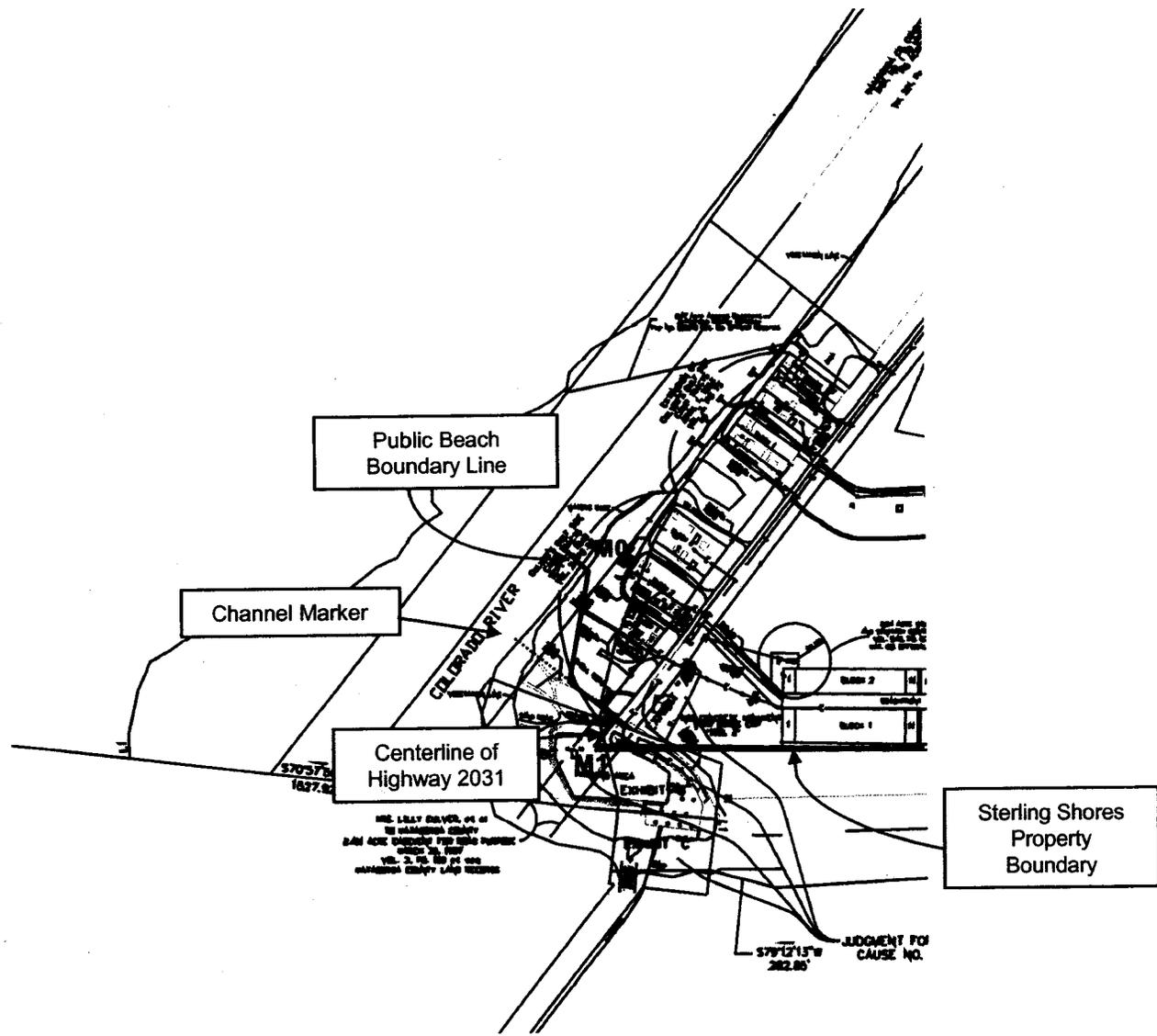
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OVERALL MAP SHOWING ENTIRE LCRA TRACT  
 LCRA MATAGORDA PARCEL  
 MATAGORDA COUNTY, TEXAS

**Matagorda Dune Protection Line and Beachfront Construction Line (Large Scale)**



**Map B-3**

**Matagorda Dune Protection Line and Beachfront Construction Line  
(Small Scale, Jetty Park Area)**



Colorado River

Public Beach Boundary Line

75 Public Parking Spaces

Gate

Emergency Vehicle Access

Jetty Park 175 Public Parking Spaces

Public Beach Access Road #1

Pedestrian Access Point #1

Pedestrian Access Point #2

2200' Jetty Pier Beach Vehicle Access

Rest Room and Future Sheriff's Office

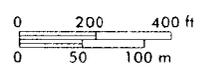
Public Beach Access Road #2

Open Vehicle Access Beach

SSE Prevailing Wind

# Beach and Map

-  Proposed Access Modifications
-  Proposed Road
-  Beach Bollards
-  Roads to be Removed
-  Large Directional Sign
-  Small Directional Sign



## Appendix I

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)
-----------------	--

Appendix I - continued

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
- Chowders, 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 nonsealed 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**

**APPENDIX A SARGENT BEACH MAPS (A-1 thru A-14)**

**APPENDIX B MATAGORDA BEACH MAP**

# APPENDIX A

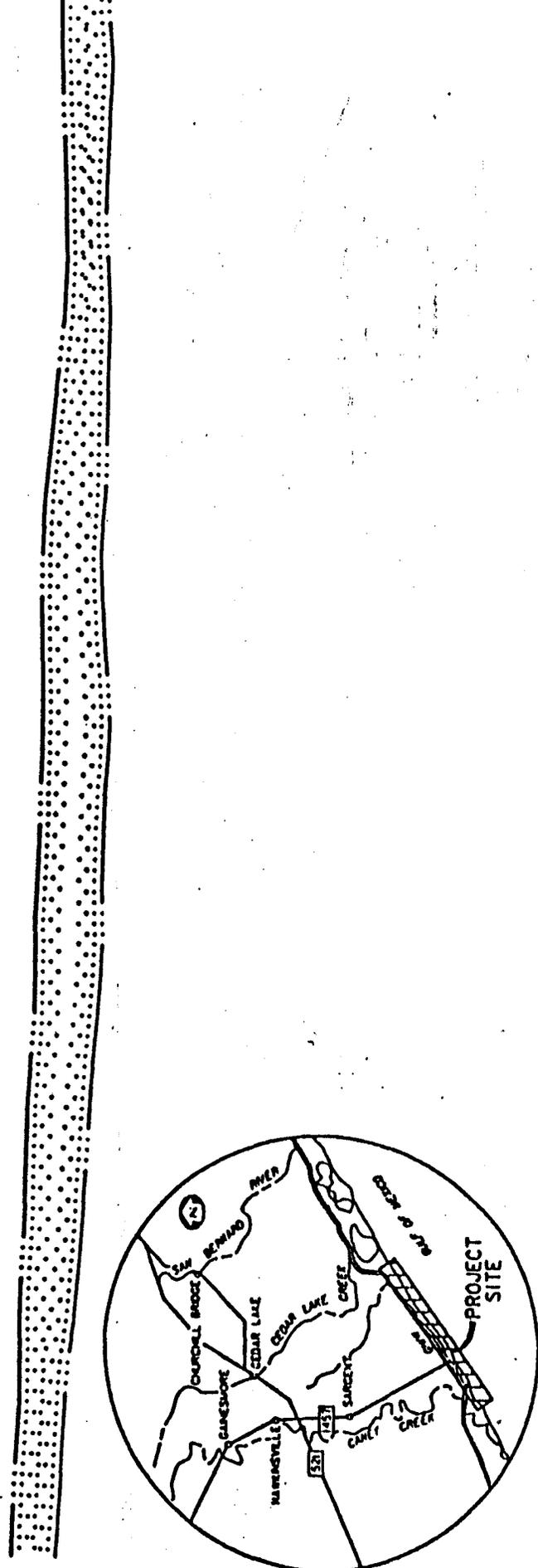
## SARGENT BEACH MAPS

A-1 THROUGH A-14 - C.O.E. MAPS SHOWING:

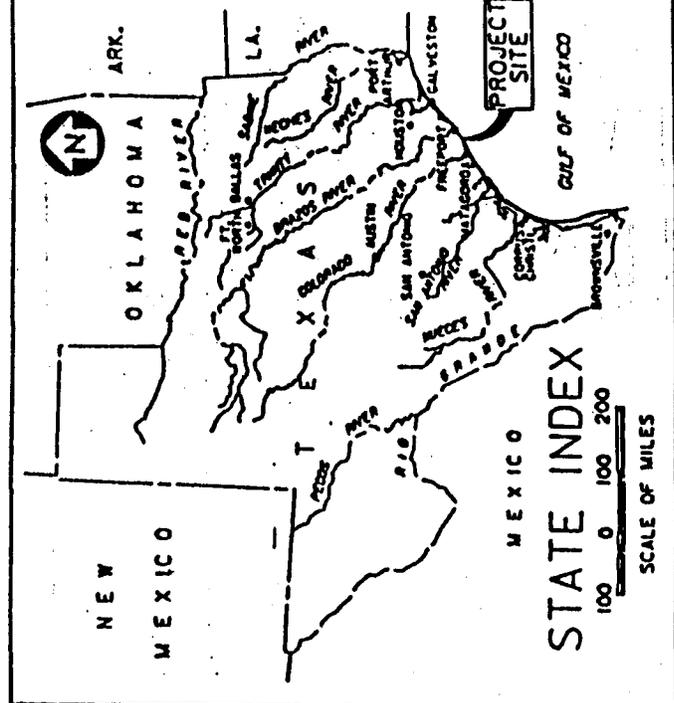
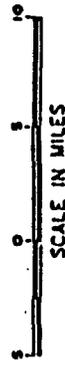
1. DUNE PROTECTION AND BEACHFRONT CONSTRUCTION LINE
2. REVETMENT WALL
3. RIGHT OF WAY DETAILS

A-1 (A) - SMALL SCALE MAP OF SARGENT BEACH AREA

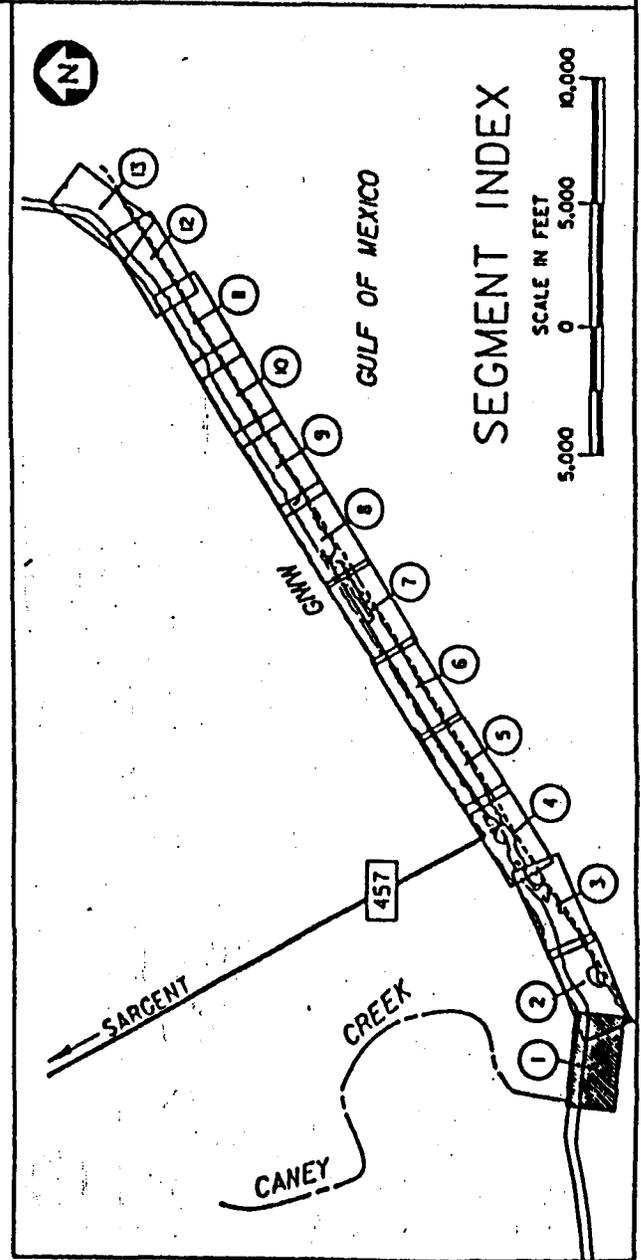
A-2 AND A-14 SHOW COORDINATES OF NE AND SW TERMINUS OF DUNE PROTECTION LINE AND BEACHFRONT CONSTRUCTION LINE



VICINITY MAP



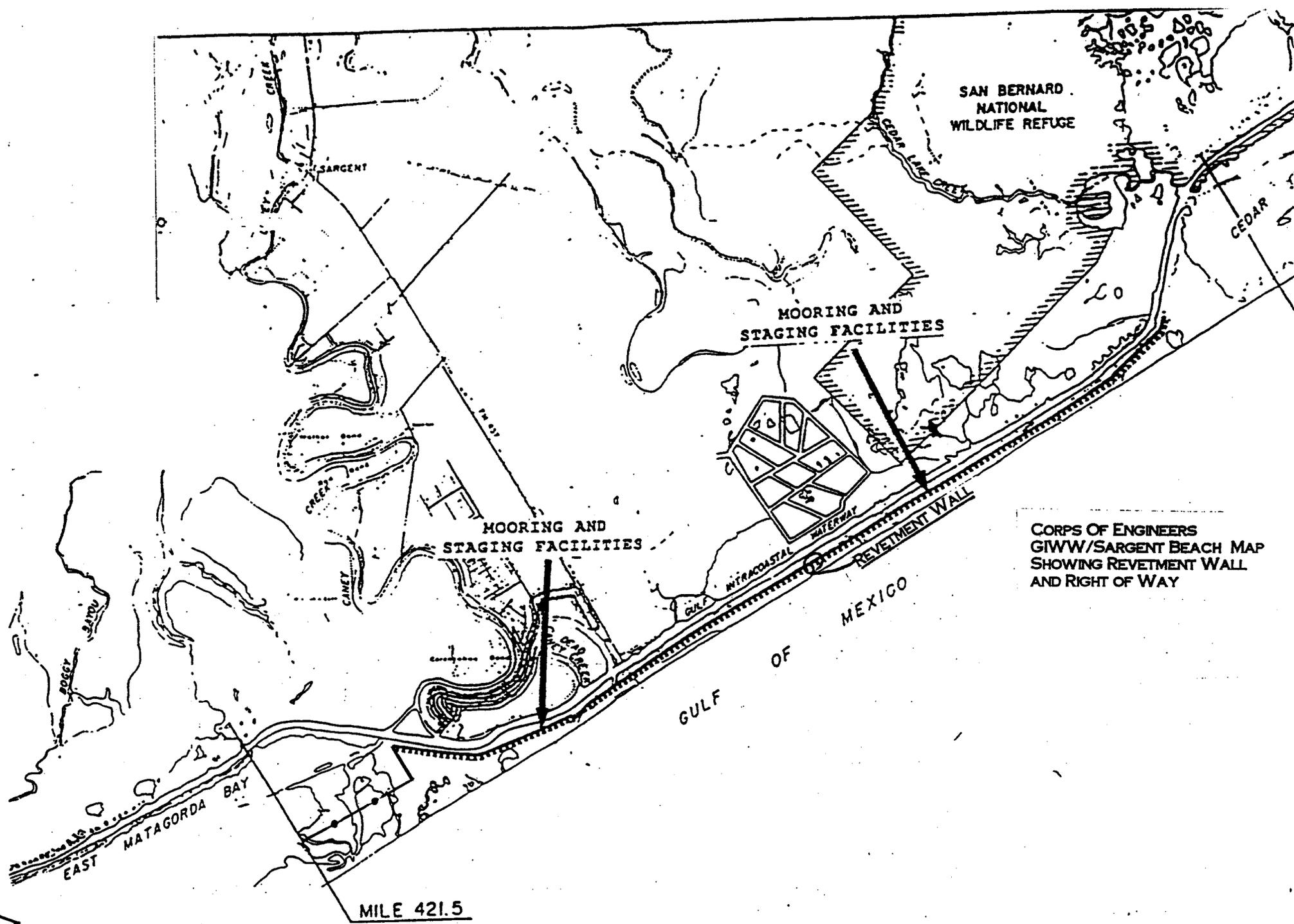
STATE INDEX



SEGMENT INDEX



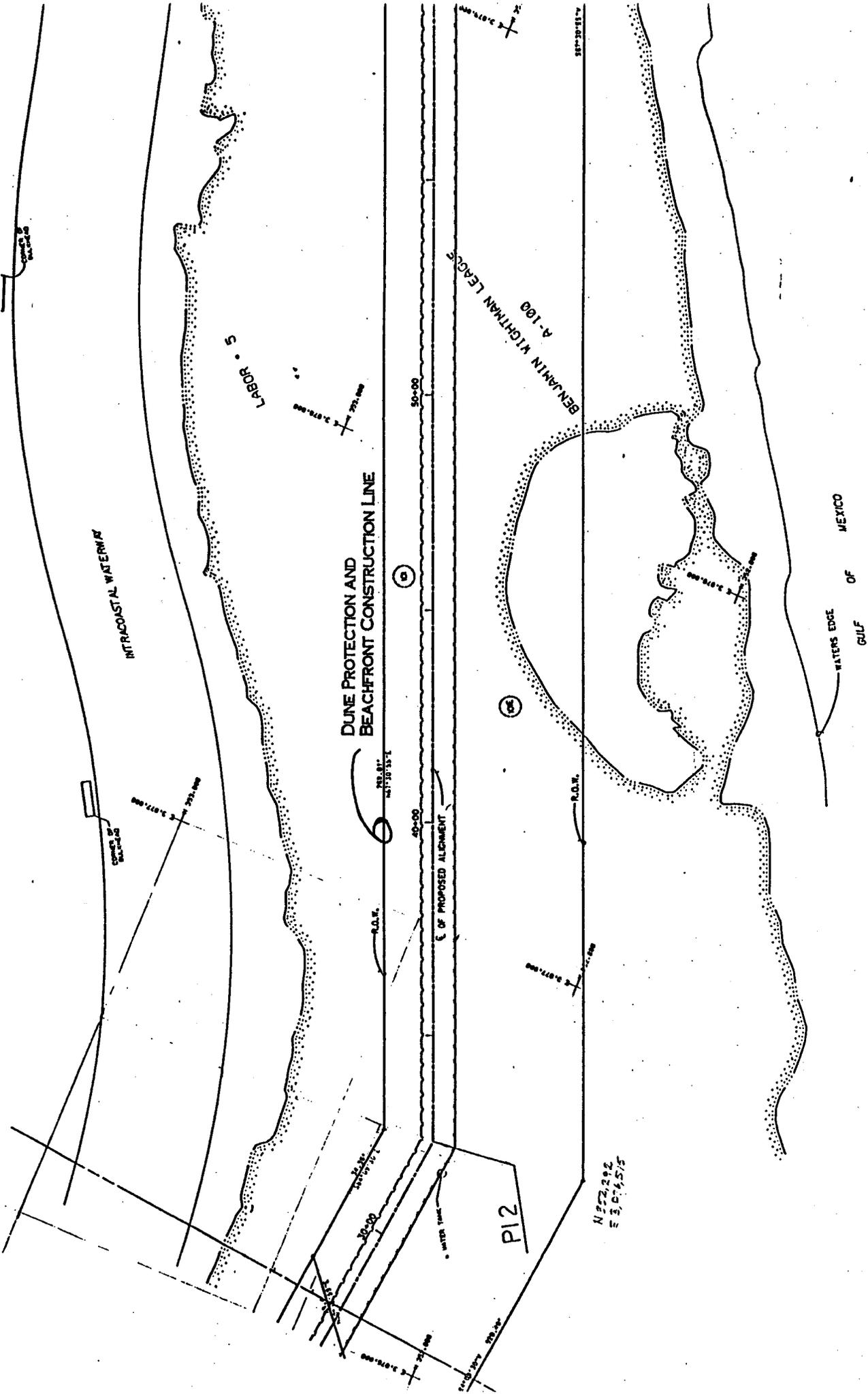
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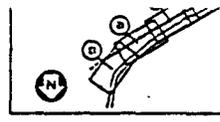
CORPS OF ENGINEERS  
 GIWW/SARGENT BEACH MAP  
 SHOWING REVETMENT WALL  
 AND RIGHT OF WAY

A-1(a)



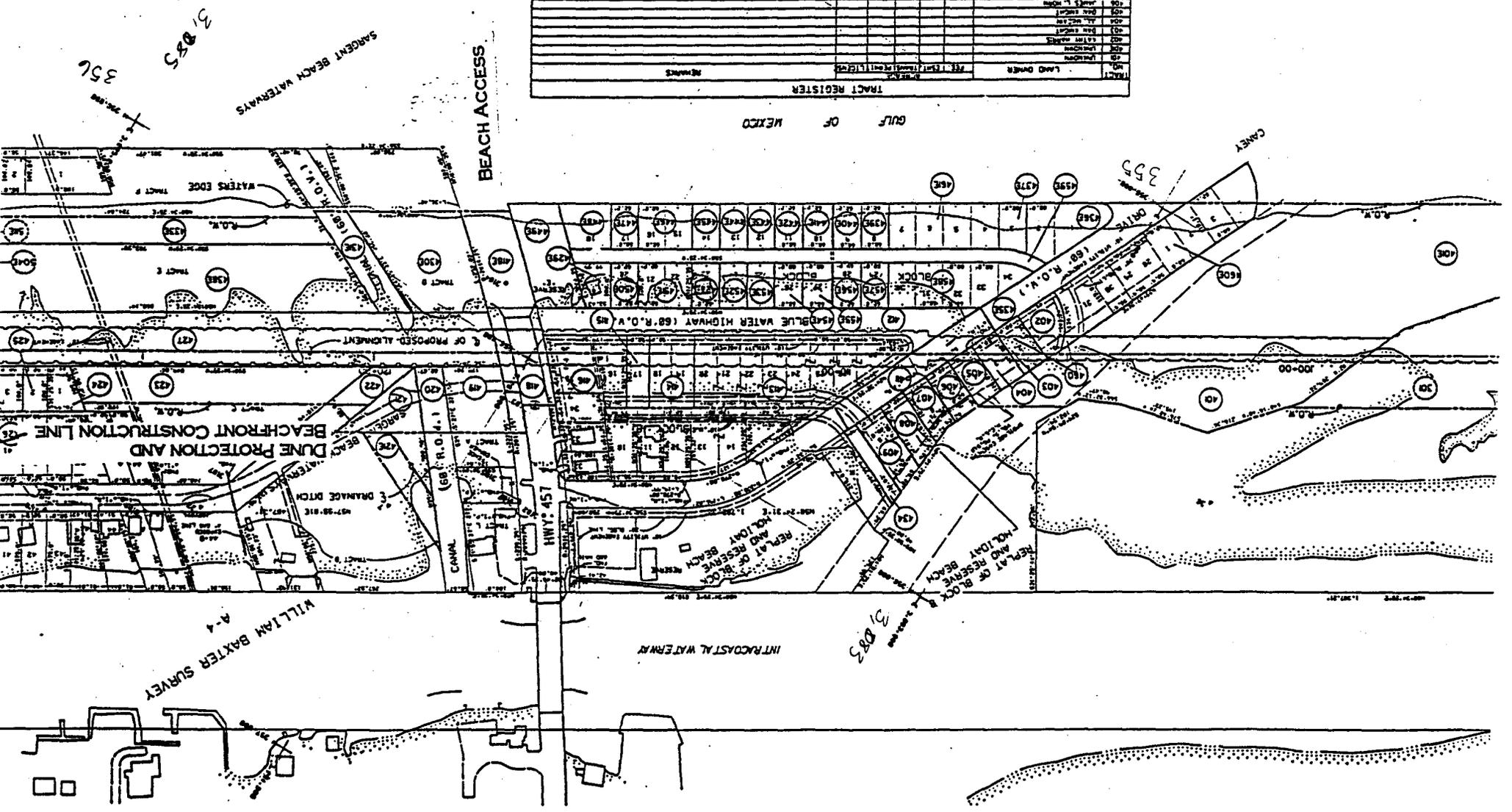




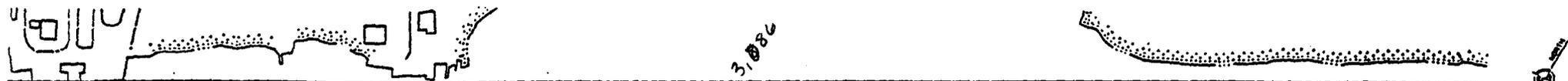


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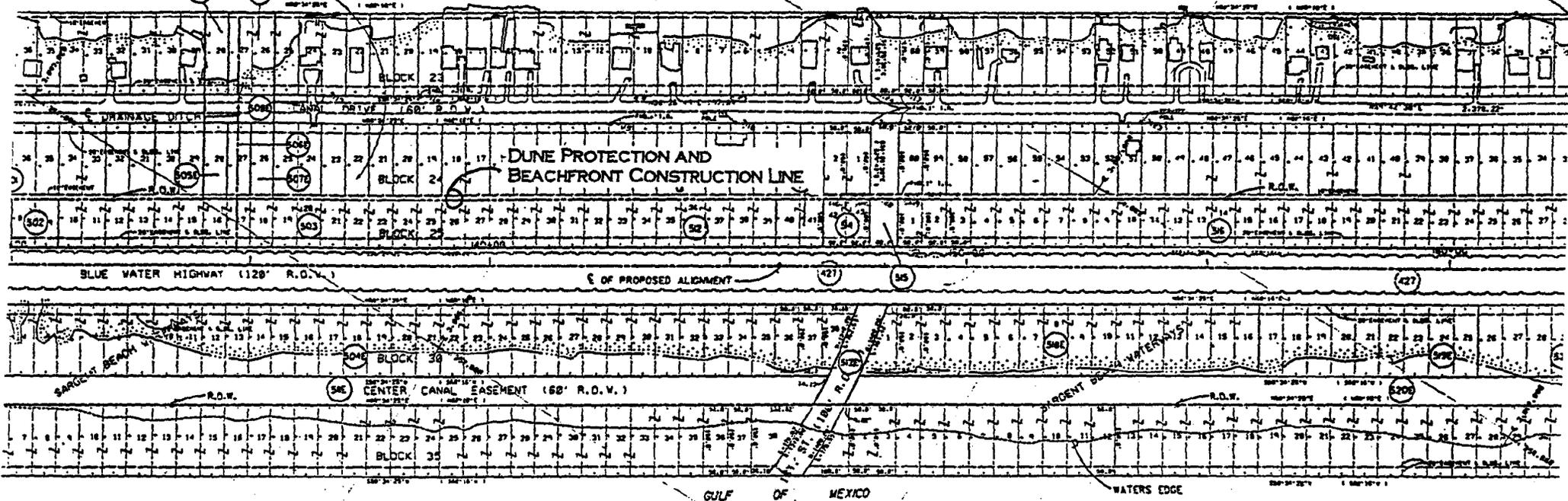
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INTRACOASTAL WATERWAY

WILLIAM BAXTER SURVEY  
A-4

REPLAT OF SARGENT BEACH ADDITION

REPLAT OF SARGENT BEACH ADDITION



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WATERS EDGE

A-6

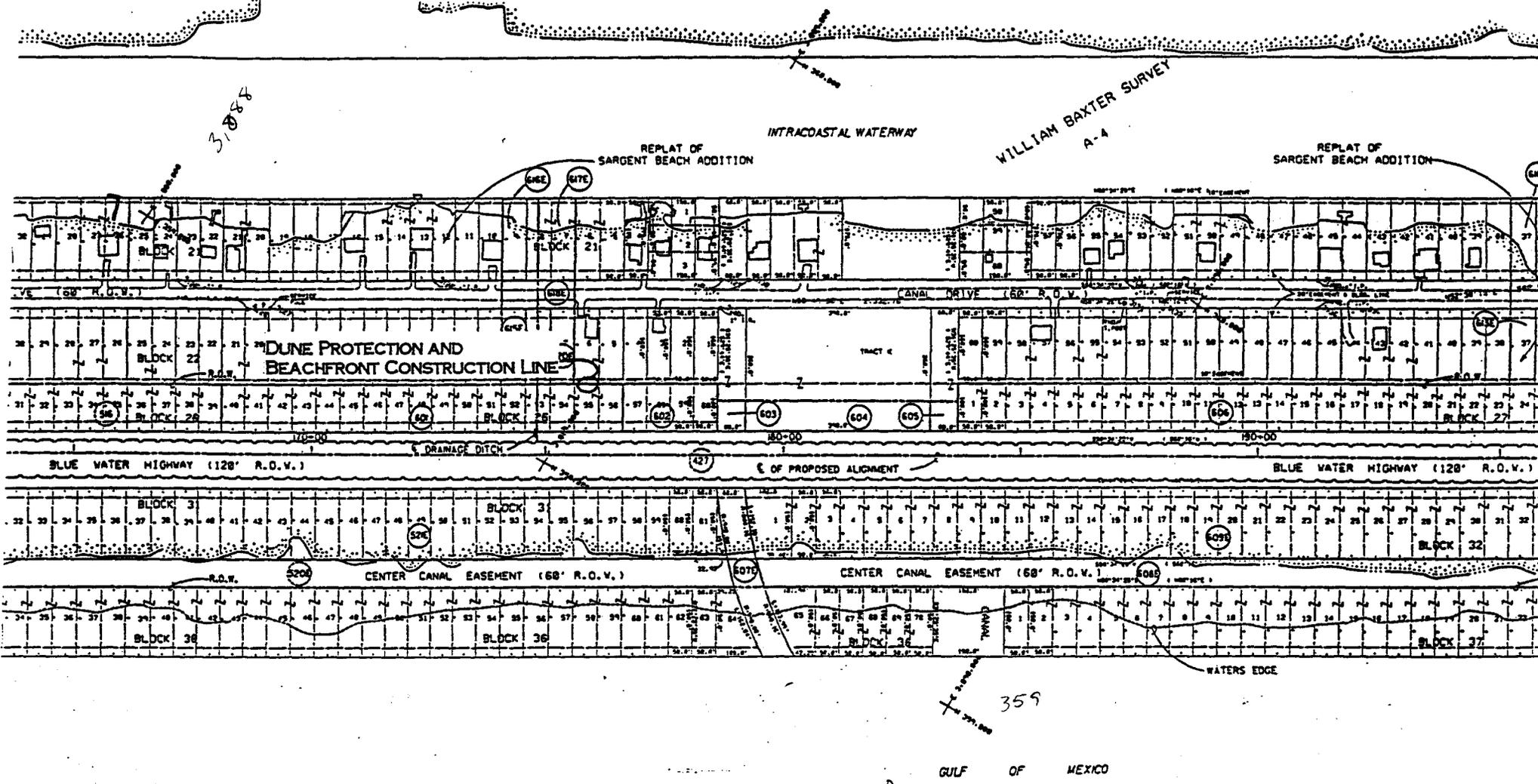


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TRACT	LAND OWNER	PLAT	RECORD	REMARKS
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WILLIAM BAXTER SURVEY  
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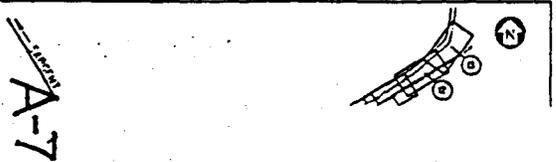
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**TRACT REGISTER**

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603	LUCIANA L. MEXALON					
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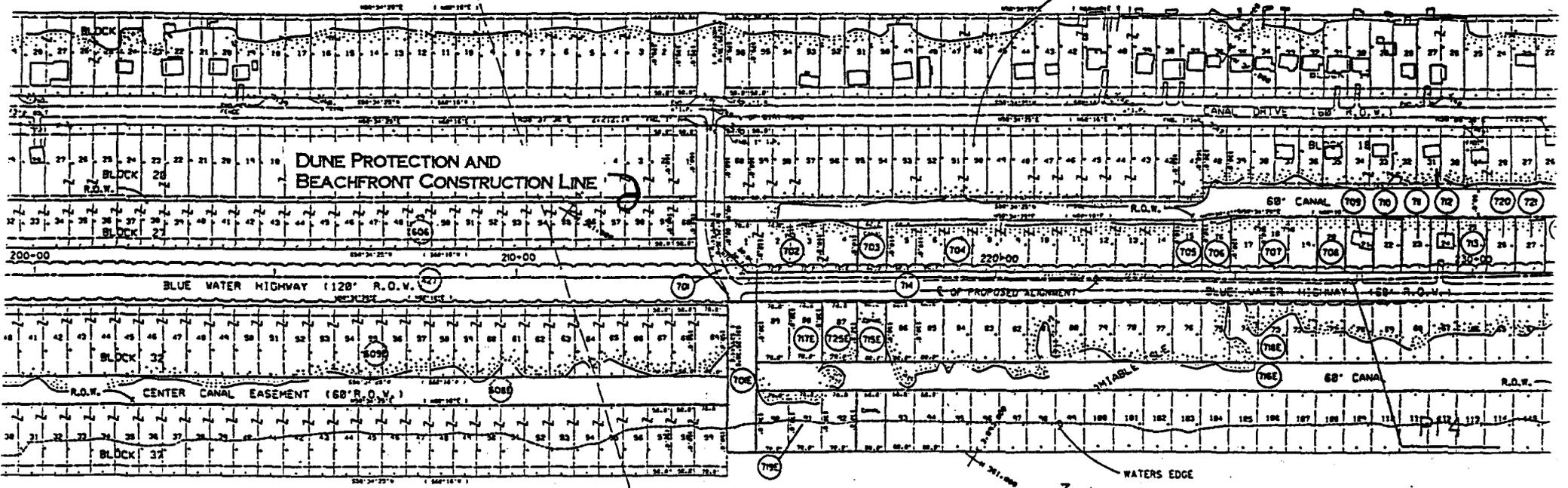


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WILLIAM BAXTER SURVEY  
A-4

INTRACOASTAL WATERWAY

REPLAT OF  
SARGENT BEACH ADDITION



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BEACH ACCESS

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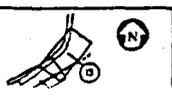
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TRACT REGISTER

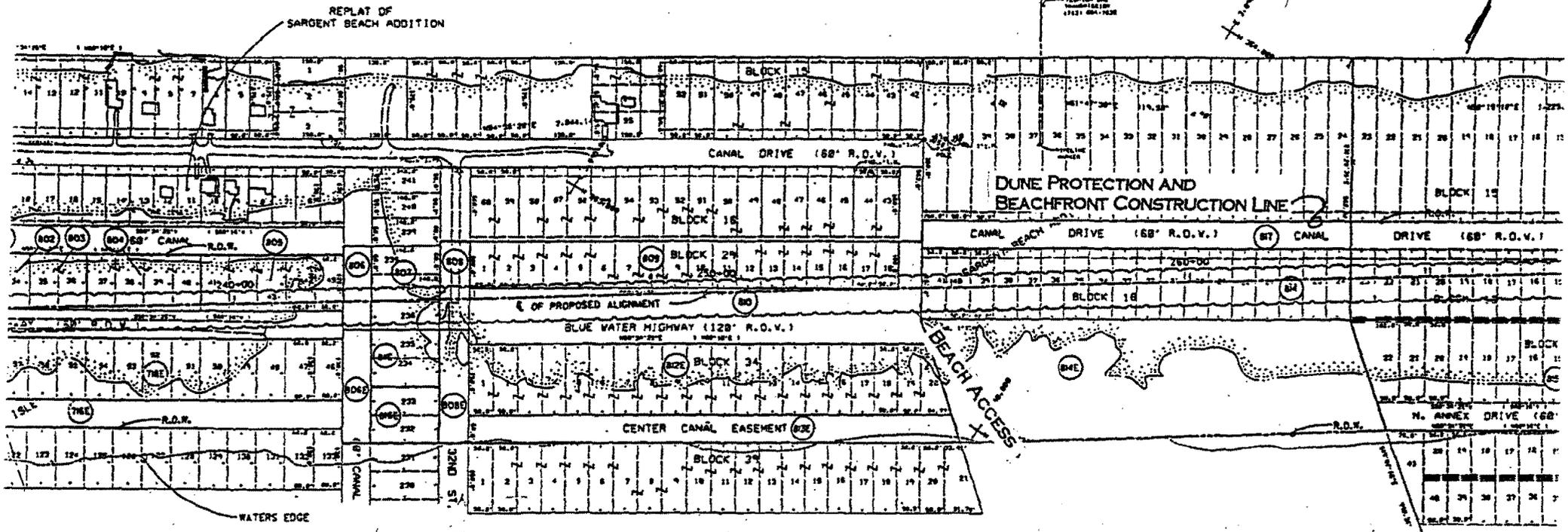
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703	SEE CHARTER		
704	SEE CHARTER		
705	CHARLES ELLIS ET AL		
706	JOHN E. WOODSON ET AL		
707	WYOMING BANK & TRUST CO.		
708	EDWARD L. DANFOS		
709	JOHN A. WELLS		
710	FRANK A. WELLS ET AL		
711	WYOMING BANK & TRUST CO.		
712	FRANK A. WELLS ET AL		
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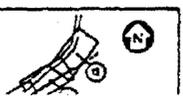


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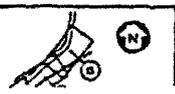
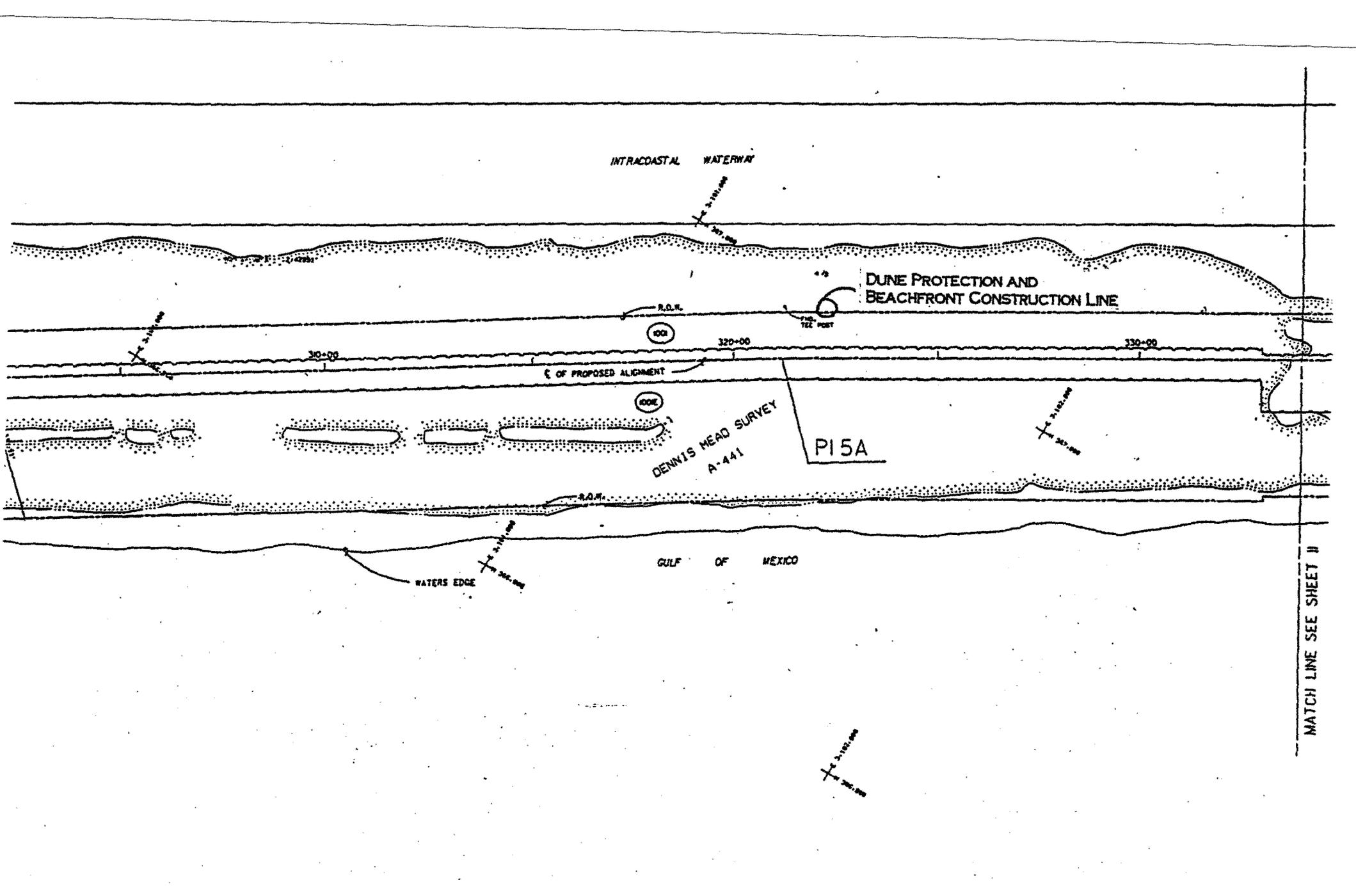
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TRACT REGISTER					
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801	S.F. CHANNING				
802	TRUSTS & ESTATE TRUSTS				
803	WILSON BROS & TRUST CO.				
804	S.F. CHANNING				
805					
806					
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809					
810	TRUSTS & ESTATE TRUSTS				

A-9





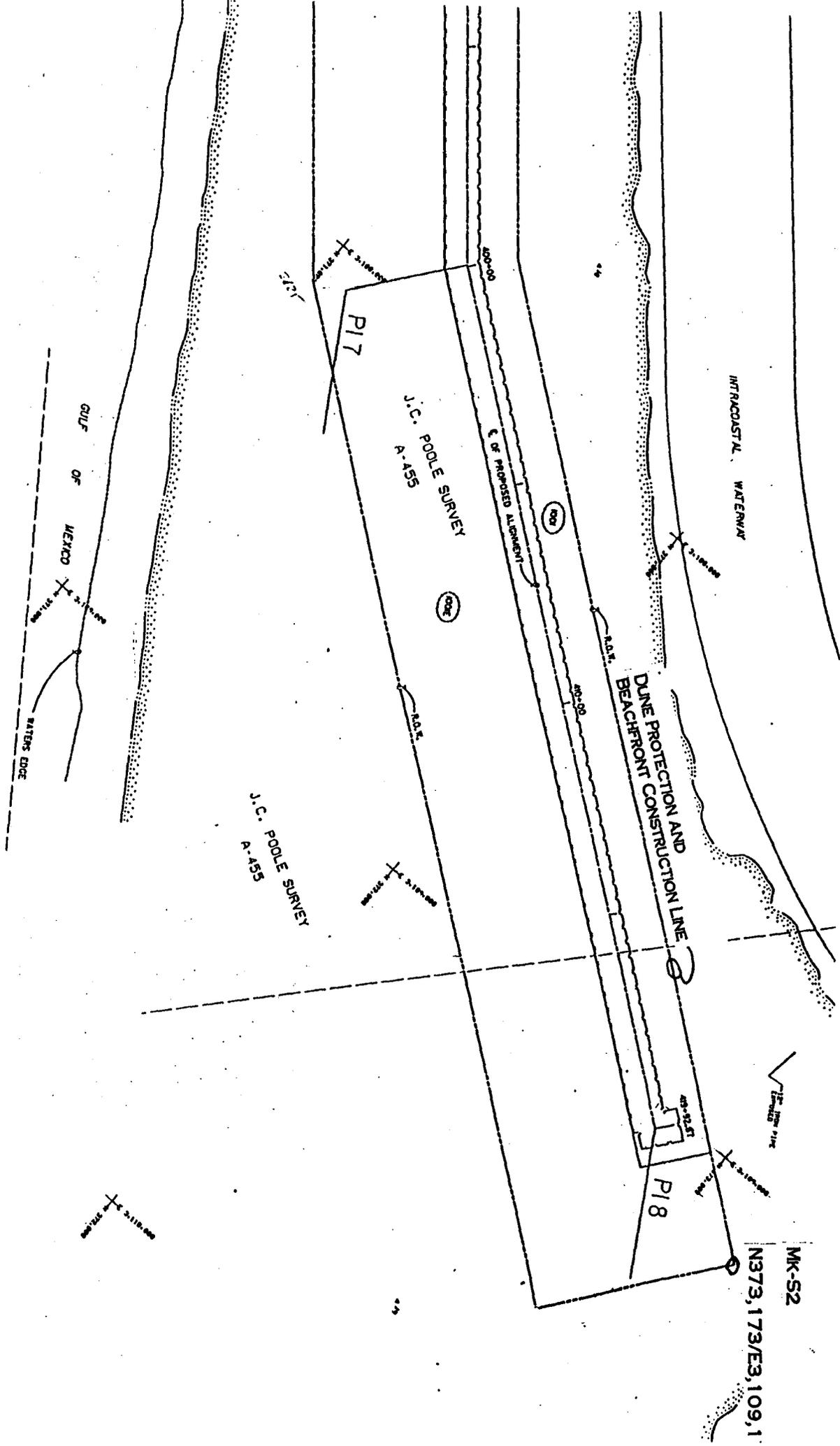
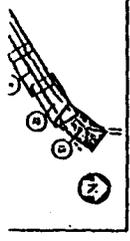


TRACT REGISTER				
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1000	Wm. A. Smith, et al.			

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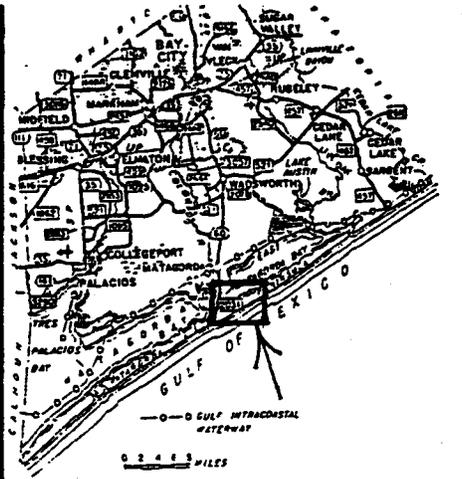
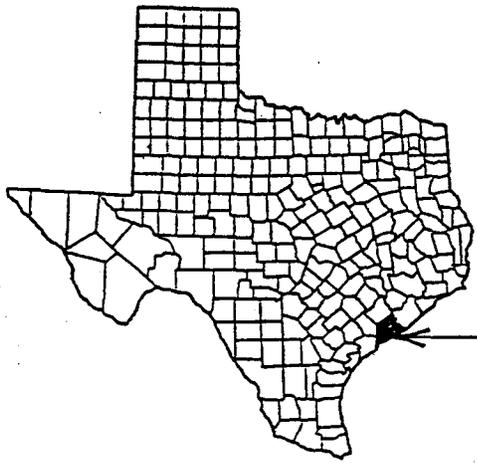


REPRODUCED FROM THE ORIGINAL DRAWING

# APPENDIX B

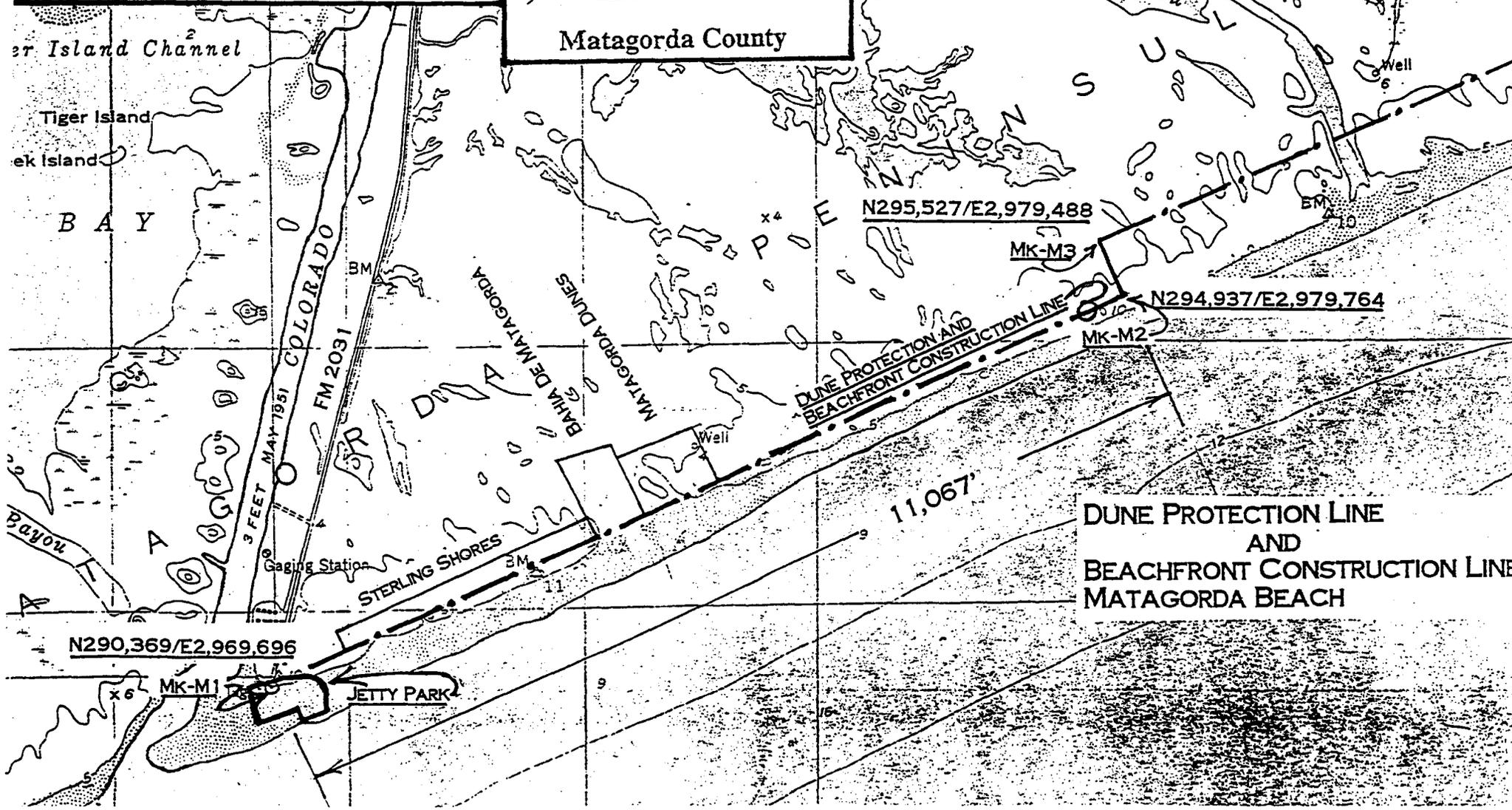
## B-1 MATAGORDA BEACH MAP SHOWING:

1. DUNE PROTECTION LINE  
BEACHFRONT CONSTRUCTION LINE
2. JETTY PARK
3. SUBDIVISIONS



Matagorda County

6841 III NW  
(MATAGORDA)



DUNE PROTECTION LINE  
AND  
BEACHFRONT CONSTRUCTION LINE  
MATAGORDA BEACH

Order to approve a Resolution approving the Matagorda County Erosion Response Plan as an Amendment to the Matagorda County Beach Access and Dune Protection Plan

**BE IT REMEMBERED**, that on this 28<sup>th</sup> day of January, 2013, the Commissioner's Court of Matagorda County, Texas met in **Special Session**, with a quorum in attendance, and upon motion duly made by Commissioner Pollard and seconded by Commissioner Gibson, with all others concurring, to approve a Resolution approving the Matagorda County Erosion Response Plan as an Amendment to the Matagorda County Beach Access and Dune Protection Plan per resolution attached hereto and made a part hereof.

PASSED IN OPEN COURT this 28<sup>th</sup> day of January, 2013.

  
\_\_\_\_\_  
Nate McDonald, County Judge  
Matagorda County, Texas

RECEIVED

MAR 04 2013

General Land Office



**MATAGORDA COUNTY COMMISSIONERS' COURT**  
**RESOLUTION**

**Approving the Matagorda County Erosion Response Plan  
as an Amendment to the  
Matagorda County Beach Access and Dune Protection Plan**

- WHEREAS,** The Erosion Response Plan (ERP) was developed by contract for Matagorda County in consultation with the Texas General Land Office as required by the Texas Natural Resource Code, 33.607 "reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches"; and
- WHEREAS,** The ERP establishes a building setback line, explains criteria for construction seaward of the setback line, identifies opportunities for mitigation and preservation of public beach access areas and dune system, describes criteria for acquiring property seaward of the setback line, and identifies measures for post-storm damage assessment to beach access infrastructure and critical dune areas; and
- WHEREAS,** A public meeting was conducted by the Matagorda County Beach Dune Committee on July 30, 2012 to introduce the proposed Erosion Protection Plan (ERP), and to accept and consider comments; and
- WHEREAS,** The Matagorda County Beach Dune Committee forwarded the proposed ERP to the Matagorda County Commissioners Court with approval; and
- WHEREAS,** Matagorda County has received notification from the Texas General Land Office (GLO) that the Erosion Response Plan is consistent with the requirements of State Law.

**NOW THEREFORE, BE IT RESOLVED,** that the Matagorda County Commissioner's Court adopts the attached proposed Erosion Response Plan as an Amendment to the Matagorda County Dune Protection and Beach Access Plan on a motion by Commissioner POLLARD and seconded by Commissioner GIBSON.

**PASSED IN OPEN COURT,** this 28<sup>th</sup> day of January, 2013.

Attest:

Janet Hickl  
Janet Hickl, County Clerk



Approved:

Nate McDonald  
Nate McDonald, County Judge

Dan Pustka  
Dan Pustka, Commissioner, Precinct #1

Kent Pollard  
Kent Pollard, Commissioner, Precinct #2

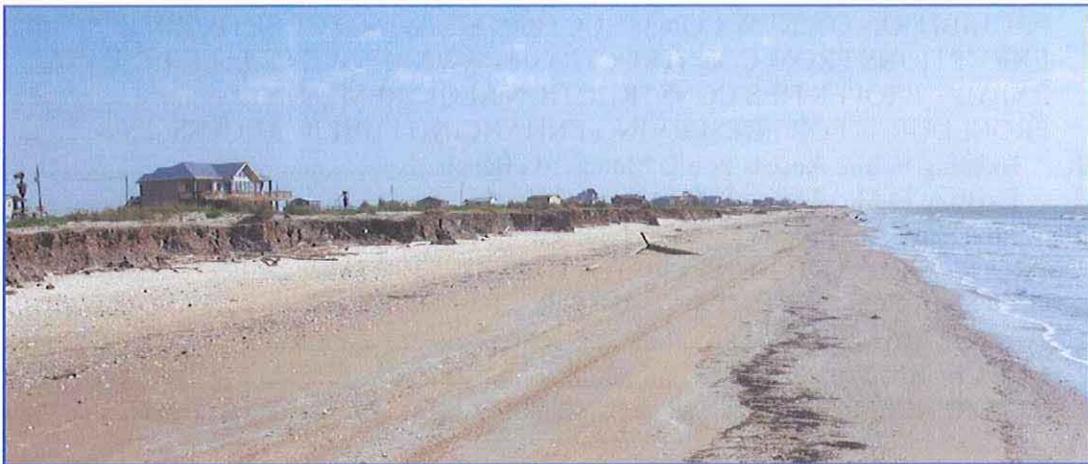
James Gibson  
James Gibson, Commissioner, Precinct #3

David Woodson  
David Woodson, Commissioner, Precinct #4

**FINAL DRAFT**

# Matagorda County

## Erosion Response Plan



**Prepared for:**



**By:**



October 2012

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## 1.0 INTRODUCTION

In 2009, the Texas Legislature enacted HB 2073 requiring Texas coastal communities who currently have Beach Access and Dune Protection plans (pursuant to Texas Natural Resources Code Chapter 61) to develop and implement a local Erosion Response Plan (ERP). As required, the Texas General Land Office (GLO) then adopted rules, TAC, Title 31, Part 1, §15.17 to implement the statute. The 2009 statute made the development of an ERP mandatory for coastal communities and removed the requirement that setbacks were mandatory plan elements. This document is a comprehensive planning document for Matagorda County that meets the GLO ERP requirements including providing recommendations for County actions which would result in reduction of losses from erosion and storm damage to public and private property in Matagorda County.

Prior to formulation of this ERP for Matagorda County, several documents and existing data were reviewed for their applicability to the ERP. These documents include the:

- GLO 2009 *Coastwide Erosion Response Plan*,
- GLO rules, TAC, Title 31, Part 1, §15.17,
- Matagorda County Beach/Dune Plan approved in 1995,
- Texas Natural Resource System for most current aerial photography,
- Dune Protection and Improvement Manual for the Texas Gulf Coast, and
- Bureau of Economic Geology (BEG) for most recent and historical Matagorda County erosion rates and shoreline positions.

After collection of initial data by its consultant, the County conferred with GLO staff to (a) verify that the erosion rates identified and the previously established Dune Protection Line (DPL) and Beachfront Construction Line (BCL) were the appropriate basis for establishing a Building Setback Line (BSL) or (b) identify the appropriate basis for the setback line. In conjunction with development of the 1995 Beach/Dune Plan, the DPL and BCL were set in field consultation with the GLO and with staff from the Office of the Attorney General of Texas. In addition, the County conferred with GLO staff to review and/or verify that the DPL and the BCL in the current Matagorda County Beach/Dune Plan have been mapped accurately and are currently applicable. The GLO agreed that the location of the DPL was accurate. The single line for the DPL, BCL and the BSL was mapped on current aerial photography. After the public meeting, one change was made to the location of the BSL from points M2 to M4 on the map. With concurrence from GLO staff, the BSL was moved seaward of the first row of homes in the Matagorda Dunes and Bahia Matagorda Subdivisions (Appendix A).

Finally, the remaining elements of the ERP were drafted. These elements include:

- Prohibition on new construction seaward of setback line
- Exemptions from construction seaward of setback line
- Exempt properties construction requirements
- Procedures for preserving/enhancing public access
- Procedures for dune protection & enhancement
- Criteria for voluntary acquisition of property seaward of building setback line

## 2.0 DESCRIPTION OF ACCESSIBLE SHORELINE AREAS AND SHORELINE CONDITIONS

### 2.1 Accessible Shoreline Areas

Only two areas within Matagorda County are accessible by a vehicle or public ferry (as defined under the Texas Open Beaches Act (OBA)) and thus likely to incur erosion which threatens public and private infrastructure or dune systems subject to the Dune Protection Act: the Sargent Beach area (located south of the town of Sargent) and the Matagorda Beach area (located on Matagorda Peninsula) (see figures in Appendix A). Matagorda Peninsula across the Colorado River Navigation Channel from Matagorda Beach can be accessed by boat or aircraft only. Other beach areas to the east of Sargent Beach are also inaccessible and are comprised of high washover beaches.

The Matagorda Beach area is located east of the East Jetties on the Colorado River Navigation Channel. The Matagorda County Jetty Park is immediately adjacent to the East Jetties and Navigation Channel. Matagorda Bay Nature Park is a 1,600-acre park and preserve adjacent to the Jetty Park. The Nature Park has about two miles of Gulf of Mexico frontage and two miles of river frontage and hundreds of acres of coastal marshes and dunes. A short section of beach extends north of the Jetty Park around the mouth of the Navigation Channel about 100 feet and is subject to the DPL requirements. Altogether there are 22 miles of accessible Gulf beach in this area which require a Matagorda County visitor's permit. Three subdivisions abut the Matagorda Beach just east of the Jetty Park: Sterling Shores, Matagorda Dunes and Bahia de Matagorda.

### 2.2 Shoreline Conditions and Natural Processes

The following sources were used to determine historical changes in the beach within the limits of Matagorda County:

- Texas Coastwide Erosion Response Plan
- Historical Erosion Rates as determined by the BEG
- Historical Shoreline Position Data from the BEG
- Historical Aerials from the TNRIS

The Texas Coastwide Erosion Response Plan reported that Matagorda Beach experiences an average shoreline erosion rate of 0.9 ft/yr (0.27m/yr). (Texas General Land Office 2009). However, the erosion rate identified in the Texas Coastwide Erosion Response Plan is only consistent for the Matagorda Beach area not the Sargent Beach area. The communities in the study quoted in the Texas Coastal Erosion Response Plan were evaluated based on a "no action" response to the 50-year shoreline erosion projection at one-mile shoreline intervals. The analysis estimated damages to structures and to land if, and when, the projected 50-year shoreline moved landward of the structures and compared beach visitation benefits for different scenarios of beach loss. The quoted study states that "communities less affected by the land loss are the City

of Port Aransas and Matagorda due to the lower erosion rate and existing practices for siting structures farther from the shoreline”.

The BEG reports that historically within the limits of Matagorda County, the shoreline change has varied from a maximum accretion of less than 5m/yr to erosion of 8 m/yr (BEG 2000). The erosion rate of 8 m/yr occurs at the Sargent Beach area, the area now protected by an 8-mile long revetment and sheetpile structure constructed by the US Army Corps of Engineers (USACE) in the early 1990’s. Figure 1.1 below depicts the long-term average annual rate of shoreline change. As depicted in the figures in Appendix A, the historical aerial data, and 2060 predicted shoreline position (from the BEG) appear to verify the magnitude of the accretion and erosion as reported by the BEG.

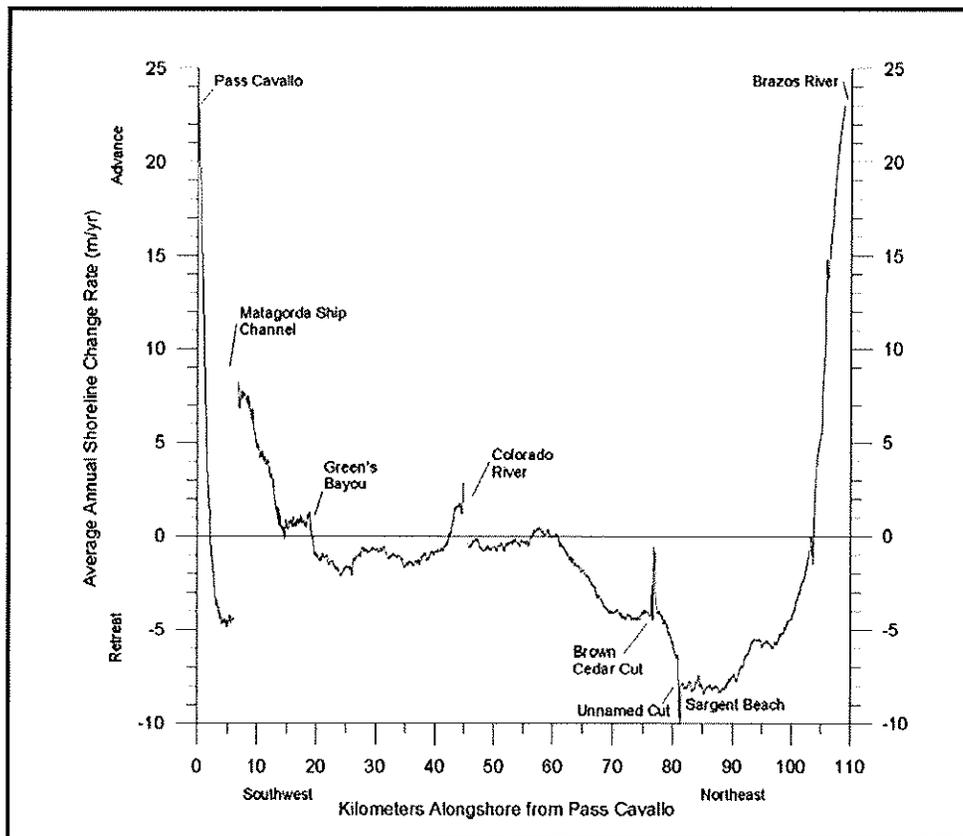


Figure 1.1. Long-term Average Annual Rate of Shoreline Change (from BEG 2000)

### 3.0 DUNE PROTECTION LINE AND BEACHFRONT CONSTRUCTION LINE

#### 3.1 Matagorda Beach

Within the limits of Matagorda Beach, the DPL and BCL are based upon the lines identified in the 1995 Matagorda County Dune Protection and Beach Access Plan as amended in 2003. The DPL and BCL are the same line and are generally located at the same position as identified within the Matagorda County Plan although exact Northing/Easting locations were not identified

in the Matagorda Plan. The single Matagorda DPL and BCL within the Matagorda Beach starts at point designated "M0" located at the landward extent of the public beach on the Colorado River Channel and then generally extends southward parallel to the river to the point designated "M1" in the Jetty Park Parking Lot. The DPL/BCL then extends in a northeasterly direction along the seaward property line of the Sterling Shores Subdivision to the western boundary of the Bahia De Matagorda Subdivision, a point designated "M2".. The DPL/BCL line then extends northward following along the Bahia De Matagorda Subdivision boundary to a point designated "M3" which is approximately 550 feet from line of MHT. The DPL/BCL then continues in a northeasterly direction, generally parallel to the shoreline, to the eastern boundary of the Matagorda Dunes Homesites Subdivision (a point designated "M4"), then landward along the subdivision boundary to a point ( designated "M5") 1,000 feet landward of the MHT. The line shall then extend to length of the peninsula parallel to and at a distance of 1,000 feet landward of MHT. The approximate position of points "M0" to "M5" are identified in Table 1.1 below. The DPL and BCL are depicted in in Appendix A.

Point ID	Northing	Easting
M0	10392862.91	685149.462
M1	10390547.62	684858.25
M2	10392025.52	688621.422
M3	10392321.79	689388.937
M4	10392688.26	690300.152
M5	10393221.58	689998.47
Note that the coordinates above are referenced in UTM Zone 15N NAD83 ft		

**Table 1.1. Coordinates of DPL and SBL for Matagorda, Texas**

### 3.2 Sargent Beach

At Sargent Beach, the DPL and Beachfront Construction Line (BCL) were set coincident with the landward boundary line of the USACE right-of- way established for the Sargent Beach/GIWW 8-mile stone revetment/sheet pile wall. This right-of-way boundary was adopted by the Texas Legislature after the construction of the Sargent Beach Revetment and included in the Matagorda Beach/Dune Plan after consultation with the GLO and as amended in 2003. This right of way established for construction of the revetment is identified as the WORK AREA LIMIT in the drawing titled "Gulf Intracoastal Waterway, Texas Sargent Beach Eight Mile Reach" dated February 1995. The DPL and BCL within this segment of beach are identified with the Coordinates as identified in Table1.2 below and are depicted in a plan view figure in Appendix A. The DPL and BCL are also identified in the Matagorda County Beach Access and Dune Protection Plan (1995).

Point ID	Northing	Easting	Point ID	Northing	Easting
1	13476087.0910	3041375.2030	20	13483710.2270	3059168.0910
2	13475724.7190	3044916.5240	21	13485154.9380	3061590.1630
3	13476749.6470	3047393.0150	22	13485115.1280	3061544.1710
4	13477256.7110	3048609.5690	23	13484596.5870	3060618.7770
5	13478671.4440	3050941.5450	24	13484562.4570	3060639.6270
6	13478657.7630	3050949.8440	25	13486184.0040	3063234.9160
7	13479703.2190	3052642.2730	26	13486192.0250	3063230.0060
8	13479689.5390	3052650.5730	27	13486718.6270	3064091.8780
9	13480035.2490	3053153.3040	28	13486757.0280	3064068.4190
10	13480022.4980	3053168.5640	29	13486062.1480	3063074.9790
11	13480441.1450	3053817.6310	30	13486079.0080	3063064.6900
12	13480519.3530	3053945.6260	31	13488797.1430	3067284.8890
13	13482531.4560	3057238.7960	32	13487825.8630	3065817.7640
14	13482609.3830	3057366.3510	33	13490354.2850	3069698.2290
15	13482736.3670	3057641.9710	34	13489530.9400	3068422.1620
16	13482766.5280	3057623.5410	35	13492222.6230	3072763.5580
17	13483032.4290	3058058.7380	36	13493386.1480	3074562.8920
18	13483000.8990	3058078.0080	37	13496610.0330	3077574.3330
19	13483632.0190	3059040.0860	38	13494760.3570	3076168.4460
20	13483710.2270	3059168.0910			

Note that the coordinates above are referenced in UTM Zone 15N NAD83 ft

Table 1.2. Coordinates of DPL and SBL for Sargent Beach, Texas

#### 4.0 ESTABLISHMENT OF A CONSTRUCTION SETBACK LINE

After careful review of the County's current DPL and BCL as amended in 2003, Matagorda County has decided to establish this concurrent single line as their Building Setback Line (BSL) except at points M2-M4. This line has served the County well in protecting its resources while allowing good public access. The proposed DPL, BCL and BSL are depicted on current aerials of the County in Appendix A.

#### 5.0 PROHIBITION ON NEW CONSTRUCTION SEAWARD OF SETBACK LINE

Matagorda County will adopt the following criteria in regard to new construction seaward of the setback line:

- (1) To the maximum extent practicable, all structures, *(includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed or affixed to land, 31TAC§15.2)* should be constructed landward of the BSL.
- (2) Construction of structures landward of the building set-back line establishes a rebuttable presumption that the permittee has followed the mitigation sequence requirements for

avoidance and minimization of effects on dunes and dune vegetation specified in §15.4(f) of this title (relating to Mitigation). However, the permittee is not exempt from compliance with compensatory mitigation requirements for unavoidable adverse effects on dunes and dune vegetation.

## 6.0 EXEMPTIONS FROM CONSTRUCTION SEAWARD OF SETBACK LINE

Matagorda County will consider the following exemptions from the prohibition of residential and commercial construction seaward of the building set-back line for:

- (1) properties for which the owner has demonstrated to the satisfaction of the local government that no practicable alternatives to construction seaward of the building set-back line exist. For purposes of this ERP, practicable means available and capable of being done after taking into consideration existing building practices, siting 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;
- (2) properties for which construction is permitted under a dune protection and beach access plan establishing a building set-back line certified by the GLO prior to the effective date of the GLO rules for the ERP; and
- (3) structures located seaward of the building set-back 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 set-back line that are damaged more than 50% or destroyed will be subject to this ERP before any repairs or reconstruction may be conducted.

## 7.0 EXEMPT PROPERTIES CONSTRUCTION REQUIREMENTS

If an exemption is allowed from the prohibition for building seaward of the building set-back line, Matagorda County will require the following conditions of construction:

- (1) plans and certifications for the structure by a registered Professional Engineer licensed in the State of Texas providing evidence of the following:
  - a. a minimum two-foot freeboard above base flood elevation (BFE) as established by the National Flood Insurance Program and Matagorda County Flood Insurance Rate Map available from Matagorda County or on-line at <http://www.msc.fema.gov>;
  - b. no enclosures below BFE;
  - c. the adequacy of elevated building foundations and the proper placement, compaction, and protection of fill when used as construction for all newly constructed, substantially damaged, and substantially improved buildings elevated on pilings, posts, piers, or columns in accordance with the latest edition of specifications outlined in American Society of Civil Engineers, Structural Engineering Institute, Flood Resistant Design and Construction, ASCE 24-05;
  - d. feasible relocation of any habitable structure; and
  - e. all construction is designed to minimize impacts on natural hydrology.
- (2) location of all construction should be landward of the landward toe of the foredune ridge, where practicable.

## 8.0 PROCEDURES FOR PRESERVING/ENHANCING PUBLIC ACCESS

### 8.1 Existing Public Access Points Matagorda Beach

Matagorda Beach contains the following public beach access point:

Matagorda Beach contains one public beach access point at the end of Beach Drive (Appendix A Sheets 2-4).

### 8.2 Existing Public Access Points Sargent Beach

Sargent Beach has five designated access points. The first access point is at the intersection of the end of FM 457 and Canal Drive. There are four more access points from off of branch roads Canal drive seaward. The location and condition of some of these access points will be examined in 2013 and the Matagorda Beach/Dune Committee will recommend any changes for these access points (Appendix A, Sheets 6-11).

### 8.3 Procedures for Preserving/Enhancing Public Access

(1) Evaluation of all areas of public access to determine those that require improved protection from erosion and storm surge.

Matagorda County has concluded that no improved protection actions are needed at this point to protect existing access points from erosion and storm surge. Current access points are either behind the revetment in Sargent Beach, or in the case of the new access road at Matagorda Beach, it already curves to avoid dunes and because of its curvature avoids acting as a storm surge avenue. In determining that no improvements are currently necessary to protect public access from erosion and storm surge, Matagorda County, its Beach/Dune Committee and consultants conferred with the GLO Beach/Dune staff, local residents and officials regarding the status and safety of current access points and improvements.

In addition, the County reviewed the location of the 2060 shoreline as predicted by the GLO. Where the 2060 shoreline was landward of existing public access the County searched for any structures which may protect against erosion. At this time there is not an existing public access that is seaward of the 2060 shoreline as predicted by the GLO that is not protected by an erosion control structure.

(2) Evaluation of construction methods and design improvements for areas of beach access to reduce costs associated with repair, rebuild, or replacement due to storm damage and erosion.

Matagorda County will examine potential construction improvements for future installation of beach access amenities. Most of existing improvements are protected by the 8-mile revetment at Sargent Beach.

- (3) List of goals and implementation schedules for areas of public access design improvements that prioritize short term (two years or less) and long term goals.

In the short term current Matagorda County beach maintenance practices will continue which require placing beach cleaning sand into the dunes. An additional public restroom is needed in the Sargent beach area. In 2013 the County will discuss potential restroom sites and perhaps seek funding for the restroom. In addition, conditions have changed considerably in Sargent due to erosion and the construction of the revetment. Access points will be reviewed in both Sargent and Matagorda Beaches in 2013 to determine their conditions and whether additional or improved access points are needed. Another element the County will consider is trying to locate funds for potential dune walkovers rather than relying solely on the current foot paths adjacent to the property of the Lower Colorado River Authority. The addition of potential dune walkovers and funding sources will be discussed at a Beach/Dune Committee meeting during 2013.

- (4) Inventory all publicly funded existing amenities and access ways as a basis for qualifying for FEMA post-storm funding sources.

See Appendix B for an inventory of all publicly funded existing amenities and access ways as a basis for qualifying for FEMA post-storm funding sources.

- (5) Establishment of procedures for conducting post-storm assessment and identification of requirements for rehabilitation.

Matagorda County will adopt the following procedures for conducting post-storm assessments and identifications of rehabilitation requirements.

- a) Mandatory inspection of beach access areas by county officials within one week after meteorological events conditions allowing which will document any damages, losses, or repairs required;
- b) Compilation of a list of access points that (after a storm) no longer comply with the Matagorda County's approved Dune Protection and Beach Access plan and the GLO Beach/Dune rules including a description of specific required repairs and replacements including, but not limited to parking, pedestrian and vehicular access ways, and signage;
- c) Schedules for access area repair and replacement based on available local funding and grant requests; and
- d) As part of its post-storm inspection of public access points and post-storm damage assessment, Matagorda County staff will compare the replacement-dollar value of facilities and roads damaged seaward of the DPL/BSL versus landward of this line. Specific methodology will be determined in coordination with GLO and FEMA as appropriate.

## 9.0 PROCEDURES FOR DUNE PROTECTION AND ENHANCEMENT

- (1) Specific proposals for the height (above mean sea level), width (as measured perpendicular to the shoreline), and percent of vegetative cover of critical front row dunes necessary to protect public and private property from severe meteorological events. The minimum dune height should be based on at least 75% of the BFE height from mean sea level (MSL) established by the National Flood Insurance Program (NFIP) Flood Insurance Rate Maps for the local area.

Matagorda County will strive to incorporate specific dune height and width (at least 75% of the BFE height above MSL established by the NFIP rate maps) and percent of vegetative cover into future dune creation projects when funds are available to do this. The assessment will include recommendations for achieving 75% of base flood elevation for dune height and determination of optimum width and vegetative cover based upon the dune width and vegetative cover which exist seaward of the LCRA park as recommended by GLO staff. The existing proposed beach nourishment/dune creation project in Sargent Beach east of FM 457 does not currently adhere to these standards, but if more resources become available, these projects could be enhanced. The project will be constructed in Sargent in 2012-2013 and will add reconstructed dunes and additional sand to the beaches of Sargent. Matagorda County is also using some of its CIAP funds to sponsor a USACE study to determine if potential offshore structures could help protect the beaches and dunes within the County.

- (2) Identification and listing of specific locations where restoration is needed to fill in gaps and 'blowouts' in the foredune ridge.

Matagorda County does not have any areas of gaps and blowouts that need restoration except in the area within the two existing proposed projects on Sargent Beach. All natural cuts and washovers will be left alone and not filled in with dune projects. Existing washovers and natural cuts are can be seen in Appendix A.

- (3) Specific proposals for dune revegetation projects, including the identification of native plant species to be used in these projects.

Native species recommended in the Texas GLO Dune Protection and Improvement Manual will be used in the two proposed dune restoration projects at Sargent Beach and any future projects. These species include but are not limited to bitter panicum, sea oats and beach morning glory. In addition, county officials will coordinate with the Galveston District, USACE, regarding the possibility of using some of the dredged materials from the navigation channel and jetty channel (between the jetties) to enhance dunes. Finally Matagorda County will seek funds for the installation and/or maintenance of signs prohibiting the use of motorized vehicles on dunes.

- (4) Identification of enhanced dune protection measures for existing residences, multi-family structures and businesses.

Matagorda County has a long-term goal and history of enhancing and protecting its dune resources and will continue to implement these policies through its Dune Protection/Beach Access Committee. The County will examine and seek funding as needed for potential dune walkovers and signs in appropriate areas particularly in subdivisions.

(5) Identification of specific goals and implementation schedules to meet the requirements of 1-4 above

The County has identified the specific goals of:

- a) Incorporating, whenever funding allows, specific dune heights at least 75% of the BFE height from mean sea level established by the National Flood Insurance Program Flood Insurance Rate Maps for the local area. (Schedule: to add as a draft design condition for any future funding requests of beach nourishment/dune projects).
- b) Maintaining a list of needed gap fill areas for dune projects (none are identified at this time) and not filling in natural cuts and washovers. (Schedule: Add as requirement in beach/dune plan by 2012).
- c) Use of native species in the two proposed dune creation projects at Sargent Beach. (Schedule: Construction for Sargent East (2012-2013).
- d) Coordinating with the Galveston District, USACE, regarding the possible use of some of the dredged materials from the navigation channel and jetty channel for dune enhancement in 2013.
- e) Seeking funding for dune protection signs as appropriate.

(6) Identification of available funding and proposed grant requests to accomplish goals and implementation schedules for dune restoration.

See Appendix C for an inventory of available funding and proposed grant requests to accomplish goals and implementation schedules for dune restoration.

## **10.0 CRITERIA FOR VOLUNTARY ACQUISITION OF PROPERTY SEAWARD OF BUILDING SET-BACK LINE**

Under this requirement of the GLO ERP rules, the local government may develop criteria for identifying properties with structures located entirely seaward of the building set-back line, providing for voluntary acquisition of fee simple title or a lesser interest in such properties, and procedures for prioritizing properties to be acquired. In Matagorda County, the Line of Vegetation is well seaward of BCL both on the Sargent Beach revetment area and in the Matagorda Beach LCRA properties, thus there should be no for any reason for buyouts by the County. All undeveloped (which may be developable) areas have been previously platted. No more development is expected in either of these areas. LCRA has purchased all adjoining property in Matagorda Beach for conservation purposes. The area west of the Colorado River Navigation Channel is not subject to OBA and Dune Protection regulation because there is no vehicular access.

## 11.0 CONCLUSION

Matagorda County takes pride in its progressive actions in ensuring that its beaches remain open to the public and that its natural beach systems are preserved. With the institution and amendment of its model Beach Access/Dune Protection Plan, the County took a large step in protecting its beaches. With this added amendment of an ERP, the County will take another step in providing a quality beach experience for generations to come.

## 12.0 REFERENCES

Matagorda County. Matagorda County Dune Protection and Beach Access Plan, November 7, 1995, as amended in 2003.

Texas Administrative Code Title 31 Natural Resources and Conservation, Part 1 General Land Office, Chapter 15 Coastal Area Planning, Subchapter A Management of the Beach/Dune System Rule 15.17 Local Government Erosion Response Plans, §15.17 adopted to be effective August 31, 2010, 35 TexReg 7868.

Texas Bureau of Economic Geology. Historical Shoreline Positions.  
<http://www.beg.utexas.edu/coastal.safe/report.htm>

Texas General Land Office. 5<sup>th</sup> Edition, 2005. Dune Protection and Improvement Manual.

Texas General Land Office. 2009. Texas Coastwide Erosion Response Plan 2009 Update, McKenna, K.K., P.G.

Texas General Land Office. Texas Beach Accessibility Guide. <http://www.glo.texas.gov/what-we-do/caring-for-the-coast/publications/texas-beach-accessibility-guide.pdf>

Texas Shoreline Change Project Gulf of Mexico Shoreline Change from the Brazos River to Pass Cavallo, James C. Gibeaut, William A. White, Tiffany Hepner, Roberto Gutierrez, Thomas A. Tremblay, Rebecca Smyth, and John Andrews, October 2000

U.S. Army Corps of Engineers. February 1995. Drawing Titled "Gulf Intracoastal Waterway, Texas Sargent Beach Eight Mile Reach".

# **APPENDIX A**

Matagorda County Erosion Response Plan

Maps of the Dune Protection Line, Beachfront Construction Line  
and the Beachfront Setback Line



**NOTES:**

1. The aerial obtained from the Texas Natural Resources Information System is dated April 4th, 2008.
2. The 2060 Predicted Shoreline data is from the University of Texas, Bureau of Economic Geology.

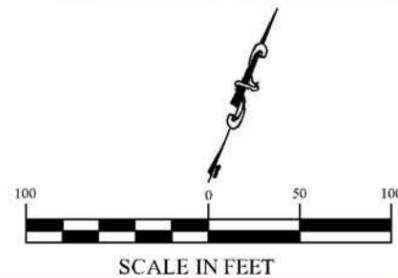


Draft	MATAGORDA COUNTY Erosion Response Plan		Draft		Plan View - Matagorda Beach 1"=300' Scale		Sheet 1	
	 <b>COASTAL TECH</b> <small>Certificate of Authorization Number: F-3066 2306 Lake Austin Blvd, Austin Texas 78703</small>		PROJ MGR SD	REVISED	DATE 10/02/2012	JOB NO. 29510		

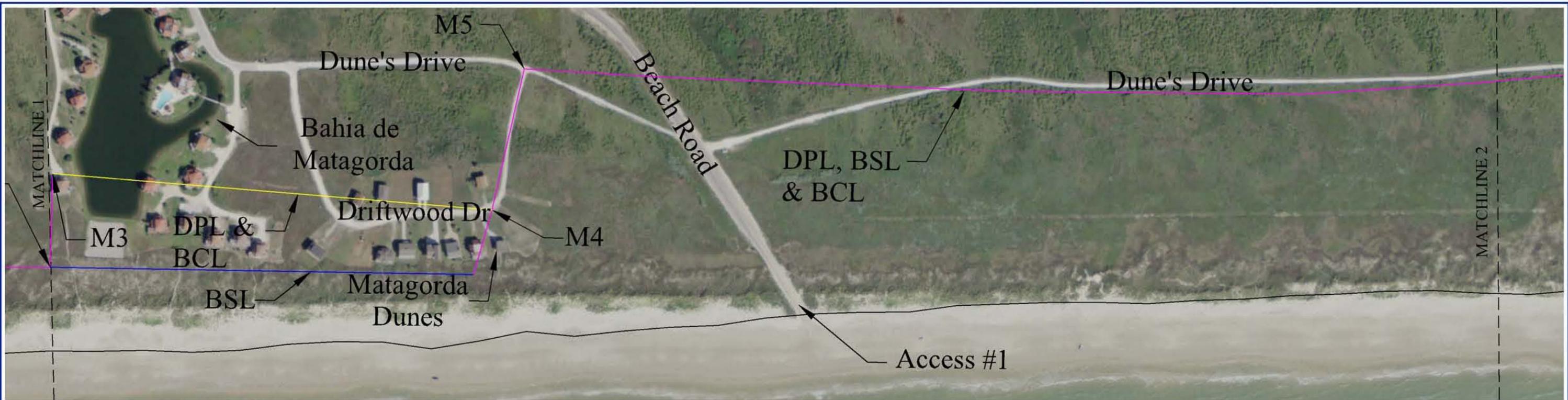


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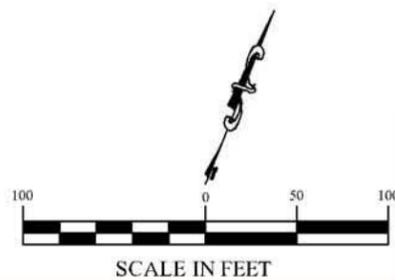


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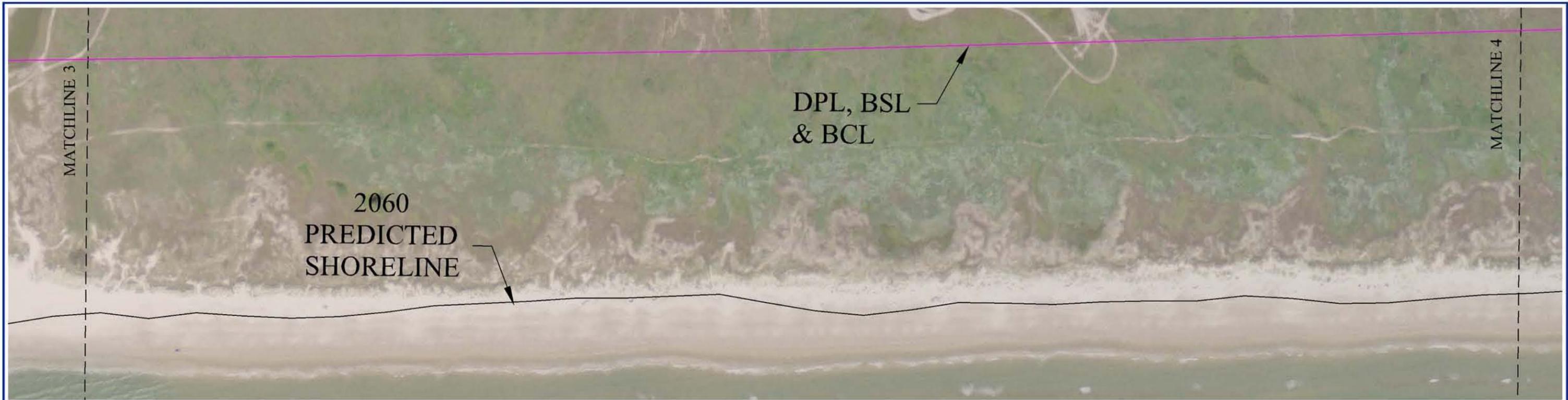


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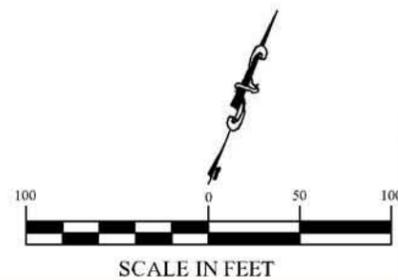


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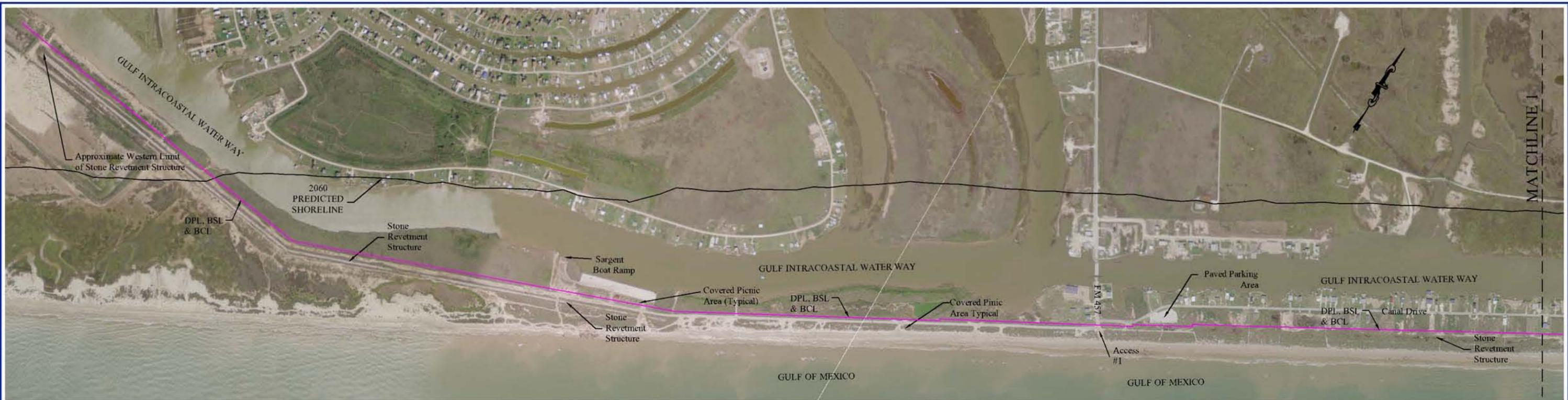


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Draft	MATAGORDA COUNTY Erosion Response Plan		Plan View - Matagorda Beach 1"=100' Scale		Sheet 4
	 <b>COASTAL TECH</b> <small>Certificate of Authorization Number: F-3066 2306 Lake Austin Blvd, Austin Texas 78703</small>		PROJ MGR SD	REVISED	DATE 10/02/2012



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2. The 2060 Predicted Shoreline data is from the University of Texas, Bureau of Economic Geology.
3. Note that the 2060 predicted shoreline does not incorporate the existence of the USACE revetment.



Draft	MATAGORDA COUNTY Erosion Response Plan		Draft	Plan View - Sargent Beach 1"=300' Scale			Sheet 5
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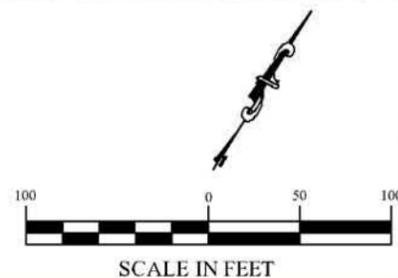


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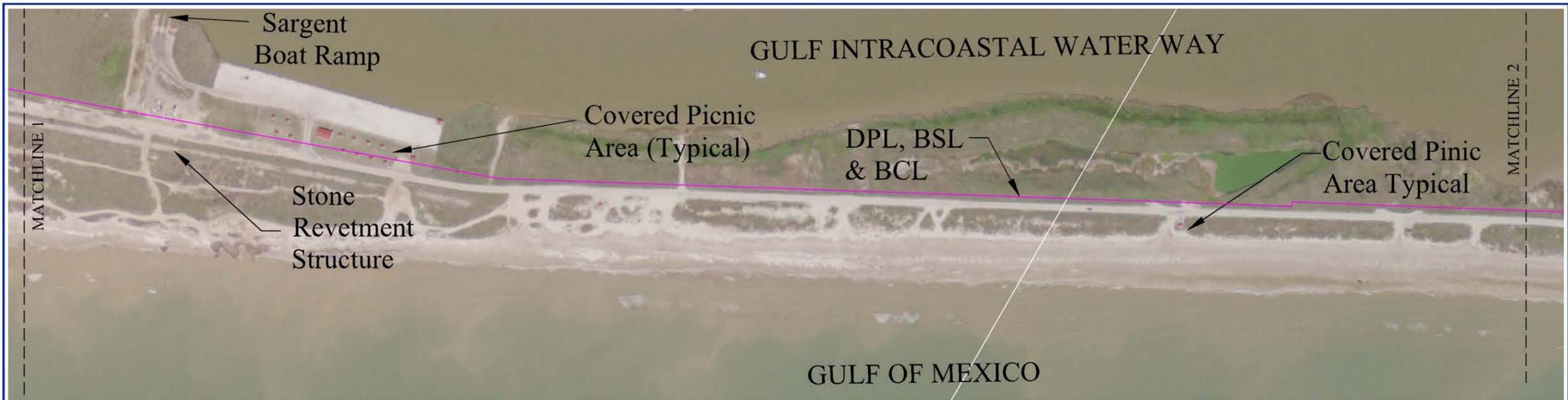


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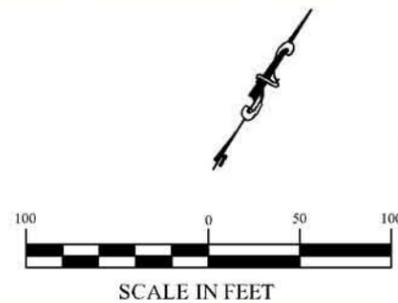


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4. The 2060 predicted shoreline is on the north side of the Gulf Intracoastal Water Way.

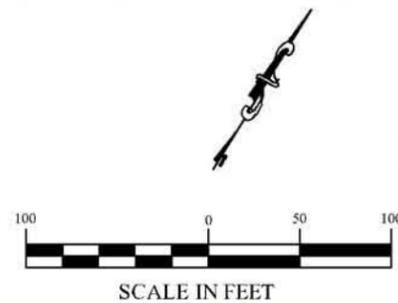


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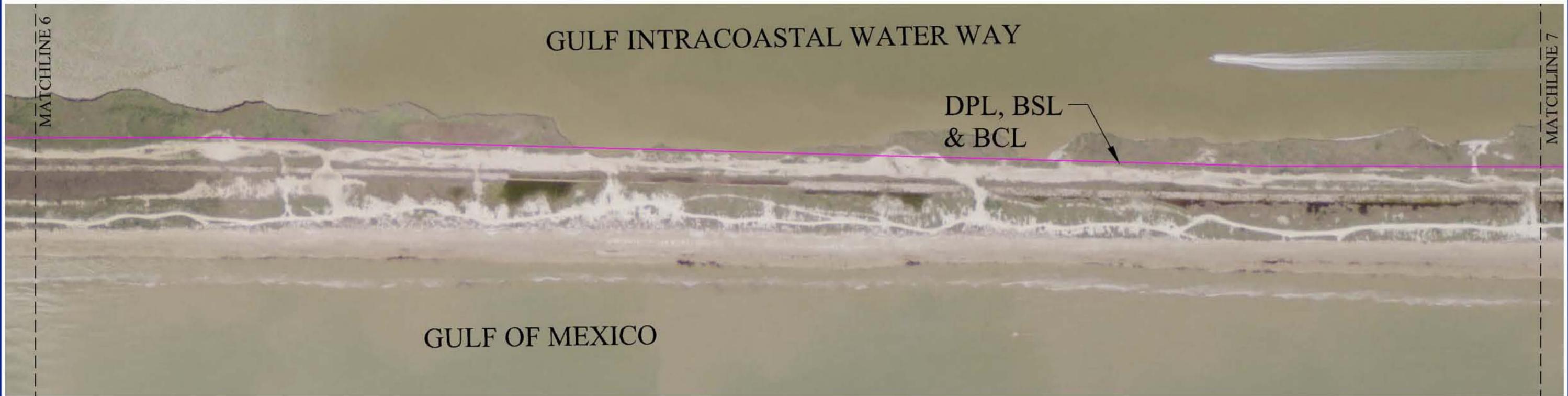
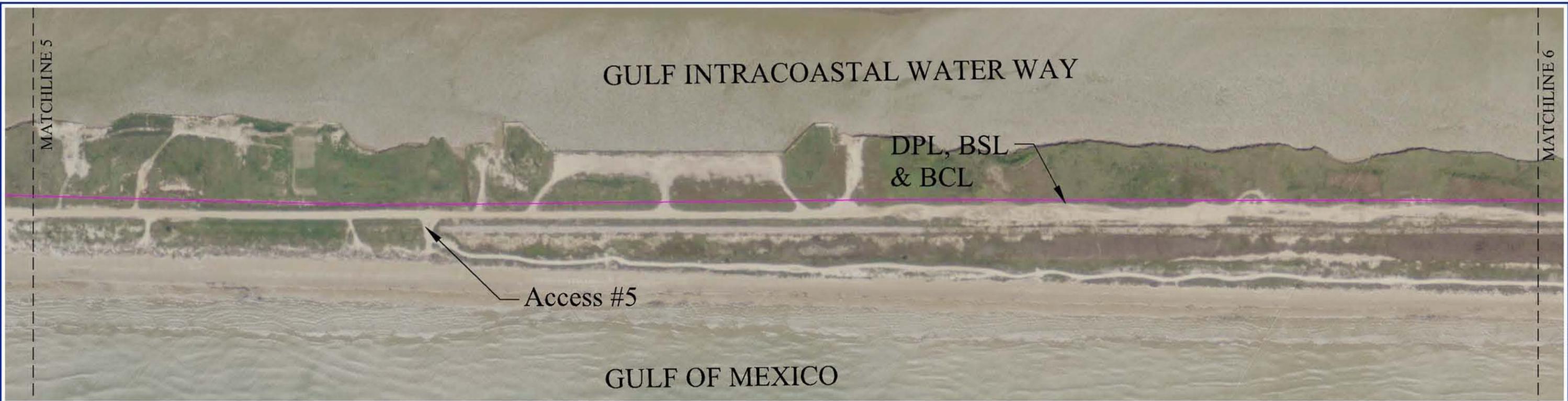


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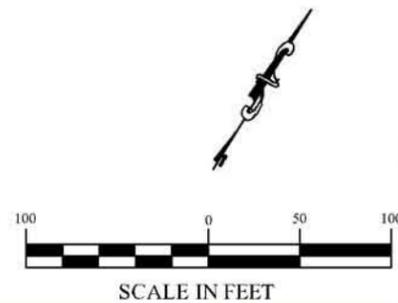


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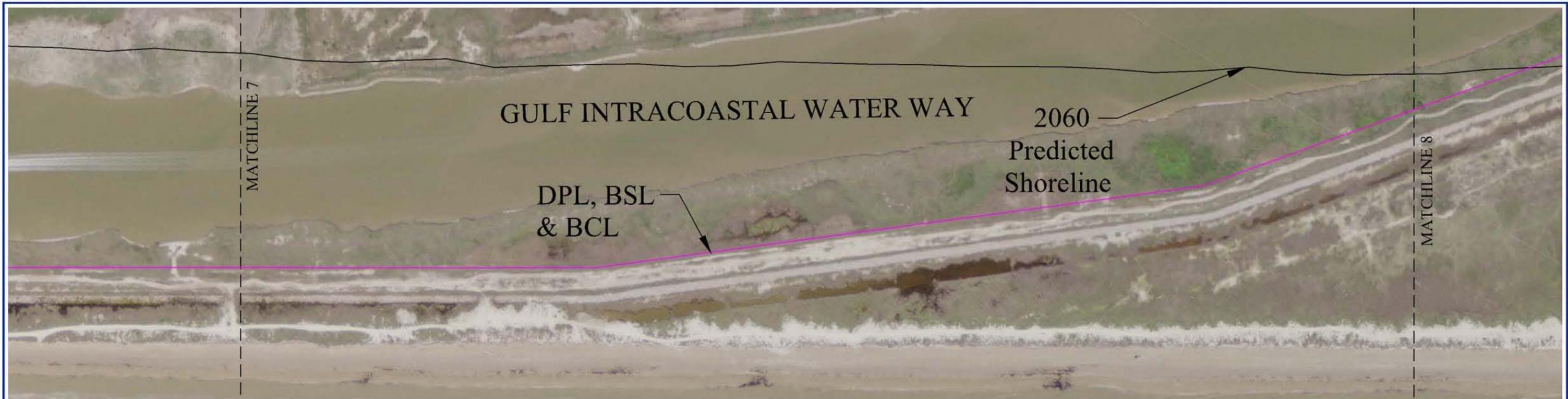


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Draft	MATAGORDA COUNTY Erosion Response Plan		Plan View - Sargent Beach 1"=100' Scale		Sheet 10
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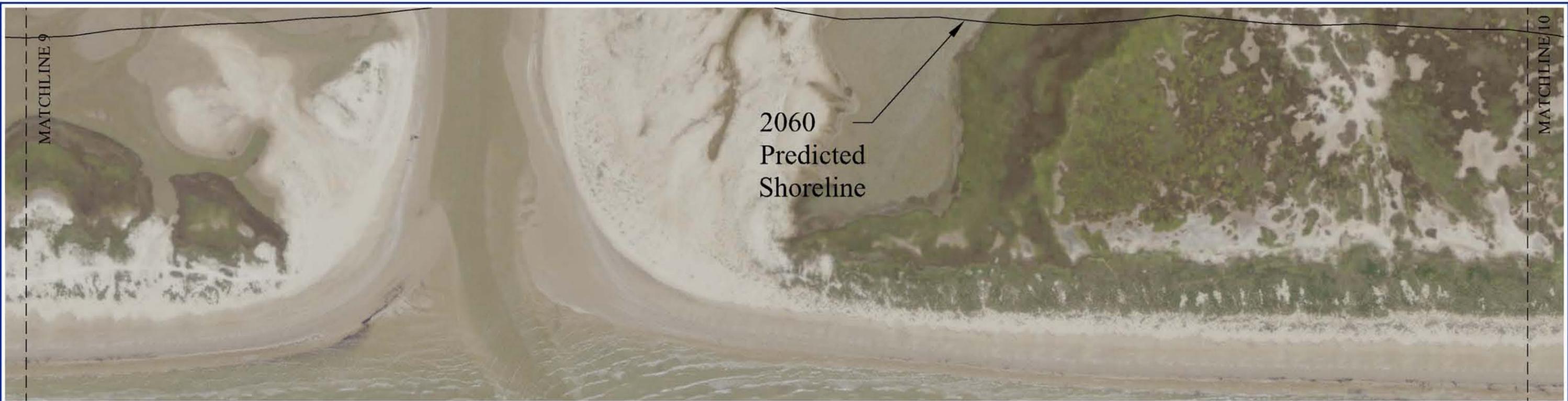


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1. The aerial obtained from the Texas Natural Resources Information System Dated April 4th, 2008.
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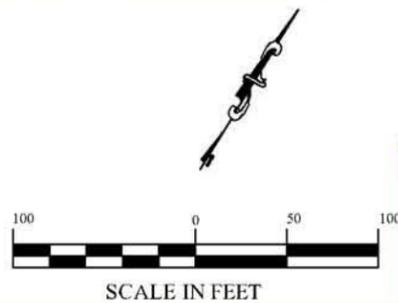


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	COASTAL TECH Certificate of Authorization Number: F-3066 2306 Lake Austin Blvd., Austin Texas 78703		PROJ MGR SD	REVISED	DATE 10/02/2012



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Draft	MATAGORDA COUNTY Erosion Response Plan		Plan View - Sargent Beach 1"=100' Scale		Sheet 12
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					JOB NO. 29510

## **APPENDIX B**

Inventory of Publicly Funded Existing Amenities and Access Ways

Amenity Number	Amenity Type	Amenity Location	Initial Funding Source	Opinion of Probable Construction Cost	
1	New East Jetty	Matagorda Bay Nature Park	Port/USACE	\$3,150,000.00	
2	Old East Jetty	Matagorda Bay Nature Park	Port/USACE	\$3,150,000.00	
3	West Jetty	Matagorda Bay Nature Park	Port/USACE	\$3,150,000.00	
4	Pier w Bridge	Matagorda Bay Nature Park	Port/USACE	\$150,000.00	
5	5 Shade Shelters	Matagorda Bay Nature Park	County/LCRA	\$111,600.00	
6	9 covered picnic tables	Matagorda Bay Nature Park	County/LCRA		
7	RV Park camping spaces	Matagorda Bay Nature Park	LCRA	\$754,938.29	
8	Shower facility for RV park	Matagorda Bay Nature Park	LCRA	\$812,000.00	
9	Visitor Center	Matagorda Bay Nature Park	LCRA	\$1,478,061.81	
10	Kiosk	Matagorda Bay Nature Park	LCRA	\$11,600.00	
11	Maintenance Building	Matagorda Bay Nature Park	LCRA	\$67,040.06	
12	Restroom Facility near beach	Matagorda Bay Nature Park	Port/County/LCRA	\$453,560.00	
13	Covered Pavilion near beach	Matagorda Bay Nature Park	Port/County/LCRA	\$15,000.00	
14	Roadway in park	Matagorda Bay Nature Park	Port/County/LCRA	\$1,160,000.00	
15	Playground Area	Matagorda Bay Nature Park	LCRA	\$120,000.00	
16	Park Site work	Electric System	Matagorda Bay Nature Park	LCRA	\$572,000.00
17		Roadway in park	Matagorda Bay Nature Park	LCRA	\$1,178,120.00
18		Fence	Matagorda Bay Nature Park	LCRA	\$42,350.16
19		Sprinkler system	Matagorda Bay Nature Park	LCRA	\$5,800.00
20		Potable water system	Matagorda Bay Nature Park	LCRA	\$290,000.00
21		Trail	Matagorda Bay Nature Park	LCRA	\$139,946.29
22		Piers in River (2)	Matagorda Bay Nature Park	LCRA	\$79,200.00
23		Outdoor lighting	Matagorda Bay Nature Park	LCRA	\$27,000.00
24		Sanitary Sewer System	Matagorda Bay Nature Park	LCRA	\$435,000.00
25		Storm Protection Barriers	Matagorda Bay Nature Park	LCRA	\$29,035.00
26		Landscaping	Matagorda Bay Nature Park	LCRA	\$116,300.00
27		Signage	Matagorda Bay Nature Park	LCRA	\$52,343.00
28		Parking	Matagorda Bay Nature Park	LCRA	\$87,000.00
29	Telephone System	Matagorda Bay Nature Park	LCRA	\$20,545.18	
			<b>Total</b>	<b>\$17,658,439.79</b>	

**Table B.1: Matagorda Beach Publicly Funded Existing Amenities and Access Ways**

Amenity Number	Amenity Type	Amenity Location	Initial Funding Source	Opinion of Probable Construction Cost
1	Mooring site	One mile west of FM 457	USACE	\$596,748.42
2	Pavilion structure	One mile west of FM 457	Grant/County	\$15,000.00
3	12 covered picnic sets	One mile west of FM 457	Grant/County	\$267,840.00
4	Paved parking lot (80+ spots)	One mile west of FM 457	Grant/County	\$123,074.38
5	Fish cleaning station	One mile west of FM 457	Grant/County	\$22,320.00
6	Four picnic sites (Gulf side)	From FM 457 to one mile west of FM 457	Grant/County	\$89,280.00
7	Two-boat capacity boat ramp	One mile west of FM 457 (on GIWW)	Grant/Port\$50K	\$30,000.00
8	Restroom facility	One mile west of FM 457	Grant/County	\$453,560.00
9	Access signs	One mile west of FM 457	County	\$800.00
10	Four miles of road (CR 238)	Perpendicular to FM 457	County	\$3,241,855.73
11	Paved parking lot (50 spaces)	500ft east of FM 457	County	\$44,383.97
12	Four picnic sites	500ft east of FM 457	County	\$89,280.00
13	Over two mile road (CR230)	East of FM 457	County	\$7,403,853.57
14	Five access points	Five points beginning at intersection of FM 457 & Canal Road & proceeding east	County	\$115,450.70
15	East mooring site	3 miles east of FM 457	County	\$596,748.42
16	East restroom facility	1000 feet east of FM 457	Grant/County	\$185,000.00
			<b>Total</b>	<b>\$13,275,195.19</b>

**Table B.2: Sargent Beach Publicly Funded Existing Amenities and Access Ways**

The following identifies the Inventory of Publicly Funded Existing Amenities and Access Ways

At Matagorda Beach the following facilities are present:

At Jetty park:

- Jetties on either side of the Colorado River Navigation Channel adjacent to Jetty Park,
- Gulf fishing pier, ¼ mile long,
- 5 shade structures,
- 9 covered picnic tables,
- RV park with camping sites,
- Shower facilities for RV park,
- Visitor Center,
- Kiosk,
- Maintenance building,
- Restroom facility near the beach,
- Covered pavilion near the beach,
- Roadway in park,
- Playground in the park,
- Other site work surrounding the park including the parking and other civil site work improvements.

At Access Point 2 (Curved Road, Driftwood Dr.):

- Curved access road Driftwood Dr,
- 6 parking spaces, and
- Restroom facility

FM 457 is the major access road onto Sargent Beach.

Currently, west of FM 457 at Sargent Beach these facilities exist:

- Mooring site (approximately one mile west of FM 457): Pavilion structure, 10 covered picnic sets, paved parking lot (80+ spaces), fish cleaning station,
- On the road to mooring site, 4 picnic sites on Gulf side, two-boat capacity boat ramp (on GIWW) and restroom,
- Access signs, and
- Four miles of road CR 238 parallel to the Gulf.

East of FM 457 at Sargent Beach; these facilities exist:

- Public restroom,
- Paved parking lot with approximately 50 spaces,
- One mile of adjacent road on Canal Drive (CR 230), and
- Five access points
- Boat mooring facility

**APPENDIX C**

Matagorda County ERP

Inventory of Potential Funding Sources for Matagorda County Dune Restoration

Potential funding sources are identified below which can be used to partially or completely fund dune restoration goals established in the body of the ERP or other ERP goals that may be established subsequent to the development of this document:

1. Any available county Coastal Impact Assistance Program funds as appropriate for dune enhancement or other ERP goals,
2. A Coastal Management Program Grant (in 2013 for just dune construction on Sargent Beach East),
3. Post storm Federal Emergency Management Agency funds (to reconstruct lost engineered dune projects), and
4. Possible British Petroleum oil spill environment mitigation funding for dune or revegetation projects.