TOWN OF QUINTANA
814 N. Lamar
Quintana TX 77541

January 14, 1994

Texas General Land Office
Sally S. Davenport
Associate Deputy Commissioner
Resource and Asset Management
Stephen F. Austin Building
1700 North Congress Ave.
Austin, Texas 78701-1495

Re: Modified Dune Protection and Beach Access Plan

Dear Ms. Davenport:

Enclosed please find a copy of our modified plan as requested by your office.

We have completed the changes to the best of our ability, however your requested information for Section 2, Administration, III.A. metes and bounds, is not available to us. I have included maps with as much data as possible.

On the advise of our Attorney, Mrs. Kim Richardson, we have not adopted these changes to amend our original ordinance.

If you have any questions please do not hesitate to contact me.

Yours truly,

Sharon H Cornett

Sharon H. Cornett
Secretary

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DUNE PROTECTION AND BEACH ACCESS PLAN

TOWN OF QUINTANA

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

Affect - To bring a change in; to have an effect on.

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.

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, Sec.63.001.et seq.

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 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.

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 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." These establishments are listed in Appendix I attached to this ordinance.

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 adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

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

National Flood Insurance Act - 42 United States Sub Sec4001.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 pipeline -Any pipeline other than those subject to the exemption in Tex. Admin. Code Section 15.3(s)(2)(A).

Open Beaches Act - Texas Natural Resources Code, Sub Sec61.001. et seq.

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.

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 city council shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. The city council shall also consider the cost of the technology or technique.

Production and gathering facilities - 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 ordinance, "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 - A dune buggy, marsh buggy, minibike, 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 ordinance 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 city officers, employees, and contractors shall comply with this ordinance 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 ordinance shall be effective only upon approval by the General Land Office.

II. Areas Exempt.

A. This ordinance applies to all private and public land within the city's corporate limits and extraterritorial jurisdiction that lies seaward of the Dune Protection Line and

the Beachfront Construction Line except state or national parks, wildlife refuges, preserves, or similar state or federal areas.

B. Other than state or national parks, wildlife refuges, preserves, and similar areas, this ordinance 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 city council establishes the following line as the dune protection line for the purpose of protecting critical dune areas:

A line running parallel to the beach 1000 feet landward of mean high tide.

B. The city council 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:

A line running parallel to the beach either 1000 feet landward of mean high tide, or along the seaward boundary of the right-of-way of the first public road generally parallel to the beach or any closer road not parallel to the beach, whichever is greater.

C. The dune protection line and beachfront construction line are depicted on the map attached to this ordinance as Appendix II.

D. The city council 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 city council 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 city's jurisdiction. The city council shall amend this ordinance to adjust the lines whenever necessary to achieve their stated purposes.

E. Prior to acting on any amendment to this ordinance that would modify either line, the city council 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 city council 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 city council 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. Dumping of any materials in the dunes is prohibited. Placement of vegetative material for erosion control must have a certificate from the city office.

C. 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 city ordinances:

1. exploration for and production of oil and gas and reasonable and necessary activities directly related to such exploration and production, including construction and maintenance of production and gathering facilities seaward of the dune protection line which serve wells located outside the dune protection line, provided that such facilities are located no farther than two 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 city council 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 city ordinances.

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 ordinance the Secretary 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; 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 city council determines that all 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.

VII. Beach/Dune Committee.

The city council establishes the Beach/Dune Committee to serve as an advisory body on matters within the scope of this ordinance. The Beach/Dune Committee shall be composed of 4 members appointed by majority vote of the city council. The city council shall appoint members so as to achieve the broadest possible representation of community views and interests.

VIII. Application Process.

A. Potential applicants may submit descriptions of proposed construction which should include, but is not limited to,

comprehensive plan containing maps, drawings, narrative, tables, site improvements, and other information about the proposed use of specific land and/or water, to Secretary 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 Secretary 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 Secretary 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 Secretary, who 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 Quintana Council.

C. Any applicant shall furnish a letter of determination from the Corps of Engineers, to determine whether jurisdictional wetlands are located on the proposed construction site.

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, if required by Section 5(III)(B)(4) of this ordinance for all construction, 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 Secretary shall provide to the state the following information:

1. a copy of the community's most recent flood insurance rate map identifying the site of the proposed construction;

2. a preliminary determination as to whether the proposed construction complies with all aspects of the local government's dune protection and beach access plan;

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

4. how the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly, the dune protection and beach access 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 Secretary shall forward the complete application, including any associated materials, to the General Land Office and the Attorney General's Office. The city council 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 city council shall review and consider:

1. the information in the permit or certificate application;

2. the proposed action is consistent with the beach/dune rules of this ordinance;

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

B. The city council shall not issue a permit or certificate that is inconsistent with this ordinance, General Land Office rules for Management of the Beach/Dune System (18 Tex.Reg. 661 (10\993), 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 ordinance by reference.

XII. Terms and Renewal of Permits/Certificates

A. Permits or certificates shall be valid for sixty (60) days with one ninety (90) day extension from the date of issuance.

B. The city council 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 ordinance and the permittee supplements the original application materials with additional information indicating any changes to the activity or information. The city council shall issue only two renewals for each permit or certificate. Thereafter, the permittee must apply for a new permit or certificate.

C. The permit shall be void 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 and, 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 city council 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 which is inconsistent with the plan or the beach/dune rules 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 city council 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 Secretary 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 city council 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 Secretary shall keep the administrative record for three years from the date of a final decision on a permit or certificate. The Secretary 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 Secretary shall provide to the permittee upon request copies of any materials in the administrative record regarding the permit or certificate not submitted to the Secretary by the permittee in the application.

SECTION 3. REQUIREMENTS FOR DUNE PROTECTION PERMITS.

I. Required Findings.

Before issuing a permit, the city council 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 ordinance.

II. Prohibited Activities.

The city council 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 ordinance;

F. operating recreational vehicles;

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 vegetative and 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 city council 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 city council 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 city council finds that no material weakening of dunes or material damage to dunes will occur, the city council shall then determine whether any adverse effects will result from

the activity. If the city council finds there will be adverse effects on dunes or dune vegetation seaward of the dune protection line, the city council may issue a permit only if the applicant demonstrates that adverse effects can be mitigated as required by the mitigation sequence. If the city council 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 city council 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, permittee 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 city council determines there is a practicable alternative that would avoid adverse effects.

2. Minimization. (a) Minimization means minimizing adverse effects by limiting the degree or magnitude of the action and its implementation. If the city council 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, permittee shall:

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

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 city council 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 city council 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 city council shall set appropriate permit conditions requiring that permittee 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) Permittee may mitigate adverse effects on dunes using vegetative or mechanical means. Permittee 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 city council 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 city council shall give priority to stabilization of blowouts and breaches. Before permitting stabilization of washover areas, the city council 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 city council shall set appropriate permit conditions requiring permittee 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 city council shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts.

(b) Permittee 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. Permittee 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) Permittee 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) Permittee shall compensate for adverse effects on dune vegetation by planting indigenous vegetation on the affected dunes. Permittee 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) Permittee shall begin compensation prior to or concurrently with the commencement of construction. If compensation is not to be completed prior to commencement of construction, the permittee shall provide proof of financial responsibility in an amount necessary to complete the compensation, in the form of an irrevocable letter of credit, performance bond, or any other instrument acceptable to the city council.

(h) Permittee shall notify the Secretary 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 city council shall take this reason into account when determining whether a permittee has violated the compensation deadline.

(i) Permittee 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 Secretary shall provide written notification to the General Land Office upon determining that the compensation is complete. If the Secretary 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 Secretary 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 city council must find that the construction is consistent with this ordinance. Construction is inconsistent with this ordinance 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 ordinance;

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 ordinance (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 ordinance (Requirements for Dune Protection Permits) or Section 5 of this ordinance (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 ordinance. 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 ordinance 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. Permittee 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;

II. General Flood Protection Requirements

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

B. 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.

III. Variances from Federal Requirements.

The Secretary 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.

IV. Special Requirements for Eroding Areas.

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

B. In addition to the other requirements of this ordinance, in eroding areas, permittee 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 ordinance, this subsection controls.

SECTION 6. MANAGEMENT OF THE PUBLIC BEACH.

I. General Access Standards.

The city council 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.

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 shall be maintained as public vehicular access ways to and from the public beach:

8th Street and 16th Street

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

5th Street in front of Quintana County Park

C. 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.

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

From the Jetties to 8th Street

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

III. Abandonments of Public Access or Parking Areas Prohibited.

The city 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 ordinance.

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 city council 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 city 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 city council 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 city council shall limit the closure to the smallest possible area and the shortest possible time necessary.

B. This ordinance 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 city council 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 14 consecutive days. "Camp" means to use for habitation any tent, lean-to, sleeping bag, blanket, automobile, trailer, camper, 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 city council 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 Secretary of any discernible change in the erosion rate caused by the project.

XI. Beach Nourishment Standards.

The city council 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 ordinance;

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 toxicity 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 ordinance, the city council 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 toxicity 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 ordinance. Permittee shall not construct or maintain private structures on restored dunes, except for dune walkovers or similar access ways meeting the requirements of this ordinance.

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 city council 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. Permittee 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, permittee 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 city council 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 city 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 city council authorizes the following beach maintenance and management measures:

> Quintana will maintain the area of beach located with in the city by providing trash barrels to be emptied weekly on Thursday and port o cans, to be cleaned weekly on Fridays. Seaweed, trash and debris will also be removed as necessary.

SECTION 7. MOTOR VEHICLES.

I. Operation of Motor Vehicles.

A. No person shall operate or cause to be operated any

public beach.

B. As physical conditions allow no vehicle shall travel or park closer than 10 feet to any dune or closer than 25 feet to the water's edge, provided that a vehicle may travel and temporarily park at or near the water's edge for the purpose of launching a boat.

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

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

E. 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. PENALTIES.

Any person who violates either the Dune Protection Act, the Open Beaches Act, this ordinance, 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 city council 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 9. GENERAL PROVISIONS.

I. Construction.

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

B. This ordinance and all orders, resolutions, or other enactments related or pursuant to this ordinance 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 city 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 city council shall presume that any beach fronting the Gulf of Mexico is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, Sec. 61.019. That section provides that any person owning property fronting the Gulf of Mexico whose rights are determined or affected by this ordinance may bring suit for a declaratory judgment against the state to try the issue or issues.

IV. General Prohibition.

No person shall violate any provision of this ordinance or any permit or certificate or the conditions contained therein.

V. Appeals.

The Dune Protection Act, Sec. 63.151, and the Open Beaches Act, Sec. 61.019, contain the provisions for appeals related to this ordinance.

THE STATE OF TEXAS

COUNTY OF BRAZORIA

O R D E R

WHEREAS, the Commissioners' Court of Brazoria County, Texas, is desirous of establishing a dune protection line on the Gulf of Mexico shoreline, the same being in said county, pursuant to the authority conferred on such Commissioners' Court by the provisions of Article 63.011 et seq, V. A. T. S., as amended by the 69th Legislature, Regular Session, 1985, effective June 16, 1985, and

WHEREAS, a public hearing on the proposed establishment of such dune protection line was held on the 8th day July, 1985, pursuant to notice having been published as required by law, and

WHEREAS, notice of same has heretofore been given the Commissioner of the Texas General Land Office, together with a map showing the proposed area, and

WHEREAS, a map defining such proposed area has been filed with the County Clerk of Brazoria County;

IT IS THEREFORE ORDERED that a dune protection line be, and the same is hereby, established on Brazoria County Gulf Shoreline, such line extending from the northeast shoreline of San Luis Pass Bridge southward continuously to the southwestern most point of the Brazoria/Matagorda County bounty line except for that area within the corporate limits of the Village of Surfside and Quintana, the Bryan Beach State Recreation area and the San Bernard Wildlife Refuge, such dune protection line being located at a distance of 1000 feet landward of the line of mean high tide (Elevation 1.7) of the Gulf of Mexico, as shown on a map on file in the offices of the County Clerk of Brazoria County and the Commissioner of the General Land Office of Texas.

IT IS FURTHER ORDERED that no person may damage, destroy, or remove a sand dune or 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 without first obtaining a permit. Application for the permit may be made to the Commissioners' Court of Brazoria for such activity. The application shall be in letter form explaining the project and must be accompanied by a filing fee of Twenty-five ($25.00) Dollars, together with drawings, plans and specifications of the proposed construction or destruction. Plans must include the existing and proposed topographic contours and base elevations of any structures.

The Commissioners' Court shall evaluate the permit application and may grant the application if it finds as a fact, after full investigation, that the particular conduct proposed will not materially weaken the dune or reduce its effectiveness as a means of protection from the effects of high wind and water

taking into consideration the height, width, and slope of the dune and the restoration of protection affected by construction as well as the restoration of vegetation.

IT IS FURTHER ORDERED that no person may operate a recreational vehicle on any sand dune seaward of the dune protection line established herein, and no permit may be issued by the Commissioners' Court that allows the operation.

IT IS FURTHER ORDERED that any person who shall damage, destroy, or remove a sand dune or portion of a sand dune at any point on the shoreline seaward of the dune protection line or kill, destroy, or remove an any manner any vegetation growing on a sand dune growing seaward of the dune protection line, or who shall operate any recreational vehicle in an area prohibited by the ordinance shall be fined not more than $200.00 for each day of violation.

This Order is adopted for the purpose of preserving sand dunes which offer a defense against storm waters and erosion of the shoreline.

This Order shall take effect and be in force immediately.

ORDERED entered this the 8 day of July, 1985.

E. E. Brewer, County Judge

R. N. "Ronnie" Broaddus
Commissioner, Precinct No. 1

Billy Joe Plaster
Commissioner, Precinct No. 3

G. L. "Bubba" Rouse
Commissioner, Precinct No. 2

John P. Gayle, Jr.
Commissioner, Precinct No. 4

ATTEST

Ms. Dolly Bailey
County Clerk

By Eddie Hurst
Deputy

APPROVED AS TO LEGAL FORM:

James L. Turner
County Attorney

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 (1987ed.).

DIVISION D.	MANUFACTURING
Major Group 20.	Food and kindred products, except Industry Numbers 2091 and 2092
Major Group 21.	Tobacco 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 37.	Transportation equipment
Major Group 38.	Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
Major Group 39.	Miscellaneous manufacturing industries
DIVISION E	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES
Major Group 49.	Sanitary services (sewerage systems, refuse systems, sanitary services not elsewhere classified)

MISCELLANEOUS FOOD PREPARATIONS AND KINDRED PRODUCTS

Industrial facilities listed in Industry Numbers 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: 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).

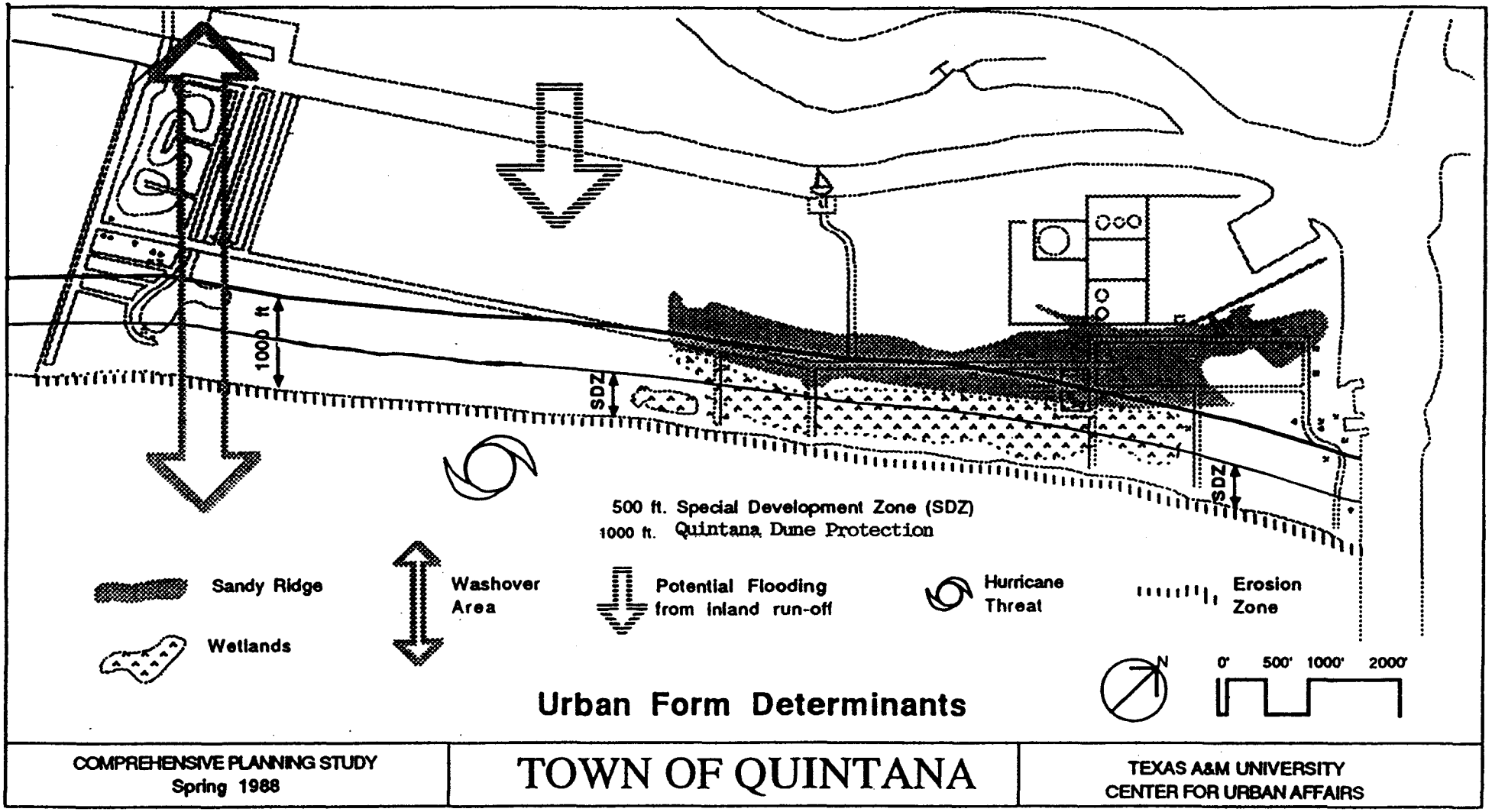
2092 Prepared Fresh or Frozen Fish and Seafoods

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 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

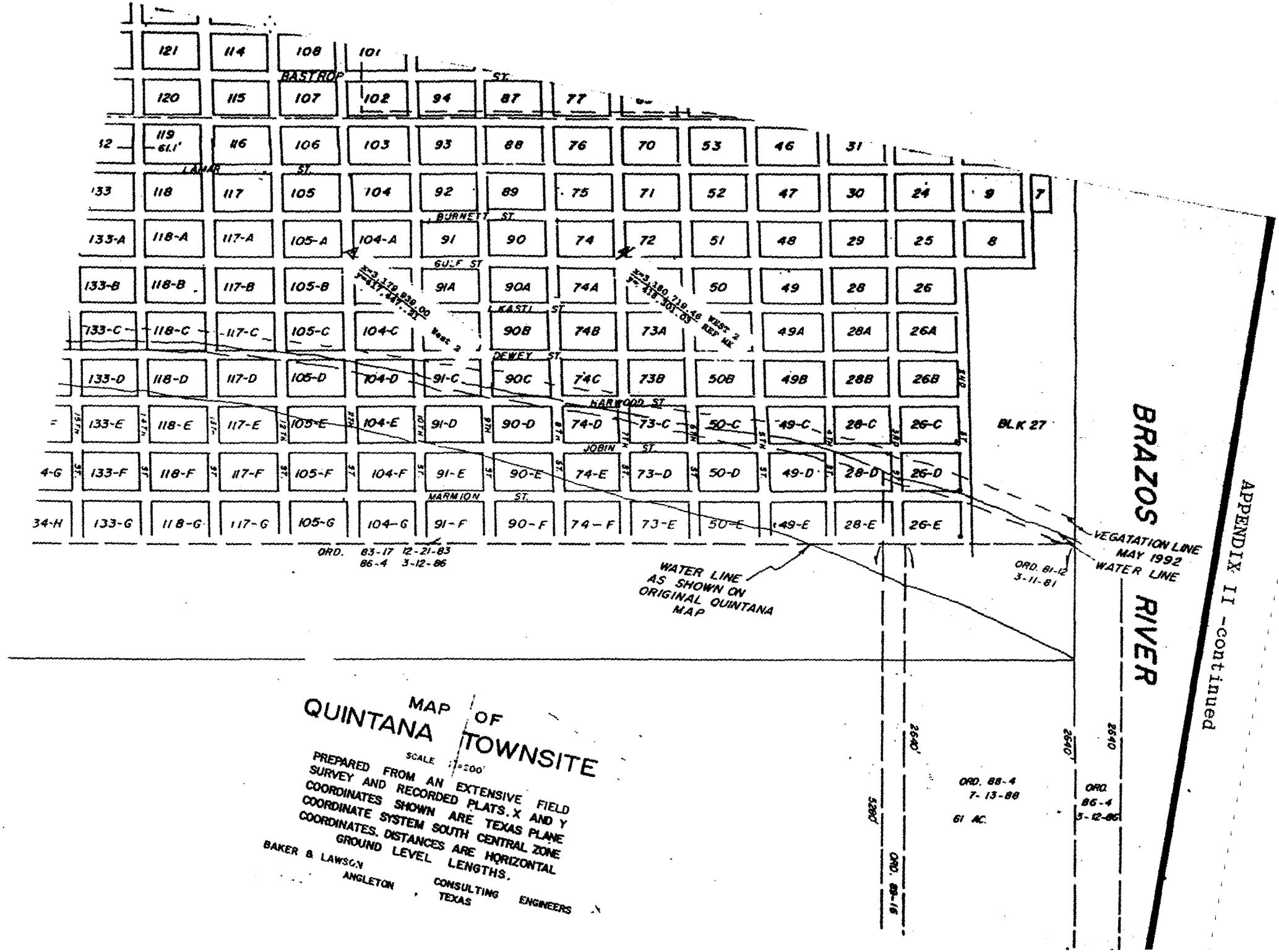
Appendix I - continued

- Fish Fillets
- Fish sticks
- Fish: fresh and frozen, prepared
- Oysters, fresh: shucking
- 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



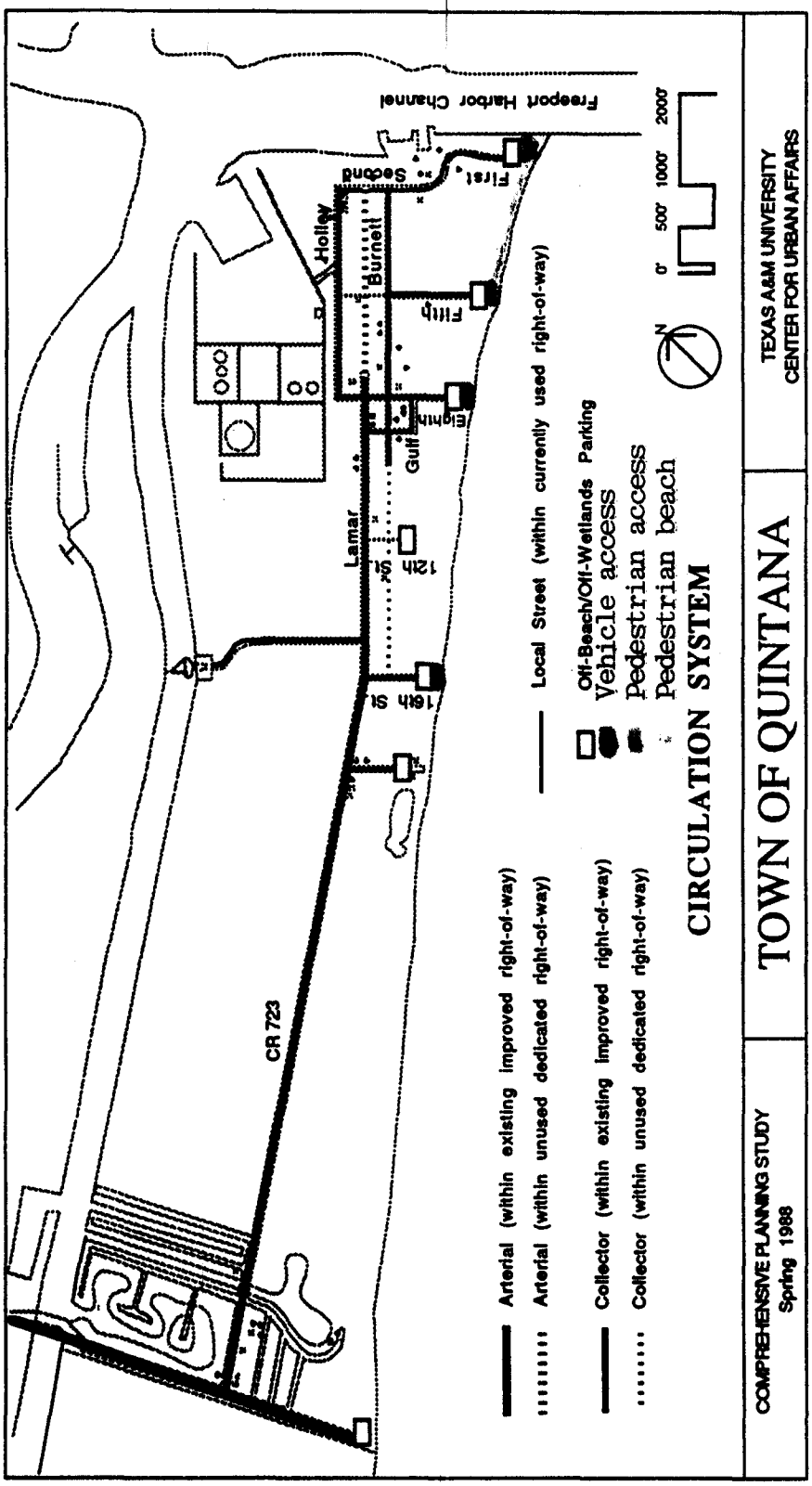
Urban Form Determinants

COMPREHENSIVE PLANNING STUDY Spring 1988	TOWN OF QUINTANA	TEXAS A&M UNIVERSITY CENTER FOR URBAN AFFAIRS



APPENDIX II -continued

Figure 7.2 Circulation System



RESOLUTION 2012-05

A RESOLUTION OF THE TOWN OF QUINTANA, TEXAS PERTAINING TO THE BRAZORIA COUNTY EROSION RESPONSE PLAN AMENDMENT TO THE DUNE PROTECTION AND BEACH ACCESS PLANS FOR BRAZORIA COUNTY, VILLIAGE OF SURFSIDE BEACH, TOWN OF QUINTANA, AND CITY OF FREEPORT.

WHEREAS: The Erosion Response Plan (ERP) was developed by Coast & Harbor Engineering, Inc. under Brazoria County Contract No. 11-022-000-4320, pursuant to the authority granted by Texas Natural Resources Code, 33.607 for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches in consultation with the Texas General Land Office.

WHEREAS: The Town of Quintana is recognized as holding a governmental jurisdiction located on the southwest side of the Freeport Channel within Brazoria County with an average long-term erosion rate for the shoreline for the Town of Quintana is 6 to 15 ft/yr and the majority of erosion rates are over 10 ft/yr.

WHEREAS: Brazoria County and local governments have established a Dune Protection Line (DPL) for the purpose of protecting critical dune areas. This line runs parallel and adjacent to the Gulf of Mexico. The Town of Quintana has a Dune Protection Line (DPL) of 1,000 ft. landward of the Mean Higher High Water (MHHW) which is the average of the highest tide on each day.

WHEREAS: The Town of Quintana proposed no Variances of Construction Requirements for Exempt Properties at the time of submission of this draft.

WHEREAS: The Town of Quintana has two vehicular access points which are in good condition and allow for easy driving onto the beach. These access points do not need any improvements at the present time, however; they are aligned with the prevailing wind direction and could be avenues for storm surge propagation during a storm. Suggested improvements would be to increase the elevation by 4 feet at the dune location; subject to available funding.

BE IT KNOWN THAT: Town of Quintana Council discussed and accepted Revision 1 of the Brazoria County Erosion Response Plan that was submitted to Brazoria County and its Cities on April 16, 2012.

APPROVED, PASSED, AND ADOPTED THIS 13 **DAY OF** August **2012 A.D.**

Leon Cortese
Mayor
Town of Quintana

ATTEST:

Lauren Anderson
City Secretary

TOWN OF QUINTANA BRAZONIA COUNTY, TX