

STATE OF ALABAMA)
COUNTY OF BALDWIN)

RESOLUTION #2015- 011

**ESTABLISHING BEACH AND DUNE PROTECTION AND MANAGEMENT
REGULATIONS FOR BALDWIN COUNTY, ALABAMA.**

WHEREAS, the Baldwin County Commission is committed to the effective management and protection of Baldwin County's beaches and dune resources as per Alabama Department of Environmental Management (ADEM) Admin Code R, 335-8-2.08 Construction and Other Activities on Gulf Front Beach and Dunes; and

WHEREAS, the health, safety and general welfare of Baldwin County, Alabama, and its economy is directly related to the health of the County's beach and dune resources, and the Baldwin County Commission desires to adopt this Beach and Dune Protection and Management Ordinance.

SECTION 1: DEFINITIONS

- a. "agency" means any unit, department, or office of federal, state or local government, including subdivisions thereof.
- b. "Alabama Coastal Area Management Program" or "ACAMP" (see definition of "management program").
- c. "beach" means a sandy shoreline area characterized by low relief, generally of gentle slope, and some vegetation. The beach extends from the waterline to a change in physiographic form such as a dune or bluff, a change in sediment type, such as clay from sand, and/or a change in vegetation type. Gulf beaches are those sand beaches of the mainland and islands in Alabama which are subjected to the direct wave action of the Gulf of Mexico. The upper limit of Gulf beaches is usually a transition from halophytic, succulent, prostrate plant forms such as Hydrocotyle bonariensis (pennywort), Cakile edentula (sea rocket), Iva imbricata (marsh or seashore elder), and Ipomoea stolonifera (seaside morning

glory) to a zone occupied by grasses, shrubs, and the same prostrate forms mentioned above.

- d. "construction control line" or "CCL" means the straight line segments formed by connecting plane coordinates (x = 339,869.380 feet; y = 82,413.826 feet) in the vicinity of monument BC-0 to (x = 343,833.777 feet; y = 82,946.329 feet) in the vicinity of monument BC-1 to (x = 344,439.935 feet; y = 83,027.749 feet) in the vicinity of monument BC-2 to (x = 345,229.900 feet; y = 83,267.806 feet) in the vicinity of monument BC-3 to (x = 346,070.573 feet; y = 83,318.732 feet) in the vicinity of monument BC-4 to (x = 347,947.400 feet; y = 83,542.163 feet) in the vicinity of monument BC-5 to (x = 353,678.481 feet; y = 84,097.590 feet) in the vicinity of monument BC-6 to (x = 358,262.949 feet; y = 84,424.908 feet) in the vicinity of monument BC-7 to (x = 361,952.301 feet; y = 84,532.314 feet) in the vicinity of monument BC-7A to (x = 367,652.468 feet; y = 84,352.329 feet) in the vicinity of monument BC-8 to (x = 370,294.079 feet; y = 84,232.401 feet) in the vicinity of monument BC-9 to (x = 370,337.309 feet; y = 84,095.345 feet) in the vicinity of monument BC-10 to (x = 372,723.136 feet; y = 84,013.940 feet) in the vicinity of monument BC-11 to (x = 374,515.213 feet; y = 84,209.778 feet) in the vicinity of monument BC-12 to (x = 381,454.710 feet; y = 83,545.945 feet) in the vicinity of monument BC-13 to (x = 382,099.449 feet; y = 83,460.299 feet) in the vicinity of monument BC-14 to (x = 384,804.496 feet; y = 83,494.181 feet) in the vicinity of monument BC-15 to (x = 388,949.030 feet; y = 83,361.769 feet) in the vicinity of monument BC-16 to (x = 394,023.606 feet; y = 83,282.288 feet) in the vicinity of monument BC-17 to (x = 394,115.430 feet; y = 83,209.569 feet) in the vicinity of monument BC-18 to (x = 396,624.613 feet; y = 83,299.904 feet) in the vicinity of monument BC-19;and

the straight line segments formed by connecting plane coordinates (x = 445,081.633 feet; y = 90,661.100 feet) in the vicinity of monument BC-20 to (x = 445,413.290 feet; y = 90,747.174 feet) in the vicinity of monument BC-21 to (x = 446,891.053; y = 90,727.783 feet) in the vicinity of monument BC-22 to (x = 447,623.180 feet; y = 90,791.160 feet) in the vicinity of monument BC-23 to (x =

448,325.619 feet; y = 90,757.219 feet) in the vicinity of monument BC-24 to (x = 449,391.117 feet; y = 90,946.878 feet) in the vicinity of monument BC-25 to (x = 449,929.915 feet; y = 91,035.782 feet) in the vicinity of monument BC-26 to (x = 451,612.654 feet; y = 91,469.061 feet) in the vicinity of monument BC-27 to (x = 452,665.982 feet; y = 91,901.813 feet) in the vicinity of monument BC-28 to (x = 454,188.522 feet; y = 92,349.654 feet) in the vicinity of monument BC-29 to (x = 455,478.358 feet; y = 92,701.191 feet) in the vicinity of monument BC-30 to (x = 456,856.032 feet; y = 92,874.036 feet) in the vicinity of monument BC-31 to (x = 461,865.947 feet; y = 94,391.131 feet) in the vicinity of monument BC-32 to (x = 463,992.195 feet; y = 94,935.555 feet) in the vicinity of monument BC-33 to (x = 466,038.578 feet; y = 95,534.410 feet) in the vicinity of monument BC-34 to (x = 466,816.191 feet; y = 95,695.196 feet) in the vicinity of monument BC-35 to (x = 467,195.619 feet; y = 95,898.951 feet) in the vicinity of monument BC-36 to (x = 469,282.178 feet; y = 96,648.946 feet) in the vicinity of monument BC-37 to (x = 475,472.539 feet; y = 98,380.947 feet) in the vicinity of monument BC-38 to (x = 476,304.695 feet; y = 98,579.846 feet) in the vicinity of monument BC-39 to (x = 476,948.092 feet; y = 98,722.141 feet) in the vicinity of monument BC-40 to (x = 479,249.115 feet; y = 99,050.021 feet) in the vicinity of monument BC-41 to (x = 479,434.293 feet; y = 99,057.019 feet) in the vicinity of monument BC-42 to (x = 479,907.870 feet; y = 99,097.293 feet) in the vicinity of monument BC-43 to (x = 480,904.364 feet; y = 99,236.552 feet) in the vicinity of monument BC-44 to (x = 488,825.140 feet; y = 100,844.567 feet) in the vicinity of monument BC-45 to (x = 489,712.334 feet; y = 101,001.701 feet) in the vicinity of monument BC-45A to (x = 491,026.916 feet; y = **101,322.132 feet**) in the vicinity of monument BC-46 to (x = 492,439.303 feet; y = 101,623.576 feet) in the vicinity of monument BC-47 to (x = 494,213.397 feet; y = 101,981.671 feet) in the vicinity of monument BC-48.

- e. All references to monument numbers in "d" above are noted for convenience only. All official submissions to the Department regarding the "construction control line" must be based upon official state plane coordinates as determined by a registered surveyor.
- f. "Department" means the Baldwin County Coastal Area Program
- g. "Department approval" means the approval of the Department or the issuance of any Department permit.
- h. "dune" (see definition of primary dune system).
- i. "dune walkover" means a raised walkway constructed for the purpose of protecting the beach and dune system between mean high tide and the construction control line from damage that may result from anticipated pedestrian traffic to the beach and which is no more than six feet in width, constructed without roof or walls, elevated at least one foot above the dune, and extends seaward of the seaward vegetation line.
- j. "endangered species" means any species, including subspecies and varieties, that are in danger of extinction throughout all or a significant portion of their range in Alabama. Endangered species are those whose prospects for survival are in immediate jeopardy and which must have help or extinction or extirpation from Alabama will probably follow. These species are defined by Code of Federal Regulations 50 CFR 17.11 and 17.12, January 1, 1989, as amended and Alabama Act No. 82-424.
- k. "existing structure" means a structure the construction of which was initiated prior to October 9, 1985, and for which all required state, local and federal authorizations were obtained prior to October 9, 1985.
- l. "footprint" means the ground area covered by a structure when viewed from the top or plan view.
- m. "habitable structure" means any structure which, by virtue of its design, size or appurtenances, is suitable for occupation as a residence on a temporary or permanent basis, or any similar structure used for commercial purposes.

- n. "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the State in accordance with the provisions of Chapter 7 of Title 9, Code of Alabama 1975, as amended, setting forth objectives, policies and standards to guide public and private users of lands and waters in the coastal area.
- o. "minor structure" means that subset of structures including, but not limited to, a deck, porch, platform, ramp, non-asphaltic parking area, sunshelter, gazebo, or other like object which is not habitable, including sand fences or dune walkovers constructed for the purpose of dune protection.
- p. "new structure" means any structure which is not an existing structure.
- q. "non-regulated use" means a use which is subject to the management program and which does not require a state permit or which is not required by federal law to be consistent with the management program and may have a significant impact on coastal resources. Non-regulated uses may include, but are not limited to construction on beaches and dunes, and other uses determined by the Department.
- r. "person" means any and all persons, natural or artificial, including but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, estate, or other legal entity or business organization or any state or local governmental entity and any successor of the foregoing.
- s. "primary dune system" means a ridge or series of ridges of unconsolidated and usually mobile sands lying landward of the upper limit of Gulf beaches which serves as the principal defense against storm wave attack. Vegetatively, this primary protective dune can be characterized by Uniola paniculata (sea oats), Spartina patens (saltmeadow cordgrass), Panicum amarulum (dune panicgrass), Distichlis spicata (saltgrass), Solidago pauciflosculosa (seaside goldenrod),

Hydrocotyle bonariensis (pennywort), and Ipomoea stolonifera (seaside morning glory).

- t. "significant impact" means the result of any activity carried out by a person which is known to have more than a negligible adverse effect on the coastal area.
- u. "structure" includes but is not limited to a motel, condominium, house, building, bulkhead, deck, pool, parking lot, gazebo or other object the whole or parts of which are arranged by human action including any substantial improvement to an existing structure. This does not include water, oil, gas, electricity, or sewage pipelines or conduits located beneath the surface of lands.
- v. "substantial improvement" means
 - 1. Any extension, enlargement, additions or expansion to any structure which increases the height or footprint of the structure and is subject to local building ordinances; or
 - 2. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the structure, either:
 - (i) before the repair, reconstruction or improvement is started; or
 - (ii) if the structure has been damaged and is being restored, before the damage occurred.
- w. "use" means any human or corporate activity or result therefrom.

SECTION 2: GENERAL PROVISIONS

Construction and Other Activities on Gulf Front Beaches and Dunes.

(1) No person shall remove primary dune or beach sands and/or vegetation or otherwise alter the primary dune system, construct any new structure, or make any substantial improvement to any existing structure, on, beneath or above the surface of any land located between mean high tide and the construction control line within the Baldwin County permitting jurisdiction.

(2) No person shall construct any new structure on, beneath or above the surface of any state owned lands located in the following areas within the Baldwin County permitting jurisdiction:

(a) between mean high tide and a line originating at plane coordinate (x = 339,562.58 feet; y = 83,758.99 feet) and extending South 77° 59' 16" West in Baldwin County;

(b) between mean high tide and Alabama Highway 180 between plane abscissas (x = 399,562.58 feet) and (x = 343,883.777 feet); and

(c) in Sections 2 and 3 of Township 4 South, Range 33 West (Tallahassee Meridian) in Baldwin County.

(3) (a) No person shall construct any new structure or make any substantial improvement to an existing structure, on, beneath or above the surface of any parcel of land owned by a person if any portion of such parcel is intersected by the construction control line and within the permitting jurisdiction of Baldwin County without first having obtained a permit therefore from the Department.

(b) A permit for construction of a new structure may be issued if the Department is satisfied that the proposed structure is not on, beneath or above the surface of any lands located between mean high tide and the construction control line. Dune walkovers may be permissible provided that the applicant notify the Department and request a review to determine if the use is subject to the permitting procedures of this ordinance.

(c) An application for a permit to construct a single family dwelling or duplex pursuant to this rule shall contain:

1. a legal description of the property on which the structure is proposed, as well as the street address;

2. an area map showing the location of the property and proposed structure in relation to roads and other recognized landmarks;

3. a survey of the property and site plan prepared by a duly licensed land surveyor of the State of Alabama showing the location of the

construction control line, as determined from the state plane coordinates, the distance from the nearest construction control line monument to the lot, and the location and dimensions of all proposed structures;

4. a certified copy of the deed, lease or other instrument under which the applicant claims title, possession or permission from the owner of the property to carry out the project;

5. an identification of the water supply source and wastewater disposal system; and

6. such other information as the Department may reasonably require to assure compliance with the Department's rules and regulations.

(d) An application for a permit to construct a motel, hotel, condominium, or planned multi-unit development shall contain:

1. all information required by Section 3 (3) (c).

2. an "Environmental Impact and Natural Hazards Study" which will include, at a minimum, the following:

(i) wave height study addressing the flood hazard and erosion potential at the project site using eroded beach profiles for pre and post developed conditions;

(ii) location and delineation of velocity zone; and

(iii) analysis of the project's potential to significantly increase the likelihood that damage will occur from floods, hurricanes, or storms.

3. a "Beach and Dune Enhancement Plan" which includes, at a minimum, the following:

(i) fence placed along the CCL prior to and during construction activities to prevent material and equipment seaward of the line;

(ii) dune walkovers designed to accommodate the anticipated pedestrian traffic from the completed project;

(iii) the placement of sand fences;

(iv) planting of suitable natural vegetation in areas devoid of vegetation; and

(v) a maintenance program for the sand fences and plantings.

(4) Bulkheads, retaining walls, or similar structures shall not be permissible on Gulf beaches or primary dunes unless it can be demonstrated that:

(a) the bulkhead or retaining wall is landward of the CCL and it is necessary to protect and insure the structural integrity of an existing or previously permitted structure; and

(b) there are no other feasible non-structural alternatives, including retreat; and

(c) the structure is in conformance with the County's current building codes.

(5) No person shall operate a motorized vehicle on the beach or primary dune system, except as may be provided by the provisions of this Administrative Code.

(6) Beach cleaning equipment and safety and law enforcement vehicles operating on flat beach sand may be permissible, provided it is demonstrated to the satisfaction of the Department that:

(a) the equipment will not be operated within the primary dune system;

(b) a route of ingress and egress has been designated and approved by the Department;

(c) beach and dune vegetation will not be impacted or destroyed; and

(d) the equipment will be operated only in areas specified by the Department or its contractor.

(7) Septic tanks and other on-site sewage disposal systems shall not be permitted.

(8) The Department has determined that the following activities conducted seaward of the construction control line are not subject to the ACAMP: the placement of items associated with daily recreational use that are of a temporary and removable nature, including but not limited to, chairs, umbrellas, volleyball and similar equipment,

provided the posts are not permanently installed in the ground, and provided these items are removed from the beach prior to major storm events.

SECTION 3: VARIANCES

(1) The Department may grant a variance from any requirement of this Ordinance where the applicant therefore has demonstrated to the satisfaction of the Department that application of the requirement would be unduly restrictive or constitute a taking of property without payment of full compensation in accordance with the Constitution of the State of Alabama or of the United States. Any variance granted pursuant to this Rule may impose conditions and requirements to effectuate to the maximum extent the object of the rule for which a variance is sought without being unduly restrictive or constituting a taking of property without payment of full compensation in accordance with the Constitution of the State of Alabama or of the United States.

(2) An application for a variance pursuant to this rule shall contain, at a minimum, the following information:

(a) a completed application form and any information required for the type of use for which the variance is being sought;

(b) a certified letter indicating specifically from which regulation(s) a variance is sought;

(c) a legal argument and documentation which demonstrates that failure by the Department to grant a variance would constitute a taking of property without just compensation;

(d) a certified copy of the deed or other instrument under which the applicant claims title or possession of the property upon which the project will be carried out;

(e) a demonstration that the project has been planned so as to minimize impacts on the beach and dune area for which the regulation, from which a variance is sought, was adopted and a demonstration that no alternative sites or means to accomplish the desired activity are available; and

(f) other information as the Department or the Baldwin County Commission may require.

SECTION 4: PUBLIC NOTICE AND HEARING

- (1) Prior to a decision on the issuance, modification or denial of any permit under this article, the Department shall publish a public notice of the proposed activity for the purpose of soliciting public comment thereon or shall require the applicant for the Department's permit to provide such notice in a manner prescribed by the Department. Said notice shall be published at least (15) days prior to issuance of the Department's decision.
- (2) The Department may provide an opportunity for a public hearing on a proposed activity if any person has satisfactorily demonstrated that a relevant and significant issue cannot be effectively or fully communicated to the department in writing or a significant public interest would be served thereby. Any public hearing provided shall be announced at least thirty days prior to the hearing date.
- (3) Public notice shall not be required for modifications, and permit extensions or renewals in which the impact is expected to be equal to or less than originally permitted. Editorial changes and permit name changes shall not be subject to the public notice requirements of this article.

SECTION 5: Appeals

Any person aggrieved by the Department's decision to issue, modify or deny any permits under this article may appeal such decision to the Department's Board of Adjustments as established by the County Commission.

BALDWIN COUNTY COMMISSION

Charles F. Gruber
CHARLES F. GRUBER
Chairman

10-7-14
DATE

ATTEST: [Signature]
County Administrator





DAVID A.Z. BREWER
County Administrator

10-7-2014

DATE