

VILLAGE OF JAMAICA BEACH

ORDINANCE NO. 93-5

AN ORDINANCE ADOPTING THE AMENDED DUNE PROTECTION AND BEACH ACCESS PLAN IN THE VILLAGE OF JAMAICA BEACH, TEXAS, AND PROVIDING FOR AN EFFECTIVE DATE.

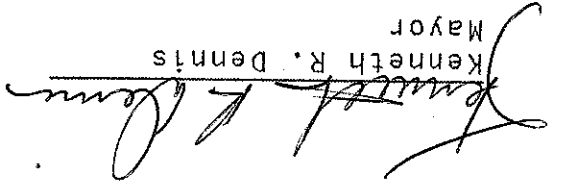
WHEREAS, BY Ordinance 93-4, the Village of Jamaica Beach, has heretofore adopted a Dune Protection and Beach Access Plan, and certain amendments are required to update said Plan,

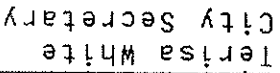
NOW, THEREFORE, BE IT ORDAINED by the City Council of the Village of Jamaica Beach, Texas:

SECTION 1: That certain documents, entitled AMENDED MASTER DUNE PROTECTION AND BEACH ACCESS PLAN, a true and correct copy of which has this day been exhibited to and approved by the City Council of the Village of Jamaica Beach, Texas, is hereby adopted and incorporated herein by reference to the same extent as though such document and all of its terms and provisions were fully set forth verbatim herein.

SECTION 2: This Ordinance shall be and become effective from and after its adoption with the approval of said Ordinance by the State of Texas Attorney General's Office and General Land Office.

SIGNED AND SEALED this 6th day of December, 1993.


Kenneth R. Dennis
Mayor


Terisa White
City Secretary

Dune Protection and Beach Access Plan
City of
Village of Jamaica Beach

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COASTAL DEVELOPMENT

STATEMENT OF PURPOSE AND INTENTION

Jamaica Beach is on an island in the Gulf, and is commonly subjected to extremes in such natural hazards as storm, flood and shoreline erosion. To combat these hazards, Jamaica Beach developed this Ordinance.

The Open Beaches Act and the Dune Protection Act require the General Land Office to promulgate rules for the protection of critical dune areas and public beach use and access. The General Land Office is required to protect the public beach from erosion or reduction and adverse effects on public access and critical dune areas by regulating beachfront construction and other activities occurring along the shoreline of the Gulf of Mexico. The purpose of these standards is to augment General Land Use rules and to protect the public health, safety and welfare by minimizing losses due to flood, storm, waves, and shoreline erosion. These standards are in compliance with those minimum standards established by the General Land Office and formulated to be consistent with all Federal mandates. It provides standards for managing the public beach and human activities occurring on the property fronting the Gulf of Mexico consistent with the Texas Natural Resources Code, Sec. 61.001 (Open Beaches Act), Sec. 63.001, et seq.

In the event of a conflict between these Zoning Standards, Federal Laws, the Open Beaches Act; Dune Protection Act; Title 31, Part 1, Chapter 15, Subchapter A, Sections 15.1 - 15.10, and General Land Office, Federal and State regulations shall prevail.

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

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

Amenities - Any nonhabitable major structures including swimming pools, bath-houses, detached garages, cabanas, pipelines, piers, canals, lakes, retention structures, roads, channels and other water retention structures, streets, highways, parking areas and other paved areas 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 Area - The beach area is that portion of the public beach-North of the Mean Low Tide (Water) of the Gulf of Mexico and South of the Line of Vegetation as protected by V.A.T.C.S. Natural Resources Code, (Chs. 61 - 63: Open Beaches Act Provisions) Chapter 61.

Beach/Dune System - The land from the Line of Mean Low Tide (Water) of the Gulf of Mexico to the landward limit of dune formation.

Beachfront Construction Certificate - Document issued certifying that the proposed construction is consistent with the City's Dune Protection and Beach Access Plan. If the construction is inconsistent with the City's Plan, inconsistencies will be specified as required by the Open Beaches Act, 61.015.

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

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

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

Dune Permitting Area - Area as identified by the General Land Office, Section 15.2. Specifically, an area extending 75' seaward of the Dune Protection Line.

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 swales.

(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 (water) 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. The two terms are used interchangeably in this code.

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.

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.

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.

not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. "Substantial improvement" 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.

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

Dune Protection Line - A line located 75 feet landward from the North toe of the Critical Dune Area. Jamaica Beach establishes a buffer area of 25 feet landward of the north toe of the dunes. No construction is permitted in this area without mitigation sequence and as defined under "Construction of Dune Walkovers." Where no dunes exist, the line shall connect the nearest Dune Protection Line on the East with the nearest Dune Protection Line on the West. This term is used synonymously with "Dune Protection Line" as defined by the regulations of the General Land Office at 31 T.A.C. Sec. 15.2. Construction is not permitted seaward of the Dune Protection Line except as defined under "Construction of Dune Walkovers" and as defined under Requirements For Permit (a) (b) and (c).

Dune Protection Permit or Permit - The document issued to authorize construction or other regulated activities in a specified location seaward of a dune protection line or within a critical dune area as provided in the Texas Natural Resources Code, 63.051.

Effect or Effects - "Effects" include: Direct Effects - those impacts on public beach use and access, on critical dune area, 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 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 ordinance 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.

Groin - Short walls built perpendicular to straight stretches of beach and designed to trap sand flowing in the longshore current. 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 and amenities.

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 purpose of this Ordinance, 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". See Appendix, Exhibit A.

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

Sand Budget - The amount of all sources of sediment, sediment

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

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

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

Public Beach - As used in this ordinance, "Public Beach" is defined in the Texas Natural Resources Code, Sec. 61.013(c).

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.

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

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

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

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

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

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

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.

Beach may be determined as provided by Sec. 61.016 and Sec. 61.017, Texas Natural Resources Code.

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.

Seaward of a Dune Protection Line - The area between a Dune Protection Line and the Line of Mean High Tide (Water).

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

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

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.

Surveying - The measurement of dimensional relationships as a method of finding Mean High Tide (Water), Mean Low Tide (Water), Elevations, the Dune Permitting Line and Vegetation Line, conducted by a licensed surveyor in the State of Texas.

Swailes - 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.

REQUIREMENT FOR PERMIT

Authority: Jamaica Beach is authorized by delegation in the Galveston County Dune Management and Beach Access Plan to adopt Dune Protection and Beach Access Plans within its jurisdiction, consistent with Title 31, Natural Resources and Conservation, Part 1, Chapter 15, Subchapter A, Section 15.1 - 15.10, and the City may enter into interlocal cooperation contracts for the administration of this program under the Interlocal Cooperation (Article 4413(32c), Vernon's Texas Civil Statutes). Jamaica Beach shall establish the jurisdictional boundaries of the Dune Protection Line and identify the line by map.

(4) Entries and exits to or from stairways and landings shall not be located within the 25 foot buffer area landward of the north toe of the critical dune area except when approved using the mitigation sequence.

(3) Piers shall be set and the structure shall be constructed with minimum destruction of the existing terrain and vegetation.

(2) Any structure built must adhere to FEMA's construction standards for flood hazard areas as adopted in Ordinance 87-1.

(1) Construction that is likely to adversely affect dunes or dune vegetation may only be undertaken utilizing the mitigation sequence.

All structures built in the Dune Permitting Area must comply with the following requirements:

(a) Structures within the Dune Permitting Areas

(3) Jamaica Beach shall review its Dune Protection Line every five years to determine whether the line is adequately located to achieve the purpose of preserving Critical Dune Areas as identified by the General Land Office. In addition to the five year review, Jamaica Beach shall review the adequacy of the location of the Dune Protection Line within 90 days after a tropical storm or hurricane affects Jamaica Beach's Coast or any time significant changes occur.

(2) No permit shall be issued for any activity within the Dune Permitting Area unless such issuance is approved by the Building Official.

(1) No person shall engage in the construction of any structure or make an addition or alteration to any structure or sand dune within Jamaica Beach's Beachfront Construction and Dune Protection Permit and Beachfront Construction Certification for such addition, alteration of construction from the Building Official. This prohibition shall not apply to routine repairs, maintenance and upkeep of existing structures that won't enlarge, expand or redesign the existing structures, except in the case of existing erosion response structures as defined in General Land Office Rules 15.6 (c). Final determination of whether repairs, maintenance or upkeep constitutes enlargement, expansion or redesign shall be the responsibility of the Building Official.

(4) Revegetation shall not be considered complete until the area has been returned to its original condition prior to the time of destruction as stated in 6L0 rule 15.4(f)(5) and 15.4(g)(5). The Building Official is responsible for determining if and when compensation is complete and will notify state agencies of completion of compensation.

(3) Sand fencing shall be required.

(2) If the area is located in the Critical Dune Area, then it shall be revegetated with Bitter Panicum (Panicum Amarum) planted on two (2) foot centers with one hundred (100%) percent coverage of the area and a mixture of Bitter Panicum (Panicum - + Amarum) and Marshy Cordgrass (Spartina Patens) planted on one (1) foot centers with one hundred (100%) percent coverage of the area.

(1) All areas shall be restored to their original elevation. Breaches shall be restored to the contour of the adjacent dunes.

In accordance with 6L0 rule 15.7(e) and as promulgated in this Ordinance, unless otherwise unavoidable during construction, removal or destruction of vegetation within the area seaward of the Dune Protection Line is prohibited. Any area where vegetation is removed or destroyed shall be revegetated. Likewise, alteration of the existing topography is prohibited unless otherwise unavoidable during construction. Any unavoidable alteration of the contour as a result of construction activities shall be restored and revegetated, and any breach in the dunes, whether caused by man or nature, shall be restored and revegetated before the issuance of Order for Permanent Electrical Power. If no electrical power is needed and site is not restored and/or revegetated, penalties shall be assessed in accordance with Ordinance 77-1 or legal proceedings implemented after proper notification to the offender.

(b) Vegetation

(5) The structure and lot design shall provide for the gradual and dispersed drainage of storm water run-off, such that run-off within the lot approximates natural rates, volumes, and direction of flow. Drain spouts, if any, shall be located so as to collect rainwater and distribute same evenly under the structure. Porches, patios, and balconies shall be constructed to allow rainwater to pass through. All drainage from the lot shall not increase natural drainage to the public beach.

(6) The walkover must start at the northern boundary of the Critical Dune Area and shall end on the beach, approximately ten (10) feet seaward of the vegetation line. Dune walkovers may not impede or restrict access to the

(5) Dune walkovers must be constructed to allow rain and sand to pass through the decking.

(4) Only one dune walkover shall be permitted per residential lot.

(3) Any vegetation or contours disturbed during construction shall be restored as provided herein.

(2) Except with respect to paired posts constructed on each side of the walkover, posts shall be placed at intervals no closer than six (6) feet.

(1) A dune walkover shall not exceed four (4) feet in width, the deck or floor of which shall be constructed at a height above the dune of not less than the width of said walkover.

Construction of Dune Walkovers shall meet the following standards and shall be constructed so that they do not interfere with or restrict public use of the beach at normal high tide (water):

Dune walkovers will be permitted only as outlined in 6L0 rule 15.7 (f).

(d) Dune Walkovers

Notwithstanding that a use or structure was in existence prior to adoption of this Ordinance, such structure or use shall comply with the provisions hereof including all applicable provisions of the Zoning Standards where such use or structure is expanded by any degree, or moved to a new location, or destroyed in excess of fifty (50%) percent of its value by fire or other catastrophe at the time of such destruction. When a property which has been damaged less than (50%) percent, but is seaward of the Dune Protection Line, and by determination by the Building Official, as stated in this ordinance and 6L0 rule 15.4(a),(b), and (c), that the proposed development will damage or deplete the Critical Dune Area, such reconstruction of the development shall require Beachfront Construction Certificate & Dune Protection Permit. In no event shall a permit or certificate be issued as stated in 6L0 rule 15.6 (d).

(c) Pre-existing Uses: Destruction

5. the approximate percentage of existing and finished open spaces (areas completely free of structures).

4. a description (including location) of proposed roadways and driveways, parking, dune walkovers, and proposed landscaping activities on the tract.

3. the number and location of the structures and whether the structures are amenities or habitable structures.

2. the location of the property lines and a notation of the legal description of adjoining tracts.

1. the site by its legal description, including, where applicable, the subdivision, block, and lot.

b. A complete legal description of the tract and a statement of its size in acres or square feet.

a. The name, address, phone number, fax number, and the name of the property owner if different from the applicant.

(1) For all proposed construction (large- and small-scale), within the Dune Permitting Area, applicants shall submit the following items and information:

(e) Beachfront Construction and Dune Protection Requirements

(11) All dune walkover construction, improvement or repair must be permitted through the office of the Building Official.

(10) Permittees must relocate walkovers to follow any landward migration of the public beach or seaward migration of the dunes and maintain the walkover height to approved levels.

(9) It shall be the duty of the property owner, pursuant to the requirements of this Ordinance to keep and maintain said dune walkover in good condition (repaired and maintained).

(8) All walkovers shall be constructed according to Southern Building Code Standards.

(7) All walkovers built in public areas shall be constructed with two (2) handrails.

public beach.

6. the floor plan (s) and elevation view of the structure proposed to be constructed or expanded.
7. the approximate duration of construction.
8. a grading and layout plan identifying all elevations (in reference to the National Oceanographic and Atmospheric datum), existing contours of the project area (including location of dunes and swales), and proposed contours for the final grade.
9. photographs of the site which clearly show the current location of the vegetation line and the existing dunes on the tract.
10. the effects of the proposed activity on the beach/dune system which cannot be avoided if the activity is permitted, including but not limited to damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology.
11. 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.
12. proof of financial capability to mitigate or compensate for adverse effects on dunes and dune vegetation (submit an irrevocable letter of credit or a performance bond) or to fund eventual relocation or demolition of structures (as through proof of Upton Jones coverage in the National Flood Insurance Program etc).
13. the location of the structures, the footprint or perimeter of the proposed construction on the tract.
14. the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract.
15. 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.
16. a copy of the FEMA elevation certificate.
17. additional information shall be required as stated in GLO rule 15.3(s)(4)(c).

c. "Material Change" includes human or natural conditions which have adversely affected dunes, dune vegetation, or beach access and use that

b. A material change occurs after the permit or certificate is issued; or a permittee fails to disclose any material fact in the application.

a. The permit is inconsistent with this Ordinance at the time the permit was issued.

(1) A permit may be terminated if:

(f) Termination of Permit

A person proposing to conduct an activity requiring a Beachfront Construction Certificate & Dune Protection Permit shall submit a complete application to the Building Official who will act upon it in the indicated time period. The Building Official shall forward the complete application, including materials required in GL0 rule 15.3s(4)(d), to the GL0, the Attorney General's Office and, if necessary, the Corps of Engineers. The application, any documents associated with the application, and information as to when the decision will be made must be received by the GL0 and the Attorney General's Office no later than 20 days before the City is first scheduled to act on the permit.

d. the proposed activity's impact on the natural drainage pattern of the site and the adjacent lots.

c. 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

b. in the case of multiple-unit dwellings, the number of units proposed.

a. if 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) For all proposed large-scale construction, in the Dune Permitting Area, applicants shall submit the following additional items and information:

- (1) The proposed activity is not a prohibited activity as defined in these Standards.
- (2) The proposed activity will not materially weaken dunes or materially damage dune vegetation seaward of the Dune Protection Line based on substantive findings as defined in "Technical Standards" of this Ordinance.
- (3) There are no practicable alternatives to the proposed activity that is located seaward of the Dune Protection Line and adverse effects cannot be avoided as provided in the Mitigation Sequence as outlined in these Zoning Standards.

Before issuing a permit within the Dune Permitting Area the Building Official must find that:

Dune Area.
 tion Permit for those areas within the Critical
 tioning a Beachfront Construction & Dune Protec-
 following standards in issuing, denying or condi-
 15.4, requires Jamaica Beach to comply with the
 vation, Part I, Chapter 15, Subchapter A, Section
 Authority: Title 31, Natural Resources & Conser-

BEACHFRONT CONSTRUCTION CERTIFICATE & DUNE PROTECTION PERMIT STANDARDS

- e. Work approved under this Permit shall be completed within one (1) year from the date of the Permit except Master Planned Developments which shall be completed in two (2) years. If work is not completed in this time period, it will be necessary for the applicant to reapply for a Dune Protection Permit.
- d. 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.
- c. Work approved under this Permit shall be completed within one (1) year from the date of the Permit except Master Planned Developments which shall be completed in two (2) years. If work is not completed in this time period, it will be necessary for the applicant to reapply for a Dune Protection Permit.
- b. 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.
- a. Work approved under this Permit shall be completed within one (1) year from the date of the Permit except Master Planned Developments which shall be completed in two (2) years. If work is not completed in this time period, it will be necessary for the applicant to reapply for a Dune Protection Permit.

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 in Management of the Public Beach unless equivalent or better access or parking is established.

c. Closes any existing public beach access or parking area, unless equivalent or better public access or parking is established.

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.

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 Ordinance.

The proposed activity will be considered inconsistent with this Ordinance, and therefore, will not be approved if the activity:

(6) No concrete slabs or other impervious surfaces are within 200' landward of the natural vegetation line (concrete slab may be permitted in the described area if it supports and does not extend beyond the perimeter of a habitable structure elevated on pilings and if no walls are erected that prohibit the natural transfer of sand; an impervious surface may be permitted in the described area if it does not exceed 5% of the area of the permitted habitable structure).

(5) The proposed activity complies with any applicable requirements of: Requirements for Beachfront Construction Certificate & Dune Protection Permit and Management of the Public Beach of this Ordinance.

(4) The applicant's mitigation plan, for an activity seaward of the Dune Protection Line, if required, will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects.

e. Fails to comply with Requirements for Beachfront Construction & Dune Protection Permits.

(g) Prohibited Activities

The Building Official shall not issue a permit or certificate authorizing the following actions within and seaward of the Dune Permitting Area.

(1) Activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:

a. Relocating sand which lies seaward of the Dune Protection Line.

b. Temporarily or permanently moving sand off the site, except for purposes of permitted mitigation, compensation, or an approved dune restoration or beach nourishment project and then only from areas where the historical accretion rate is greater than one foot per year, and the project does not cause any adverse effects on the sediment budget.

(2) Depositing sand, soil, sediment, or dredged spoil which contains any of the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, State, and Federal Governments.

(3) Depositing sand, soil, sediment, or dredged spoil seaward of the Dune Protection Line, which is of an unacceptable mineralogy or grain size when compared to the sediments found on the site.

(4) Creating dredged spoil disposal sites, such as levees and weirs without the appropriate local, state, and federal permits.

a. Construction affecting natural drainage patterns will not be permitted unless the construction and property design minimizes impacts on natural hydrology and does not cause erosion to adjacent properties, critical dune areas, or the public beach.

(13) Erosion response structures as per Title 31, Natural Resources & Conservation, Part I, Ch. 15, Subchapter A, Section 15.6;

(12) A permit or certificate will not be issued that does not comply with FEMA minimum requirements or with Ordinance 87-1.

(11) Detonating bombs or explosives.

(10) Constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields, with the exception of structures located in subdivisions plattd before the enactment of this Ordinance.

(9) Depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction.

(8) Constructing concrete slabs or other impervious surfaces seaward of the dune Protection Line.

(7) Mining the dunes.
63.002(4), Texas Natural Resource Code).

(6) Operating recreational vehicles; dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle that is being used for recreational purposes, but does not include any vehicle not being used for recreational purposes. (Chapter 63, Section 63.002(4), Texas Natural Resource Code).

(5) Constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of this Ordinance.

(15) Where it is shown that a loss of sand, silt, shell, sediment, vegetation or any other geologic or biological component of the Critical Dune Area will result, the following activities, seaward of the Dune Protection Line, shall be prohibited:

- d. Placement of fill within the Critical Dune Area.
- c. Construction of dunes.
- b. Any activity that shall kill, destroy, or remove any vegetation growing on a sand dune or within a critical dune area.
- a. Any activity that shall damage, destroy, or remove a portion or all of a sand dune.

(14) The following activities are prohibited within the area seaward of the Dune Protection Line without a Beach-Front Construction & Dune Protection Permit:

- 2. Failure to repair the structure, as determined by the Planning Commission, will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure.
- 1. Failure to repair the structure, as determined by the Planning Commission, 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.
- c. Repairing existing erosion response structures within 200 feet landward of the Vegetation Line except in the following circumstances.
- b. Retaining walls are prohibited within 200 feet landward of the Line of Vegetation.

a. Parking of any motor vehicle except in an area approved by the City Council for parking of a motor vehicle.

b. Storage of goods, equipment, building materials, junk, household items, boats, furniture, wares or merchandise of any kind.

c. Any type of construction work, other than that on the main structure or on a main building.

d. Construction of substructures under the main building.

e. Use or placement of playground equipment, volley ball nets, showers, barbecues, stables, utilities, or other apparatus.

f. Horse riding.

g. Wandering, grazing, or running at large of animals, (Ordinance 77-3).

h. Operation of any motor vehicle except for necessary maintenance and clean up.

i. Mowing.

j. Paving of any type.

k. Creation of roads, trails or paths except those access roads approved by Jamaica Beach as part of its access plan.

(h) Technical Standards

Authority: Title 31, Natural Resources & Conservation, Part I, Chapter 15, Subchapter A, Section 15.4, requires Jamaica Beach to comply with the following technical standards when issuing, denying or conditioning a Beachfront Construction & Dune Protection Permit within the Critical Dune Area.

The following standards will be used to determine material weakening and material damage of dune vegetation within a critical

dune area or seaward of the Dune Protection Line. Failure to meet any one of these standards will result in a finding of material weakening or material damage and the Building Official shall not approve the application for the construction as proposed.

(1) The activity shall not result in the potential for increased flood damage to the proposed construction site or adjacent property.

(2) The activity shall not result in run-off or drainage patterns that aggravate erosion on or off the site.

(3) The activity shall not result in significant changes to dune hydrology.

(4) The activity shall not result in adverse affects on dune complexes or dune vegetation.

(5) The activity shall not significantly increase the potential for washovers or blowouts to occur.

(6) Factors other than as stated in 610 15.3 (s)(7) to be considered are as follows:

a. Cumulative & indirect effects of the proposed construction on all dunes & dune vegetation within the Critical Dune Area or seaward of that area.

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 vegetation 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. 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.

f. The impacts on the natural drainage patterns of the site and adjacent property.

g. Any significant environmental features of the potentially affected dunes and dune vegetation such as their value and function as flora or fauna habitat or any other benefits the dunes and dune vegetation provide to other natural resources.

h. Wind and storm patterns including a history of washover patterns.

i. Location of the site on the flood insurance rate map.

j. Success rates of dune stabilization projects in the area.

k. All comments submitted to the local government by the General Land Office and the Attorney General.

(1)

The Mitigation Sequence

The Mitigation Sequence shall be used by local governments in determining whether to issue a permit for an activity seaward of the Dune Protection Line, after the determination that no material weakening of dunes or material damage to dunes will occur within Critical Dune Areas or seaward of the Dune Protection Line. The mitigation sequence is as follows:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(4) Compensating for the impact by replacing resources lost or damaged.

(1) The City shall encourage carefully planned beach nourish-

management of the public beach.
to apply the following standards in issuing, denying or conditioning to
Chapter 15, Subchapter A, Section 15.7, requires Jamaica Beach
Authority: Title 31, Natural Resources & Conservation, Part I,
Beachfront Construction & Dune Protection Permits relating to

MANAGEMENT OF THE PUBLIC BEACH

(3) Require financial assurance to fund eventual relocation or
demolition of the proposed structure (e.g., through proof of
Upton-Jones coverage in the National Flood Insurance
Program).

(3) Prohibit paving or altering the ground below the lowest
habitable floor for those properties located in eroding
areas (gravel or crushed limestone may be used to stabl-
size driveways).
(2) That structures located on property adjacent to the public
beach be designed for feasible relocation (ie. on piers).

(1) That structures be elevated in accordance with Fema minimum
standards.

An eroding area is defined as follows: A portion of the shoreline
which is experiencing an historical erosion rate of greater than one
foot per year based on published data of the University of Texas at
Austin, Bureau of Economic Geology. In addition to those standards
previously promulgated in this Ordinance, in eroding areas, the City
shall require:

Authority: Title 31, Natural Resources and Conservation, Part I,
Chapter 15, Subchapter A, Section 15.6, requires Jamaica Beach to
deny or conditioning a Beachfront Construction & Dune
Protection Permit.

SPECIAL STANDARDS FOR ERODING AREAS SOUTH OF THE DUNE PROTECTION LINE

The above sequence shall be followed as per guidelines promul-
gated in Title 31, Natural Resources and Conservation, Part I, General
Land Office, Chapter 15, Coastal Area Planning, Subchapter A,
Management of the Beach/Dune System, Section 15.4 Dune Protection
Standards. The permittee shall be deemed to have failed to achieve
compensation if a 1:1 ratio has not been achieved within three years
after beginning compensation efforts. If, for any reason, an
applicant cannot demonstrate the ability to mitigate adverse effects
on dunes and dune vegetation, the Building Official is not authorized
to issue the Permit.

- 1. hard or engineered structures.
- 2. non-biodegradable items.
- 3. fine clay or silty sediments.

g. The City may allow restoration of dunes on the public beach up to 20 feet, if it is determined that the seaward migration of the dunes would occur naturally. Dune Restoration seaward of the 20 foot limit must receive GLO approval. Interference with public use of the beach is prohibited. Dune reconstruction must approximate the natural formation of dunes and indigenous vegetation must be used. The following methods and materials shall not be permitted:

- f. There will be no adverse effects caused from transporting the nourishment material;
- e. The removal of sediment will not have adverse impacts on flora and fauna;

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

c. The material must be free of toxins as defined in Volume 40 of the Code of Federal Regulations, Part 302.4 and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;

b. The sediment to be used must be of effective grain size, mineralogy, and quality or the same as the existing beach material, may be used for a sub-base for dune enhancement projects subject to the approval of the City Council;

a. The project must be consistent with the City's dune and beach policies;

(3) Requirements for Beach Nourishment Projects:

(2) Permittees are required to notify the General Land Office and the City of any discernible change in the erosion rate on their property, as stated in GLO 15.7(c).

ment for erosion response and prohibit erosion response structures within the public beach and 200 feet landward of the natural vegetation line.

(4) Jamaica Beach is granted authority to regulate animals on public beaches by Subchapter D of Section 61 of the Texas Natural Resources Code (Section 61.122b); however, livestock grazing is exempt from the Dune Protection Act.

(3) All parking and access plans must be consistent with General Land Office regulations as promulgated in Title 31, Natural Resources and Conservation, Part I, General Land Office, Chapter 15, Coastal Area Planning, Subchapter A, Management of the Beach/Dune System, Section 15.7 and Section 61.015. Natural Resources Code.

(2) Signs shall be displayed in a conspicuous location identifying access and parking for the public beach.

(1) Parking requirements for all new or replanted developments on or adjacent to the beach, will be calculated at one (1) space for each 15 linear feet of beach frontage.

Jamaica Beach shall regulate pedestrian and vehicular beach access, traffic and parking on the public beach only in a manner that preserves or enhances existing public access and use. The following standards will be observed when regulating access and parking on the beach. The street on the south side of State Highway 3005, adjacent to the State Park on Jamaica Beach's eastern boundary, allows access to the beach. Another access point is Buccaneer Drive.

Jamaica Beach shall presume that any beach fronting the Gulf of Mexico within its jurisdiction is a public beach unless the owner of the adjacent land obtains a Declaratory Judgment otherwise under the Open Beaches Act, Sec. 61.019. The Attorney General shall make the determination on issues relating 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.

Authority: Title 31, Natural Resources & Conservation, Part I, Chapter 15, Subchapter A, Section 15.7, requires Jamaica Beach to regulate pedestrian and vehicular access, traffic and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach.

(j) Public Beach Use and Access

Restored or man-made dunes will be protected under the same standards as natural dunes.

4. Toxic materials as previously defined in this Ordinance.

(5) Beach Traffic Orders: All beach traffic orders, including but not limited to, parking, access, signage, obstructions, and speed limits shall be in conformance with Jamaica Beach City Codes.

(6) Beach Maintenance Activities:

- a. Jamaica Beach shall prohibit beach maintenance activities which will result in the significant redistribution of sand or which will significantly alter the beach profile. Jamaica Beach contracts with the City of Galveston for beach maintenance.

- b. All sand moved or redistributed due to beach maintenance activities shall be returned to a location within the Critical Dune Areas.

- c. It is prohibited to display on or adjacent to any public beach any sign, marker, or warning, or make or allow to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to and from the public beach or the right to use the public beach as guaranteed by the Open Beaches Act and the Common Law Right of the public.

(7) Beach User Fees:

- a. Jamaica Beach may charge public beach users a fee in exchange for providing services to public beach users in general. Currently, no public beach user fee is charged.

- b. Jamaica Beach may only impose a public beach user fee in accordance with GLO rule 15.8(c) based on the cost of providing public services and facilities directly to the public beach.

- c. A new or amended beach user fee shall be preceded by a State approved beach user fee plan submitted by the City.

- d. Revenues from beach user fees may be used only for beach-related services as defined by title 31. Natural Resources and Conservation, Part I, Chapter 15, Subchapter A, Section 15.8 and Section 63.053, Natural Resources Code.

- e. Accounting and administration of all beach user fees shall be in conformance with those policies promulgated

b. At least 60 days prior to acting on a request for approval of a master planned development within the area

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.

MASTER PLANNED DEVELOPMENTS

If any section, subsection, paragraph, sentence, clause, phrase or word in this Ordinance, or the application thereof to any person or circumstance, be held invalid, such holding shall not affect the validity of the remaining portion of this order. In the case of a conflict between this Ordinance and any other City Ordinances, the Ordinance containing higher standards for Dune Protection will prevail.

REPEAL OF CONFLICTING ORDINANCES - SEVERABILITY

Any violation of a Permit requirement, Dune Protection and Beach Access Plan, the Dune Protection Act, the Open Beaches Act, Title 31, Part I, Chapter 15, Subchapter A, Sections 15.3 - 15.10, Management of the Beach/Dune System, shall be reported by the City to the General Land Office within 24 hours.

Any person who violates the Dune Protection Act - Texas Natural Resources Code 63.001, the Open Beaches Act - 61.013, and General Land Office rule 15.2, or a Permit Condition established by this regulation is liable to the General Land Office for a civil penalty of not less than \$50 nor more than \$1000 per violation per day. Each day the violation occurs or continues is considered a separate violation.

Authority: Title 31. Natural Resources & Conservation. Part I, Chapter 15, Subchapter A, Section 15.9, establishes the following penalties.

PENALTIES

In Title 31. Natural Resources and Conservation, Part I, Chapter 15, Subchapter A, Section 15.8.

subject to this Ordinance, Jamaica Beach 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 City Council 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.

3. Whether any component of the development, such as installation of roads or utilities, will subsequently require a permit or a certificate.

d. If the City Council determines that any development contemplated by the plan complies with all requirements of this Ordinance, a permit and/or certificate for the development may be issued.

e. If the City Council determines that any development contemplated by the plan does not comply with the requirements of this Ordinance and therefore can not be approved without an amendment to this Ordinance, the City

Council 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 Ordinance.

APPENDIX I

A local government is not authorized to issue a permit or certificate authorizing construction or operation of the 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 PREPARATION 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, canned, 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

Appendix I - continued

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 shrimp-cakes. 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: shucked, picked, or packed
- Shrimp, fresh and frozen
- Soups, fish and seafood: frozen
- Stews, fish and seafood: frozen

identified in <*>15.11(b) of this section must be formally
 <*>15.11(b) of this section. Such modification of plans
 Office comments sent to the local governments and referenced in
 governments modifying their plans consistent with general land
 certifies five plans with the condition that the pertinent local
 certified without conditions; <*>15.11(b) of this section
 this section identifies eight local governments whose plans are
 all thirteen plans comply with state law. Subsection 15.11(a) of
 <*><*>15.11(a) and (b) of this section and hereby certifies that
 <p>The General Land Office has reviewed the plans identified in
 content and implementation of local plans.

15.10) in February, 1993, which provide the minimum standards for
 rules for management of the beach/dune system (31 TAC <*><*>15.1-
 to the General Land Office. The General Land Office adopted
 governments with jurisdiction over gulf beaches to submit plans
 chapters 61 and 63, and 31 TAC <*>15.3(o) require all local
 access plans ("plans"). The Texas Natural Resources Code,
 certification of local government dune protection and beach
 <p>The General Land Office proposes new <*>15.11 concerning

TITLE 31. NATURAL RESOURCES AND CONSERVATION
 CHAPTER 15. COASTAL AREA PLANNING
 SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM
 SECTION 11. CERTIFICATION OF LOCAL GOVERNMENT DUNE
 PROTECTION AND BEACH ACCESS PLANS

31 TAC
 §15.11

General Land Office

adopted by the local governments on or before 180 days from the effective date of this section, unless the provisions of <*>15.11(d)(2) of this section apply.

<p>Carlyn K. Cospes, deputy commissioner for Resource Management, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period of the section will be due to additional time spent by staff reviewing a limited number of local government permits either (1) at the request of the local government or (2) as part of an audit to be conducted by the General Land Office to monitor compliance with state law. Because staff is already performing this function, any increase in fiscal implications is expected to be minimal. Specific fiscal impacts cannot be identified as the annual number of permits and certificates reviewed by General Land Office staff varies according to the rate of construction occurring within the geographic scope of the area regulated by this chapter. <p>The estimated effect on local governments for the first five-year period the section will be in effect are expected to be minimal. All local governments impacted by this subchapter participate in the Federal Flood Insurance Program, and therefore have adopted commissioners court orders or ordinances governing beachfront construction, in addition to any local building code requirements. The application requirements in <*>15.3(s)(4) of

General Land Office
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this chapter were extracted from various existing requirements for construction applications created by local governments along the Gulf Coast. In addition, this section allows local governments to implement a system for collection of beach user fees which is specifically authorized for expenditures relating to the public beach.

The cost of compliance with the section for small and large businesses is best addressed through a discussion of the cost of compliance for individuals, as businesses are considered "individuals" or "persons" pursuant to the definition of the latter term in 31 TAC § 15.2. Estimated cost of compliance for individuals is expected to be minimal, based on the cost of providing information required for a dune protection permit and a beachfront construction certificate. Because the information required under the various plans largely mirrors those necessary to obtain other authorizations for beachfront construction, the cost is expected to be moderate. However, costs are difficult to estimate since the applicants will have differing capacities for providing the required information and the information required will vary from site to site depending not only on the terrain but also the nature and scope of the proposed project. In general, it is anticipated that smaller projects (e.g., a single-family seasonal residence) would incur significantly lower costs than a large-scale commercial project.

Wadick, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax:

<p>Comments on the proposed rule may be submitted to Ashley K. facilities and services.
erosion; and establishment and maintenance of beach-related habitat protection; maintenance of the sediment supply to slow public beach use, recreation and access; natural resource and beachfront structures; guaranteed preservation and enhancement of increased flood protection for private and public property and benefit anticipated as a result of enforcing the section will be five years the section, as proposed, is in effect the public <p> Ms. Cospes has determined that for each year of the first for individuals cannot be predicted.

vary from jurisdiction to jurisdiction, a uniform cost estimate not required to pay beach user fees at all beaches, and such fees "free" beach, where no fees are charged. Because individuals are jurisdiction charging a beach user fee is required to provide a public beach where a beach user fee is charged; however, each <p> individuals will incur costs when using and accessing the amount of mitigation required.

a uniform basis, as they will vary considerably depending on the which mitigation is required. These costs are not predictable on if the applicant proposes damage to dunes or dune vegetation for <p> In addition to the information costs, costs will be incurred

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General Land Office

512/463-6311. Ms. Wadick will also provide copies of any general land office comments referenced in <*15.11(b) of this section upon written request.

<p>The new section is proposed under the Natural Resources Code, <*61.011(d) (5) and <*63.121 which provide the General Land

Office with the authority to promulgate rules, respectively, for the certification of local government beach access and use plans and for the identification and protection of critical dune areas. <*15.11. Certification of local government dune protection and Beach Access Plans.

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are certified as consistent with state law:

- (1) Brazoria County,
 - (2) Chambers County,
 - (3) City of Fort Aransas,
 - (4) City of Fort Arthur,
 - (5) Jefferson County,
 - (6) Matagorda County,
 - (7) Town of Quintana, and
 - (8) Village of Jamaica Beach.
- (b) Conditional certification of local government plans. The following local governments have submitted plans to the General

Land Office which are conditionally certified as consistent with

state law.

(1) City of Corpus Christi. This certification is valid for 180 days, during which time the City of Corpus Christi will modify its plan consistent with the General Land Office comments submitted to the City of Corpus Christi (October 14, 1993).

(2) City of Galveston. This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).

(3) Galveston County. This certification is valid for 180 days, during which time Galveston County will modify its plan consistent with the General Land Office comments submitted to Galveston County (October 18, 1993).

(4) Kleberg County. This certification is valid for 180 days, during which time Kleberg County will modify its plan consistent with the General Land Office comments submitted to Kleberg County (October 14, 1993).

(5) Village of Surfside Beach. This certification is valid for 180 days, during which time the Village of Surfside Beach will modify its plan consistent with the General Land Office comments submitted to the Village of Surfside Beach (December 3, 1993).

(c) Implementation of conditionally certified plans. Local governments are required to implement conditionally certified

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local government shall provide in writing the scientific or legal
its plan as requested in the general Land Office comments, the
(2) In the event that a local government chooses not to modify
modification.

Land Office amendment to this subsection, subject to further plan
conditional certification will be reissued pursuant to a general
addressed through further comment, plan revision and review,
to which the general Land Office has noted exceptions can be
exceptions to the modifications. If those portions of the plan
insufficient, the general Land Office shall provide specific
general Land Office determines that modifications of plans are
delete the same from subsection (b) of this section. If the
pertinent local government in subsection (a) of this section, and
this subsection. Such amendments will list the name of the
remove all conditions of the plan's certification by amending
60 days of receipt of the plan. The general Land Office will
determination as to the sufficiency of the modification(s) within
Land Office shall provide to the pertinent local government a
before the expiration of the 180 day time period. The general
(1) Local governments shall submit their modified plans on or
(d) Removal of conditions of certification.

beach/dune system, <*>15.1-15.10 of this section.
63, and the general Land Office rules for management of the
plans consistent with the Natural Resources Code, Chapters 61 and

certification.

written notice of the withdrawal of the conditional
 General Land Office has given the pertinent local government
 certification, with accompanying specific reasons, and the
 adopts an amendment to this subsection withdrawing conditional
 certification shall only occur after the General Land Office
 not feasible. In any event, withdrawal of conditional
 scientific or legal justification as to why such modification is
 consistent with General Land Office comments or the written
 Office either a formally adopted plan which has been modified
 pertinent local government does not submit to the General Land
 the General Land Office after the 180-day time period if the
 certification of a local government plan shall be withdrawn by
 (e) Withdrawal of conditional certification. Conditional
 justification is resolved or this section is amended.
 conditional certification until the sufficiency of the
 Office. Local government plans shall continue in effect under
 local government within 60 days of receipt by the General Land
 the sufficiency of the justification will be provided to the
 be reviewed by the General Land Office, and a determination as to
 before the due date of the revised plan. The justification will
 justification shall be submitted to the General Land Office on or
 justification as to why such modifications are not feasible. The

General Land Office
 31 TAC
 §15.11

(f) This section does not affect the General Land Office Interim certification issued to Nueces County and Cameron County on October 9, 1992 (31 TAC, Subchapter E relating to Interim Approval of Local Government Dune Protection and Beach Access Plans) which continues in effect.

General Land Office
31 TAC
§15.11