

AN ACT

relating to the management and protection of coastal public land and other coastal resources; providing for administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 33.002, 33.012, 33.063, and 33.102, Natural Resources Code, are amended to read as follows:

Sec. 33.002. PURPOSE. The purpose of this chapter is to implement the policies stated in Section 33.001 [~~of this code~~] by delegating to the board, assisted by the appropriate [~~planning division and other~~] staff of the land office, certain responsibilities and duties with respect to the management of the surface estate in coastal public land.

Sec. 33.012. LAND OFFICE TO ASSIST BOARD. The appropriate [~~planning division and other~~] staff of the land office shall assist the board in the discharge of its responsibilities and duties under this chapter.

Sec. 33.063. FEES. The board may prescribe reasonable filing fees and fees for granting leases, easements, [~~and~~] permits, and other interests in or rights to use coastal public land.

Sec. 33.102. CONTENTS OF APPLICATION. The application to acquire rights in coastal public land shall include any information the board considers necessary to process the application, including information necessary to evaluate the purpose for which the land is

1 to be used [~~+~~

2 ~~[(1) an adequate legal description of the land in~~
3 ~~which the rights are sought,~~

4 ~~[(2) a statement of the rights sought,~~

5 ~~[(3) a statement of the purpose or purposes for which~~
6 ~~the land is to be used,~~

7 ~~[(4) a description of the nature and extent of the~~
8 ~~improvements, if any, which will be made on the land,~~

9 ~~[(5) an estimate of the time within which any~~
10 ~~improvements to be made will be completed, and~~

11 ~~[(6) any additional information the board considers~~
12 ~~necessary, including, in the case of any application for approval~~
13 ~~of construction, modification, repair, or removal of a structure, a~~
14 ~~description of all plans for any filling, dumping, dredging, or~~
15 ~~excavating to be done].~~

16 SECTION 2. Section 33.103(a), Natural Resources Code, is
17 amended to read as follows:

18 (a) The board may grant the following interests in coastal
19 public land for the indicated purposes:

20 (1) leases for public purposes;

21 (2) easements for purposes connected with:

22 (A) ownership of littoral property; or

23 (B) the operation of a facility operated by an
24 existing channel and dock corporation that was issued articles of
25 incorporation under Chapters 13 and 14, Title 32, Revised Statutes;

26 (3) permits authorizing limited continued use of
27 previously unauthorized structures on coastal public land not

1 connected with ownership of littoral property; ~~and~~

2 (4) channel easements to the holder of any surface or
3 mineral interest in coastal public land for purposes necessary or
4 appropriate to the use of the interests; and

5 (5) subject to Section 33.001(g), any other interest
6 in coastal public land for any purpose if the board determines that
7 the grant is in the best interest of the state.

8 SECTION 3. Sections 33.104 and 33.105, Natural Resources
9 Code, are amended to read as follows:

10 Sec. 33.104. DETERMINATION OF TERMS OF GRANT; CONSUMMATION
11 OF TRANSACTION ~~[PROCESSING APPLICATION]~~. ~~[(a) On receiving an~~
12 ~~application, the board may circulate it for review and comment to~~
13 ~~the member agencies of the Interagency Natural Resources Council or~~
14 ~~its successor.~~

15 ~~[(b) The board shall determine whether the proposed~~
16 ~~application should be granted not less than 30 days nor more than 90~~
17 ~~days after the application is received.~~

18 ~~[(c)]~~ If the board approves the application ~~[is granted]~~,
19 the board shall determine the terms ~~[reasonable term]~~, conditions,
20 and consideration for the grant of an interest in or right to use
21 coastal public land and may consummate the transaction.

22 Sec. 33.105. PERSONS TO WHOM INTEREST IN LAND MAY BE GRANTED
23 ~~[LEASED]~~. The board may grant to any person an interest in ~~[lease]~~
24 coastal public land if the board determines that the grant is in the
25 best interest of the state ~~[to:~~

26 ~~(1) the Parks and Wildlife Department or to any~~
27 ~~eligible city or county for public recreational purposes;~~

1 ~~[(2) the Parks and Wildlife Department for management~~
2 ~~of estuarine preserves;~~

3 ~~[(3) any nonprofit, tax-exempt environmental~~
4 ~~organization approved by the board for the purpose of managing a~~
5 ~~wildlife refuge; and~~

6 ~~[(4) any scientific or educational organization or~~
7 ~~institution for conducting scientific research].~~

8 SECTION 4. Sections 33.604 and 33.605, Natural Resources
9 Code, are amended to read as follows:

10 Sec. 33.604. COASTAL EROSION RESPONSE ACCOUNT. (a) The
11 coastal erosion response account is an account in the general
12 revenue fund that may be appropriated only to the commissioner and
13 used only for the purpose of implementing this subchapter and
14 administration of the coastal management program as provided in
15 Subchapter F.

16 (b) The account consists of:

17 (1) all money appropriated for the purposes of this
18 subchapter;

19 (2) grants to this state from the United States for the
20 purposes of this subchapter; ~~and~~

21 (3) all money received by this state from the sale of
22 dredged material; and

23 (4) penalties or costs collected under Section 61.0184
24 or 63.1814.

25 (c) The account is exempt from the application of Section
26 403.095, Government Code.

27 Sec. 33.605. USES OF ACCOUNT. (a) Money in the account may

1 be used for:

2 (1) any action authorized by this subchapter; and

3 (2) the administration of the coastal management
4 program as provided in Subchapter F [~~except for a restoration~~
5 ~~project authorized by Section 33.613~~].

6 (b) The commissioner must approve an expenditure from the
7 account. In determining whether to approve an expenditure for a
8 study or project, the commissioner shall consider:

9 (1) the amount of money in the account;

10 (2) the feasibility and cost-effectiveness of the
11 study or project;

12 (3) the locations of other existing or proposed
13 erosion response projects;

14 (4) the needs in other critical coastal erosion areas;

15 (5) the effect of the study or project on public or
16 private property; and

17 (6) if the site to be studied or project to be
18 conducted will be located within the jurisdiction of a local
19 government subject to Chapter 61 or 63:

20 (A) [~~7~~] whether the local government is
21 adequately administering those chapters; and

22 (B) the building set-back line established by the
23 local government under Section 33.607.

24 SECTION 5. The heading to Section 33.607, Natural Resources
25 Code, is amended to read as follows:

26 Sec. 33.607. COASTAL EROSION PUBLIC AWARENESS AND
27 EDUCATION; LOCAL GOVERNMENT PLANNING AND REGULATION.

1 SECTION 6. Section 33.607, Natural Resources Code, is
2 amended by amending Subsection (e) and adding Subsections (f), (g),
3 and (h) to read as follows:

4 (e) A local government subject to Chapter 61 or 63 may [~~is~~
5 ~~encouraged to~~] use historical erosion data to prepare a plan for
6 reducing public expenditures for erosion and storm damage losses to
7 public and private property, including public beaches, by
8 establishing and implementing a building set-back line that will
9 accommodate a shoreline retreat. The local government shall hold a
10 public educational meeting on the plan before proposing to
11 implement it through the plans, orders, or ordinances provided by
12 Chapters 61 and 63.

13 (f) A plan for reducing public expenditures for erosion and
14 storm damage losses to public and private property that includes
15 the establishment and implementation of a building set-back line
16 under this section may:

17 (1) preserve and enhance the public's right of access
18 to and use of the public beach;

19 (2) preserve critical sand dunes for natural storm
20 protection and conservation purposes;

21 (3) establish a building set-back line no further
22 landward than the dune protection line established by the local
23 government under Chapter 63;

24 (4) provide for the prohibition of new construction
25 seaward of the building set-back line; and

26 (5) provide for the acquisition of fee title to or a
27 lesser interest in property seaward of the building set-back line.

1 (g) The commissioner may adopt rules for the establishment
2 and implementation of a building set-back line under this section.

3 (h) Chapter 2007, Government Code, does not apply to a rule
4 or local government order or ordinance authorized by this section.

5 SECTION 7. Section 33.651(4), Natural Resources Code, is
6 amended to read as follows:

7 (4) "Coastal improvement project" means a project to
8 improve access to a public beach by:

9 (A) acquiring fee title to property or a right of
10 public access to a public beach;

11 (B) constructing or maintaining public roads,
12 parking, or other facilities in aid of public access to or use of a
13 public beach; ~~[or]~~

14 (C) requiring a landowner, as prescribed by land
15 office rules, to restore land affected by coastal erosion to its
16 original boundaries; or

17 (D) implementing a building set-back line
18 established under Section 33.607.

19 SECTION 8. Section 33.656, Natural Resources Code, is
20 amended to read as follows:

21 Sec. 33.656. PROJECTS THAT QUALIFY FOR FUNDING. To qualify
22 for funding under this subchapter, a project must:

23 (1) be sponsored by a coastal county;

24 (2) be located within the sponsoring coastal county
25 along or adjacent to the shore of the Gulf of Mexico, an inland bay,
26 or a connecting channel between the Gulf of Mexico and an inland
27 bay;

1 (3) be accessible by public roads or a common carrier
2 ferry;

3 (4) be identified and approved for funding by a
4 coastal county and the land office; and

5 (5) require more than \$5 million to complete, as
6 estimated by the land office, unless the project implements a
7 building set-back line established under Section 33.607.

8 SECTION 9. Section 33.659(a), Natural Resources Code, is
9 amended to read as follows:

10 (a) In addition to all other powers that a coastal county
11 has under general law, a coastal county has the rights, powers,
12 privileges, authority, and functions that are necessary or
13 convenient to:

14 (1) the designing, engineering, acquiring,
15 constructing, improving, maintaining, extending, repairing,
16 replacing, monitoring, removing, administering, and financing of a
17 qualified project located in a coastal county; ~~and~~

18 (2) the funding of a reserve or other fund relating to
19 bonds; and

20 (3) the establishment and implementation of a building
21 set-back line under Section 33.607.

22 SECTION 10. Section 61.011(d), Natural Resources Code, is
23 amended to read as follows:

24 (d) The commissioner shall promulgate rules, consistent
25 with the policies established in this section, on the following
26 matters only:

27 (1) acquisition by local governments or other

1 appropriate entities or public dedication of access ways sufficient
2 to provide adequate public ingress and egress to and from the beach
3 within the area described in Subdivision (6);

4 (2) protection of the public easement from erosion or
5 reduction caused by development or other activities on adjacent
6 land and beach cleanup and maintenance;

7 (3) local government prohibitions of vehicular
8 traffic on public beaches, provision of off-beach parking, and
9 other minimum measures needed to mitigate for any adverse effect on
10 public access and dune areas;

11 (4) imposition of beach access, user, or parking fees
12 and reasonable exercises of the police power by local governments
13 with respect to public beaches;

14 (5) contents and certification of beach access and use
15 plans and standards for local government review of construction on
16 land adjacent to and landward of public beaches, including
17 procedures for expedited review of beach access and use plans under
18 Section 61.015;

19 (6) construction on land adjacent to and landward of
20 public beaches and lying in the area either up to the first public
21 road generally parallel to the beach or to any closer public road
22 not parallel to the beach, or to within 1,000 feet of mean high
23 tide, whichever is greater, that affects or may affect public
24 access to and use of public beaches; ~~and~~

25 (7) the temporary suspension under Section 61.0185 of
26 enforcement of the prohibition against encroachments on and
27 interferences with the public beach easement and the ability of a

1 property owner to make repairs to a house while a suspension is in
2 effect;

3 (8) the determination of the line of vegetation or
4 natural line of vegetation;

5 (9) the factors to be considered in determining
6 whether a structure, improvement, obstruction, barrier, or hazard
7 on the public beach:

8 (A) constitutes an imminent hazard to safety,
9 health, or public welfare; or

10 (B) substantially interferes with the free and
11 unrestricted right of the public to enter or leave the public beach
12 or traverse any part of the public beach; and

13 (10) the procedures for determining whether a
14 structure is not insurable property for purposes of Section
15 2210.004, Insurance Code, because of the factors listed in
16 Subsection (h) of that section.

17 SECTION 11. Sections 61.015(b) and (c), Natural Resources
18 Code, are amended to read as follows:

19 (b) Local governments shall submit proposed beach access
20 and use plans to the commissioner for certification as to
21 compliance with such policies and rules. The commissioner shall act
22 on a local government's proposed beach access and use plan within 90
23 ~~[60]~~ days of submission by either approving the plan or denying
24 certification. In the event of denial, the commissioner shall send
25 the proposed plan back to the originating local government with a
26 statement of specific objections and the reasons for denial, along
27 with suggested modifications. On receipt, the local government

1 shall revise and resubmit the plan. The commissioner's
2 certification of local government plans shall be by adoption into
3 the rules under Section 61.011.

4 (c) A littoral owner proposing construction adjacent to and
5 landward of a public beach in the area described in Section
6 61.011(d)(6) shall submit a development plan to the appropriate
7 local government. The local government shall forward a [the]
8 development plan for small-scale construction activity that
9 includes 5,000 square feet or less or habitable structures two
10 stories or less in height to the commissioner no less than 10
11 working days prior to acting on the development plan. The local
12 government shall forward a development plan for large-scale
13 construction activity that includes more than 5,000 square feet or
14 habitable structures more than two stories in height to the
15 commissioner no less than 30 working days prior to acting on the
16 development plan. The commissioner may submit comments on the
17 proposed construction to the local government.

18 SECTION 12. Sections 61.018(b) and (c), Natural Resources
19 Code, are amended to read as follows:

20 (b) In the same suit, the attorney general, the
21 commissioner, county attorney, district attorney, or criminal
22 district attorney may recover penalties and the costs of removing
23 any improvement, obstruction, barrier, or other encroachment if it
24 is removed by public authorities pursuant to an order of the court
25 or a removal order issued by the commissioner as provided by Section
26 61.0183.

27 (c) A person who violates this chapter or a removal order

1 issued by the commissioner as provided by Section 61.0183 is liable
2 for a civil penalty of not less than \$50 nor more than \$2,000
3 [~~\$1,000~~]. Each day the violation occurs or continues is a separate
4 violation.

5 SECTION 13. Subchapter B, Chapter 61, Natural Resources
6 Code, is amended by adding Sections 61.0181, 61.0182, 61.0183, and
7 61.0184 to read as follows:

8 Sec. 61.0181. ADMINISTRATIVE PENALTY. The commissioner may
9 assess an administrative penalty against a person who violates this
10 chapter or a rule adopted under this chapter in the amount provided
11 by Section 61.018(c) for a civil penalty. In determining the amount
12 of the penalty, the commissioner shall consider:

13 (1) the seriousness of the violation, including the
14 nature, circumstances, extent, and gravity of the violation and the
15 hazard or damage caused thereby;

16 (2) the degree of cooperation and quality of response;

17 (3) the degree of culpability and history of previous
18 violations by the person subject to the penalty;

19 (4) the amount necessary to deter future violations;

20 and

21 (5) any other matter that justice requires.

22 Sec. 61.0182. ENFORCEMENT PROVISIONS CUMULATIVE. This
23 subchapter is cumulative of all other applicable penalties,
24 remedies, and enforcement and liability provisions.

25 Sec. 61.0183. REMOVAL OF CERTAIN STRUCTURES, IMPROVEMENTS,
26 OBSTRUCTIONS, BARRIERS, AND HAZARDS ON PUBLIC BEACH. (a) The
27 commissioner may order the removal of a structure, improvement,

1 obstruction, barrier, or hazard from a public beach if the
2 commissioner finds the structure, improvement, obstruction,
3 barrier, or hazard to be on the public beach as defined by Section
4 61.013(c) and:

5 (1) the structure, improvement, obstruction, barrier,
6 or hazard was constructed or placed on the beach in a manner that is
7 inconsistent with the local government's beach access and use plan;
8 or

9 (2) the structure, improvement, obstruction, or
10 barrier constitutes an imminent hazard to safety, health, or public
11 welfare.

12 (b) The decision to remove a structure, improvement,
13 obstruction, barrier, or hazard under this section is discretionary
14 with the commissioner. This section does not impose a duty on the
15 state to remove a structure, improvement, obstruction, barrier, or
16 hazard or to remedy or warn of a hazardous condition on the public
17 beach.

18 (c) The commissioner may contract for the removal and
19 disposal of a structure, improvement, obstruction, barrier, or
20 hazard under this section and may pay the costs of removal from
21 money appropriated by the legislature.

22 Sec. 61.0184. NOTICE REQUIREMENTS; ORDERS AND HEARINGS.

23 (a) The commissioner shall make a determination that a structure is
24 located on the public beach, assess an administrative penalty, and
25 pursue the removal of a structure, improvement, obstruction,
26 barrier, or hazard from a public beach in accordance with this
27 section.

1 (b) Before the commissioner may notify the Texas Windstorm
2 Insurance Association as provided by Section 2210.004, Insurance
3 Code, regarding the status of property, the commissioner must give
4 written notice and an opportunity for a hearing to a person who is
5 constructing, maintains, controls, owns, or possesses the
6 structure, improvement, obstruction, barrier, or hazard on the
7 public beach. The notice must state that:

8 (1) the commissioner finds that a specific structure
9 is located on the public beach as determined under this chapter,
10 and:

11 (A) constitutes an imminent hazard to safety,
12 health, or public welfare; or

13 (B) substantially interferes with the free and
14 unrestricted right of the public to enter or leave the public beach
15 or traverse any part of the public beach;

16 (2) the commissioner intends to notify the Texas
17 Windstorm Insurance Association of a determination in accordance
18 with Section 2210.004, Insurance Code; and

19 (3) the person who is constructing, maintains,
20 controls, owns, or possesses the structure, improvement,
21 obstruction, barrier, or hazard located on the public beach may
22 submit, not later than the 30th day after the date on which the
23 notice is served, written request for a hearing to contest the
24 determination.

25 (c) Before the commissioner may order the removal of a
26 structure, improvement, obstruction, barrier, or hazard under
27 Section 61.0183 or impose an administrative penalty under Section

1 61.0181, the commissioner must provide written notice to the person
2 who is constructing, maintains, controls, owns, or possesses the
3 structure, improvement, obstruction, barrier, or hazard. The
4 notice must:

5 (1) describe the specific structure, improvement,
6 obstruction, barrier, or hazard that violates this subchapter;

7 (2) state that the person who is constructing,
8 maintains, controls, owns, or possesses the structure,
9 improvement, obstruction, barrier, or hazard is required to remove
10 the structure, improvement, obstruction, barrier, or hazard:

11 (A) not later than the 30th day after the date on
12 which the notice is served, if the structure, improvement,
13 obstruction, barrier, or hazard is obstructing access to or use of
14 the public beach; or

15 (B) within a reasonable time specified by the
16 commissioner if the structure, improvement, obstruction, barrier,
17 or hazard is an imminent and unreasonable threat to public health,
18 safety, or welfare;

19 (3) state that failure to remove the structure,
20 improvement, obstruction, barrier, or hazard may result in
21 liability for a civil penalty under Section 61.018(c), removal by
22 the commissioner and liability for the costs of removal, or any
23 combination of those remedies; and

24 (4) state that the person who is constructing,
25 maintains, controls, owns, or possesses the structure,
26 improvement, obstruction, barrier, or hazard may submit, not later
27 than the 30th day after the date on which the notice is served,

1 written request for a hearing.

2 (d) A person is considered to be the person who owns,
3 maintains, controls, or possesses an improvement, obstruction,
4 barrier, or other encroachment on the public beach for purposes of
5 this section if the person is the person who most recently owned,
6 maintained, controlled, or possessed the improvement, obstruction,
7 barrier, or other encroachment on the public beach.

8 (e) The notice required by Subsection (b) must be given:

9 (1) by service in person, by registered or certified
10 mail, return receipt requested, or by priority mail; or

11 (2) if personal service cannot be obtained or the
12 address of the person responsible is unknown, by posting a copy of
13 the notice on the structure, improvement, obstruction, barrier, or
14 hazard and by publishing notice in a newspaper with general
15 circulation in the county in which the structure, improvement,
16 obstruction, barrier, or hazard is located at least two times
17 within 10 consecutive days.

18 (f) The commissioner by rule may adopt procedures for a
19 hearing under this section.

20 (g) The commissioner must grant a hearing before an
21 administrative law judge employed by the State Office of
22 Administrative Hearings if a hearing is requested. A person who
23 does not request a hearing within 30 days after the date on which
24 the notice is served waives all rights to judicial review of the
25 commissioner's findings or orders and shall immediately remove the
26 structure, improvement, obstruction, barrier, or hazard and pay any
27 penalty assessed. If a hearing is held, the commissioner may issue

1 a final order approving the proposal for decision submitted by the
2 administrative law judge concerning a determination regarding
3 whether a structure is not insurable property for purposes of
4 Section 2210.004, Insurance Code, because of the factors listed in
5 Subsection (h) of that section or concerning removal of the
6 structure, improvement, obstruction, barrier, or hazard and
7 payment of a penalty. The commissioner may change a finding of fact
8 or conclusion of law made by the administrative law judge or may
9 vacate or modify an order issued by the administrative judge in
10 accordance with Section 2001.058, Government Code.

11 (h) A person may seek judicial review of a final order of the
12 commissioner under this section in a Travis County district court
13 under the substantial evidence rule as provided by Subchapter G,
14 Chapter 2001, Government Code. The trial courts of this state shall
15 give preference to an appeal of a final order of the commissioner
16 under this section in the same manner as provided by Section
17 23.101(a), Government Code, for an appeal of a final order of the
18 commissioner under Section 51.3021 of this code.

19 (i) If the person who is constructing, maintains, controls,
20 owns, or possesses the structure, improvement, obstruction,
21 barrier, or hazard does not pay assessed penalties, removal costs,
22 and other assessed fees and expenses on or before the 30th day after
23 the date of entry of a final order assessing the penalties, costs,
24 and expenses, the commissioner may:

25 (1) sell salvageable parts of the structure,
26 improvement, obstruction, barrier, or hazard to offset those costs;

27 (2) request that the attorney general institute civil

1 proceedings to collect the penalties, costs of removal, and other
2 fees and expenses remaining unpaid; or

3 (3) use any combination of the remedies prescribed by
4 this subsection, or other remedies authorized by law, to collect
5 the unpaid penalties, costs of removal, and other fees and expenses
6 assessed because of the structure, improvement, obstruction,
7 barrier, or hazard on the public beach and its removal by the
8 commissioner.

9 (j) Penalties or costs collected under this section shall be
10 deposited in the coastal erosion response account as established
11 under Section 33.604.

12 (k) Notwithstanding any other provision of this subchapter,
13 if a structure that is the subject of an order for removal under
14 Section 61.0183 or an administrative penalty under Section 61.0181
15 has been used as a permanent, temporary, or occasional residential
16 dwelling by at least one person at any time during the year before
17 the date on which the order is issued or the penalty is assessed:

18 (1) the notice required by Subsection (c) must state
19 that the person who is constructing, maintains, controls, owns, or
20 possesses the structure may submit, not later than the 90th day
21 after the date on which the notice is served, written request for a
22 hearing;

23 (2) if the person does not request a hearing within 90
24 days after the date on which the notice is served, the person waives
25 all rights to judicial review of the commissioner's findings or
26 orders and shall immediately remove the structure and pay any
27 penalty assessed; and

1 (3) the amount of the administrative penalty assessed
2 may not exceed \$1,000 for each day the violation occurs or
3 continues.

4 SECTION 14. Sections 61.020 and 61.025, Natural Resources
5 Code, are amended to read as follows:

6 Sec. 61.020. PRIMA FACIE EVIDENCE. (a) In a suit or
7 administrative proceeding brought or defended under this
8 subchapter or whose determination is affected by this subchapter, a
9 showing that the area in question is located in the area from mean
10 low tide to the line of vegetation is prima facie evidence that:

11 (1) the title of the littoral owner does not include
12 the right to prevent the public from using the area for ingress and
13 egress to the sea; and

14 (2) there is imposed on the area a common law right or
15 easement in favor of the public for ingress and egress to the sea.

16 (b) The determination of the location of the line of
17 vegetation by the commissioner as provided by Sections 61.016 and
18 61.017 constitutes prima facie evidence of the landward boundary of
19 the area subject to the public easement until a court adjudication
20 establishes the line in another place.

21 Sec. 61.025. DISCLOSURE TO PURCHASER OF PROPERTY. (a)
22 Except as provided by Subsection (b), a [A] person who sells or
23 conveys an interest, other than a mineral, leasehold, or security
24 interest, in real property located seaward of the Gulf Intracoastal
25 Waterway to its southernmost point and then seaward of the
26 longitudinal line also known as 97 degrees, 12', 19" which runs
27 southerly to the international boundary from the intersection of

1 the centerline of the Gulf Intracoastal Waterway and the
2 Brownsville Ship Channel must include in any executory contract for
3 conveyance a [~~the following~~] statement in substantially the
4 following form:

5 CONCERNING THE PROPERTY AT _____

6 DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS

7 OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH

8 WARNING: THE FOLLOWING NOTICE OF POTENTIAL RISKS OF ECONOMIC
9 LOSS TO YOU AS THE PURCHASER OF COASTAL REAL PROPERTY IS REQUIRED BY
10 STATE LAW.

11 • READ THIS NOTICE CAREFULLY. DO NOT SIGN THIS CONTRACT
12 UNTIL YOU FULLY UNDERSTAND THE RISKS YOU ARE ASSUMING.

13 • BY PURCHASING THIS PROPERTY, YOU MAY BE ASSUMING
14 ECONOMIC RISKS OVER AND ABOVE THE RISKS INVOLVED IN PURCHASING
15 INLAND REAL PROPERTY.

16 • IF YOU OWN A STRUCTURE LOCATED ON COASTAL REAL PROPERTY
17 NEAR A GULF COAST BEACH, IT MAY COME TO BE LOCATED ON THE PUBLIC
18 BEACH BECAUSE OF COASTAL EROSION AND STORM EVENTS.

19 • AS THE OWNER OF A STRUCTURE LOCATED ON THE PUBLIC BEACH,
20 YOU COULD BE SUED BY THE STATE OF TEXAS AND ORDERED TO REMOVE THE
21 STRUCTURE.

22 • THE COSTS OF REMOVING A STRUCTURE FROM THE PUBLIC BEACH
23 AND ANY OTHER ECONOMIC LOSS INCURRED BECAUSE OF A REMOVAL ORDER
24 WOULD BE SOLELY YOUR RESPONSIBILITY.

25 The real property described in this contract is located
26 seaward of the Gulf Intracoastal Waterway to its southernmost point
27 and then seaward of the longitudinal line also known as 97 degrees,

1 12', 19" which runs southerly to the international boundary from
2 the intersection of the centerline of the Gulf Intracoastal
3 Waterway and the Brownsville Ship Channel. If the property is in
4 close proximity to a beach fronting the Gulf of Mexico, the
5 purchaser is hereby advised that the public has acquired a right of
6 use or easement to or over the area of any public beach by
7 prescription, dedication, or presumption, or has retained a right
8 by virtue of continuous right in the public since time immemorial,
9 as recognized in law and custom.

10 The extreme seaward boundary of natural vegetation that
11 spreads continuously inland customarily marks the landward
12 boundary of the public easement. If there is no clearly marked
13 natural vegetation line, the landward boundary of the easement is
14 as provided by Sections 61.016 and 61.017, Natural Resources Code.

15 Much of the Gulf of Mexico coastline is eroding at rates of
16 more than five feet per year. Erosion rates for all Texas Gulf
17 property subject to the open beaches act are available from the
18 Texas General Land Office.

19 State law prohibits any obstruction, barrier, restraint, or
20 interference with the use of the public easement, including the
21 placement of structures seaward of the landward boundary of the
22 easement. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION
23 LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD
24 OF THE VEGETATION LINE AS A RESULT OF [~~NATURAL~~] PROCESSES SUCH AS
25 SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO
26 REMOVE THE STRUCTURES.

27 The purchaser is hereby notified that the purchaser should:

1 (1) determine the rate of shoreline erosion in the
2 vicinity of the real property; and

3 (2) seek the advice of an attorney or other qualified
4 person before executing this contract or instrument of conveyance
5 as to the relevance of these statutes and facts to the value of the
6 property the purchaser is hereby purchasing or contracting to
7 purchase.

8 (b) If the statement is not included in the executory
9 contract for conveyance or there is no executory contract for
10 conveyance, the statement must be delivered to, and receipt thereof
11 acknowledged by, the purchaser not later than 10 calendar days
12 prior to closing the transaction.

13 (c) Failure to comply with Subsection (a) or (b), as
14 applicable, [~~include the statement in an executory contract for~~
15 ~~conveyance~~] shall be grounds for the purchaser to terminate the
16 [~~such~~] contract or agreement to convey, and upon termination any
17 earnest money shall be returned to the party making the deposit.

18 (d) A seller commits [~~Failure to provide this statement~~
19 ~~prior to closing, either in the executory contract for conveyance~~
20 ~~or in a separate written statement, shall constitute~~] a deceptive
21 act under Section 17.46, Business & Commerce Code, if the seller
22 fails to comply with Subsection (a) or Subsection (b), as
23 applicable.

24 (e) This section, or the failure of a person to give or
25 receive the notice in the manner required by this section, does not
26 diminish or modify the beach access and use rights of the public
27 acquired through statute or under common law.

1 SECTION 15. Section 63.002, Natural Resources Code, is
2 amended by adding Subdivision (6) to read as follows:

3 (6) "Restoration" means the repair or replacement of
4 dunes or dune vegetation.

5 SECTION 16. Section 63.054(c), Natural Resources Code, is
6 amended to read as follows:

7 (c) Each county or municipality administering this chapter
8 shall establish procedures and requirements governing the review
9 and approval of dune permits, and these procedures and requirements
10 shall be submitted to the commissioner for certification to
11 determine whether the procedures and requirements are in compliance
12 with rules and policies adopted under Section 63.121. The
13 commissioner shall act on a county or municipality's proposed dune
14 protection plan not later than the 90th day after the date the plan
15 is submitted by approving the plan or denying certification. If
16 certification is denied, the commissioner shall return the proposed
17 plan to the originating local government with a statement of
18 specific objections and the reasons for denial, along with
19 suggested modifications. On receipt, the county or municipality
20 shall revise and resubmit the plan. The commissioner must certify a
21 county or municipality's procedures and requirements under this
22 section in accordance with rules adopted under Section 63.121
23 [comments].

24 SECTION 17. Section 63.056(a), Natural Resources Code, is
25 amended to read as follows:

26 (a) After receiving an application for a permit to perform
27 any of the acts prohibited in Section 63.091 in connection with

1 small-scale construction activity that includes 5,000 square feet
2 or less or habitable structures two stories in height or less [~~of~~
3 ~~this code~~], the commissioners court or the governing body of the
4 municipality shall notify the commissioner by sending, not less
5 than 10 working days before the date of the public hearing on the
6 application, notice of the hearing and a copy of the application.
7 After receiving an application for a permit to perform any of the
8 acts prohibited in Section 63.091 in connection with large-scale
9 construction activity that includes more than 5,000 square feet or
10 habitable structures more than two stories in height, the
11 commissioners court or the governing body of the municipality shall
12 notify the commissioner by sending, not less than 30 working days
13 before the date of the public hearing on the application, notice of
14 the hearing and a copy of the application.

15 SECTION 18. Section 63.121, Natural Resources Code, is
16 amended to read as follows:

17 Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS;
18 RULES. (a) The commissioner, in his role as trustee of the public
19 land of this state, shall identify the critical dune areas within
20 1,000 feet of mean high tide that are essential to the protection of
21 state-owned land, public beaches, and submerged land.

22 (b) The commissioner shall promulgate rules for:

23 (1) the identification and protection of critical dune
24 areas; and

25 (2) the certification of procedures and requirements
26 governing the review and approval of dune permits by a county or
27 municipality.

1 SECTION 19. Section 63.181(b), Natural Resources Code, is
2 amended to read as follows:

3 (b) A person who violates this chapter or any rule, permit,
4 or order under this chapter is liable for a civil penalty of not
5 less than \$50 nor more than \$2,000 [~~\$1,000~~]. Each day that a
6 violation occurs or continues constitutes a separate offense. A
7 violation of Section 63.091 is considered to be a continuing
8 violation from the date of the initial unauthorized conduct until
9 the earlier of:

10 (1) the date on which a proper permit is issued
11 authorizing the conduct; or

12 (2) the date on which restoration of dunes or dune
13 vegetation damaged by the violation is completed.

14 SECTION 20. Subchapter G, Chapter 63, Natural Resources
15 Code, is amended by adding Sections 63.1811, 63.1812, 63.1813, and
16 63.1814 to read as follows:

17 Sec. 63.1811. ADMINISTRATIVE PENALTY. The commissioner may
18 assess an administrative penalty for a violation of Section 63.091
19 or any rule, permit, or order issued under this chapter in the
20 amount established by Section 63.181(b) for a civil penalty. In
21 determining the amount of the penalty, the commissioner shall
22 consider:

23 (1) the seriousness of the violation, including the
24 nature, circumstances, extent, and gravity of the violation and the
25 hazard or damage caused thereby;

26 (2) the degree of cooperation and quality of response;

27 (3) the degree of culpability and history of previous

1 violations by the person subject to the penalty;

2 (4) the amount necessary to deter future violations;
3 and

4 (5) any other matter that justice requires.

5 Sec. 63.1812. ENFORCEMENT PROVISIONS CUMULATIVE. This
6 subchapter is cumulative of all other applicable penalties,
7 remedies, and enforcement and liability provisions.

8 Sec. 63.1813. MITIGATION FOR DAMAGE, DESTRUCTION, OR
9 REMOVAL OF DUNE OR DUNE VEGETATION WITHOUT PERMIT. (a) The
10 commissioner may order restoration for the damage, destruction, or
11 removal of a sand dune or a portion of a sand dune or the killing,
12 destruction, or removal of any vegetation growing on a sand dune
13 seaward of the dune protection line or within a critical dune area
14 in violation of this chapter or any rule, permit, or order issued
15 under this chapter.

16 (b) The decision to require restoration under this section
17 is discretionary with the commissioner. This section does not
18 impose a duty on the state to order restoration.

19 (c) The commissioner may contract for the restoration
20 required under this section and may pay the costs of restoration
21 from money appropriated by the legislature.

22 Sec. 63.1814. NOTICE REQUIREMENTS; ORDERS AND HEARINGS.
23 (a) The commissioner shall assess an administrative penalty and
24 pursue restoration in accordance with this section.

25 (b) Before the commissioner may order restoration under
26 Section 63.1813 or assess an administrative penalty under Section
27 63.1811, the commissioner must give written notice to a person who

1 is taking or has taken actions that violate Section 63.091 or any
2 rule, permit, or order issued under this chapter. The notice must
3 state:

4 (1) the specific conduct that violates Section 63.091
5 or any rule, permit, or order issued under this chapter;

6 (2) that the person who is engaged in or has been
7 engaged in the conduct that violates Section 63.091 or any rule,
8 permit, or order issued under this chapter must perform restoration
9 for the damage caused by the violation not later than the 60th day
10 after the date on which the notice is served;

11 (3) that failure to perform restoration for the damage
12 caused by the violation in accordance with the commissioner's order
13 may result in liability for a civil penalty under Section 63.181(b)
14 in an amount specified, restoration contracted or undertaken by the
15 commissioner and liability for the costs of restoration, or any
16 combination of those remedies; and

17 (4) that the person who is engaging in or has engaged
18 in conduct that violates Section 63.091 or any rule, permit, or
19 order issued under this chapter may submit, not later than the 60th
20 day after the date on which the notice is served, a written request
21 for a hearing.

22 (c) A person is considered to be engaging in or to have
23 engaged in conduct that violates Section 63.091 or any rule,
24 permit, or order issued under this chapter for purposes of this
25 section if the person is the person who most recently owned,
26 maintained, controlled, or possessed the real property on which the
27 conduct occurred.

1 (d) The notice required by Subsection (b) must be given:

2 (1) by service in person, by registered or certified
3 mail, return receipt requested, or by priority mail; or

4 (2) if personal service cannot be obtained or the
5 address of the person responsible is unknown, by posting a copy of
6 the written notice at the site where the conduct was engaged in and
7 by publishing notice in a newspaper with general circulation in the
8 county in which the site is located at least two times within 10
9 consecutive days.

10 (e) The commissioner by rule may adopt procedures for a
11 hearing under this section.

12 (f) The commissioner must grant a hearing before an
13 administrative law judge employed by the State Office of
14 Administrative Hearings if a hearing is requested. A person who
15 does not request a hearing within 60 days after the date on which
16 the notice is served waives all rights to judicial review of the
17 commissioner's findings or orders and shall immediately initiate
18 mitigation and pay any penalty assessed. If a hearing is held, the
19 commissioner may issue a final order approving the proposal for
20 decision submitted by the administrative law judge concerning
21 mitigation and payment of a penalty. The commissioner may change a
22 finding of fact or conclusion of law made by the administrative law
23 judge, or may vacate or modify an order issued by the administrative
24 law judge in accordance with Section 2001.058, Government Code.

25 (g) A person may seek judicial review of a final order of the
26 commissioner under this section in a Travis County district court
27 under the substantial evidence rule as provided by Subchapter G,

1 Chapter 2001, Government Code. The trial courts of this state shall
2 give preference to an appeal of a final order of the commissioner
3 under this section in the same manner as provided by Section
4 23.101(a), Government Code, for an appeal of a final order of the
5 commissioner under Section 51.3021 of this code.

6 (h) If the person who is engaged in or has been engaged in
7 conduct that violated Section 63.091 or any rule, permit, or order
8 issued under this chapter does not pay assessed penalties,
9 mitigation costs, and other assessed fees and expenses on or before
10 the 60th day after the date of entry of a final order assessing the
11 penalties, costs, and expenses, the commissioner may:

12 (1) request that the attorney general institute civil
13 proceedings to collect the penalties, costs of restoration, and
14 other fees and expenses remaining unpaid; or

15 (2) use any combination of the remedies prescribed by
16 this section, or other remedies authorized by law, to collect the
17 unpaid penalties, costs of restoration, and other fees and expenses
18 assessed because of unauthorized conduct and its mitigation by the
19 commissioner.

20 (i) Penalties or costs collected under this section shall be
21 deposited in the coastal erosion response account established under
22 Section 33.604.

23 SECTION 21. Section 2210.004, Insurance Code, is amended by
24 amending Subsection (a) and adding Subsection (h) to read as
25 follows:

26 (a) Except as provided by Subsection (h), for [~~For~~] purposes
27 of this chapter and subject to this section, "insurable property"

1 means immovable property at a fixed location in a catastrophe area
2 or corporeal movable property located in that immovable property,
3 as designated in the plan of operation, that is determined by the
4 association according to the criteria specified in the plan of
5 operation to be in an insurable condition against windstorm and
6 hail or fire and explosion, as appropriate, as determined by normal
7 underwriting standards.

8 (h) For purposes of this chapter, a structure is not
9 insurable property if the commissioner of the General Land Office
10 notifies the association of a determination that the structure is
11 located on the public beach under procedures established under
12 Section 61.011, Natural Resources Code, and that the structure:

13 (1) constitutes an imminent hazard to safety, health,
14 or public welfare; or

15 (2) substantially interferes with the free and
16 unrestricted right of the public to enter or leave the public beach
17 or traverse any part of the public beach.

18 SECTION 22. Section 5.008(b), Property Code, is amended to
19 read as follows:

20 (b) The notice must be executed and must, at a minimum, read
21 substantially similar to the following:

22 SELLER'S DISCLOSURE NOTICE
23 CONCERNING THE PROPERTY AT _____
24 (Street Address and City)

25 THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF
26 THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY
27 SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
28 WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT
29 A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

1 Seller ___ is ___ is not occupying the Property.

2 If unoccupied, how long since Seller has occupied the Property?

3 _____

4 1. The Property has the items checked below:

5 Write Yes (Y), No (N), or Unknown (U).

- | | | | |
|----|---|--|--|
| 6 | <input type="checkbox"/> Range | <input type="checkbox"/> Oven | <input type="checkbox"/> Microwave |
| 7 | <input type="checkbox"/> Dishwasher | <input type="checkbox"/> Trash Compactor | <input type="checkbox"/> Disposal |
| 8 | <input type="checkbox"/> Washer/Dryer | <input type="checkbox"/> Window | <input type="checkbox"/> Rain Gutters |
| 9 | <input type="checkbox"/> Hookups | <input type="checkbox"/> Screens | |
| 10 | <input type="checkbox"/> Security | <input type="checkbox"/> Fire Detection | <input type="checkbox"/> Intercom |
| 11 | <input type="checkbox"/> System | <input type="checkbox"/> Equipment | <input type="checkbox"/> System |
| 12 | <input type="checkbox"/> TV Antenna | <input type="checkbox"/> Cable TV | <input type="checkbox"/> Satellite |
| 13 | | <input type="checkbox"/> Wiring | <input type="checkbox"/> Dish |
| 14 | <input type="checkbox"/> Ceiling Fan(s) | <input type="checkbox"/> Attic Fan(s) | <input type="checkbox"/> Exhaust |
| 15 | | | <input type="checkbox"/> Fan(s) |
| 16 | <input type="checkbox"/> Central A/C | <input type="checkbox"/> Central Heating | <input type="checkbox"/> Wall/Window Air |
| 17 | | | <input type="checkbox"/> Conditioning |
| 18 | <input type="checkbox"/> Plumbing System | <input type="checkbox"/> Septic System | <input type="checkbox"/> Public Sewer |
| 19 | | | <input type="checkbox"/> System |
| 20 | <input type="checkbox"/> Patio/Decking | <input type="checkbox"/> Outdoor Grill | <input type="checkbox"/> Fences |
| 21 | <input type="checkbox"/> Pool | <input type="checkbox"/> Sauna | <input type="checkbox"/> Spa |
| 22 | | | <input type="checkbox"/> Hot Tub |
| 23 | <input type="checkbox"/> Pool Equipment | <input type="checkbox"/> Pool Heater | <input type="checkbox"/> Automatic Lawn |
| 24 | | | <input type="checkbox"/> Sprinkler |
| 25 | | | <input type="checkbox"/> System |
| 26 | <input type="checkbox"/> Fireplace(s) & | | <input type="checkbox"/> Fireplace(s) & |
| 27 | <input type="checkbox"/> Chimney | | <input type="checkbox"/> Chimney |
| 28 | <input type="checkbox"/> (Woodburning) | | <input type="checkbox"/> (Mock) |
| 29 | <input type="checkbox"/> Gas Lines | | <input type="checkbox"/> Gas Fixtures |
| 30 | <input type="checkbox"/> (Nat./LP) | | |
| 31 | Garage: <input type="checkbox"/> Attached | <input type="checkbox"/> Not Attached | <input type="checkbox"/> Carport |
| 32 | Garage Door Opener(s): | <input type="checkbox"/> Electronic | <input type="checkbox"/> Control(s) |
| 33 | Water Heater: | <input type="checkbox"/> Gas | <input type="checkbox"/> Electric |
| 34 | Water Supply: <input type="checkbox"/> City | <input type="checkbox"/> Well <input type="checkbox"/> MUD | <input type="checkbox"/> Co-op |
| 35 | Roof Type: _____ | | Age: _____(approx) |

36 Are you (Seller) aware of any of the above items that are not in
37 working condition, that have known defects, or that are in need of
38 repair? Yes No Unknown.

39 If yes, then describe. (Attach additional sheets if necessary):

40 _____

41 _____

42 2. Are you (Seller) aware of any known defect/malfunctions in any

1 of the following?

2 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- 3 Interior Walls Ceilings Floors
- 4 Exterior Walls Doors Windows
- 5 Roof Foundation/
6 Slab(s) Basement
- 7 Walls/Fences Driveways Sidewalks
- 8 Plumbing/Sewers/
9 Septics Electrical Systems Lighting Fixtures

10 Other Structural Components (Describe): _____

11 _____

12 _____

13 If the answer to any of the above is yes, explain. (Attach
14 additional sheets if necessary): _____

15 _____

16 _____

17 3. Are you (Seller) aware of any of the following conditions?

18 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- 19 Active Termites Previous Structural
20 (includes or Roof Repair
- 21 wood-destroying insects)
- 22 Termite or Wood Rot Hazardous or Toxic Waste
- 23 Needing Repair
- 24 Previous Termite Damage Asbestos Components
- 25 Previous Termite Urea formaldehyde
- 26 Treatment Insulation
- 27 Previous Flooding Radon Gas
- 28 Improper Drainage Lead Based Paint
- 29 Water Penetration Aluminum Wiring
- 30 Located in 100-Year Previous Fires
- 31 Floodplain
- 32 Present Flood Insurance Unplatted Easements
- 33 Coverage
- 34 Landfill, Settling, Soil Subsurface
- 35 Movement, Fault Lines Structure or Pits

36 If the answer to any of the above is yes, explain. (Attach
37 additional sheets if necessary): _____

38 _____

1 _____
2 4. Are you (Seller) aware of any item, equipment, or system in or
3 on the property that is in need of repair? Yes (if you are
4 aware) No (if you are not aware). If yes, explain (attach
5 additional sheets as necessary). _____

6 5. Are you (Seller) aware of any of the following?
7 Write Yes (Y) if you aware, write No (N) if you are not aware.

- 8 Room additions, structural modifications, or other
- 9 alterations or repairs made without necessary permits or not
- 10 in compliance with building codes in effect at that time.
- 11 Homeowners' Association or maintenance fees or assessments.
- 12 Any "common area" (facilities such as pools, tennis courts,
- 13 walkways, or other areas) co-owned in undivided interest with
- 14 others.
- 15 Any notices of violations of deed restrictions of
- 16 governmental ordinances affecting the condition or use of the
- 17 Property.
- 18 Any lawsuits directly or indirectly affecting the Property.
- 19 Any condition on the Property which materially affects the
- 20 physical health or safety of an individual.

21 If the answer to any of the above is yes, explain. (Attach
22 additional sheets if necessary): _____

23 _____
24 _____

25 6. If the property is located in a coastal area that is seaward of
26 the Gulf Intracoastal Waterway or within 1,000 feet of the mean high
27 tide bordering the Gulf of Mexico, the property may be subject to
28 the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63,
29 Natural Resources Code, respectively) and a beachfront
30 construction certificate or dune protection permit may be required
31 for repairs or improvements. Contact the local government with
32 ordinance authority over construction adjacent to public beaches
33 for more information.

1 _____
2 Date Signature of Seller

3 The undersigned purchaser hereby acknowledges receipt of the
4 foregoing notice.

5 _____
6 Date Signature of Purchaser

7 SECTION 23. Not later than January 1, 2008, the
8 commissioner of the General Land Office shall adopt rules required
9 by Sections 61.011 and 63.121, Natural Resources Code, as amended
10 by this Act.

11 SECTION 24. Sections 33.014, 33.110(b), and 33.613, Natural
12 Resources Code, are repealed.

13 SECTION 25. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 2819 was passed by the House on April 12, 2007, by the following vote: Yeas 143, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2819 on May 23, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2819 on May 27, 2007, by the following vote: Yeas 147, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 2819

I certify that H.B. No. 2819 was passed by the Senate, with amendments, on May 21, 2007, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2819 on May 26, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor