

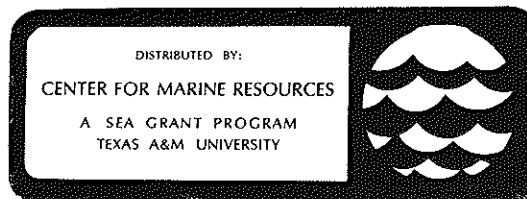
A Coastal Program For Texas



Senator A. R. Schwartz

Recommendations of the Chairman

To the Coastal Zone Committee





The Senate of The State of Texas

A. R. SCHWARTZ
GALVESTON, BRAZORIA, MATAGORDA, CALHOUN,
ARANSAS AND HARRIS COUNTIES

COMMITTEES:

CHAIRMAN: RULES
FINANCE
EDUCATION
ENVIRONMENTAL MATTERS
FEDERAL PROGRAMS & RELATIONS
NOMINATIONS
STATE DEPARTMENTS &
INSTITUTIONS

Lieutenant Governor Ben Barnes
Senate of the 62nd Legislature
Members of the Coastal Zone Study Committee
People of the Coastal Zone

Dear fellow citizens and colleagues:

The following report contains the proposals for preserving and protecting the resources of the coastal zone which my staff and I have developed after months of investigation, testimony, and debate.

This draft does not represent the final research report of the committee, which will be presented, along with proposed legislation, to the 63rd Legislature in January, 1973. Instead, the purpose of this report is to acquaint the reader with the major problems which affect the coastal zone. Each of these issues is summarized briefly, and is followed by a declaration of what state policy should be and how this policy might be implemented.

By publishing this report, we hope to stimulate comments and suggestions from the people of the coastal zone. These proposals must be acted upon by the full committee before they are presented to the Legislature, and your response to the recommendations in this report will play a large part in determining whether the committee approves these proposals for submission to the 63rd Legislature.

The report and recommendations cover the following topics:

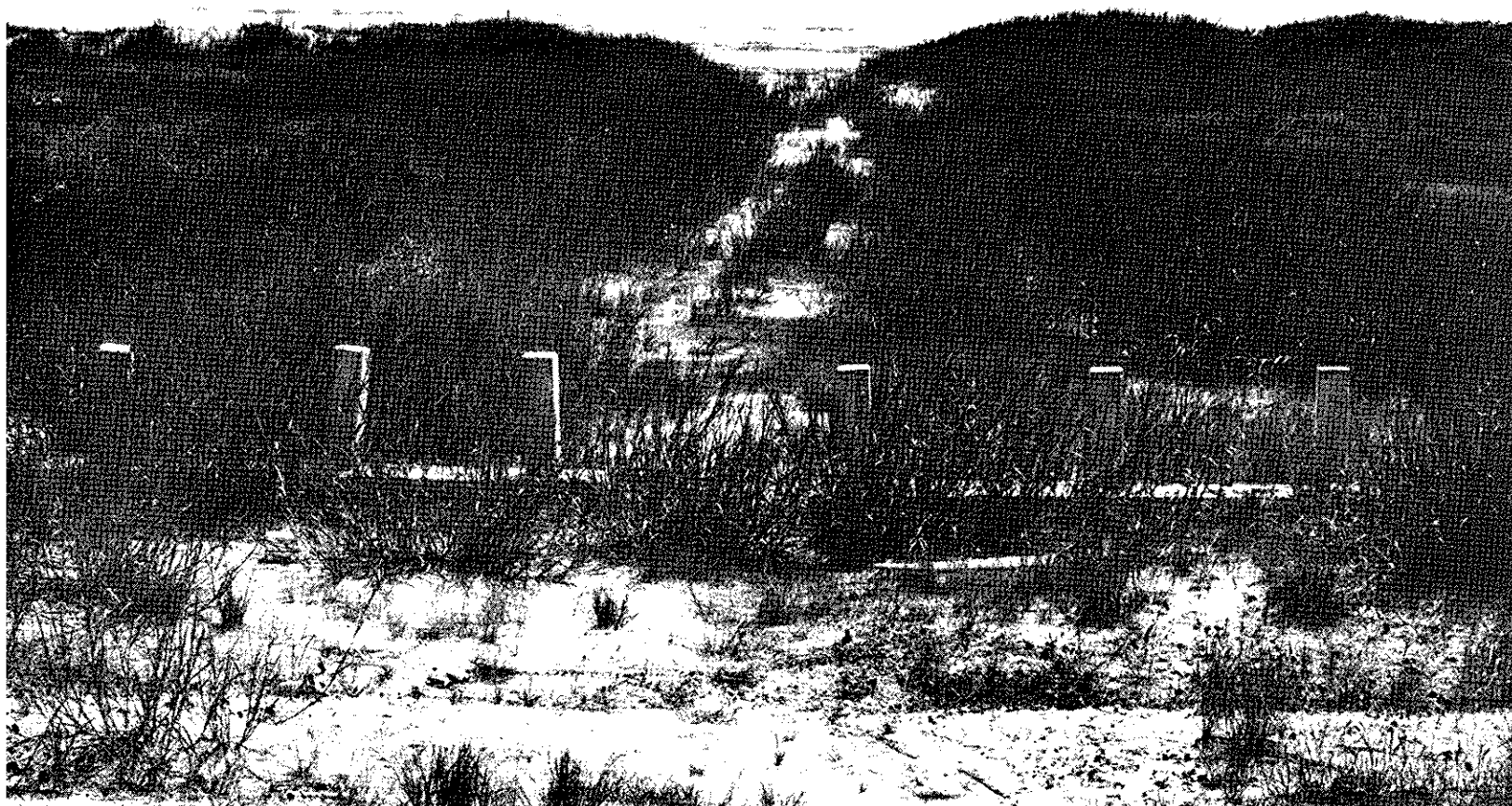
History of State Coastal Policy
The Beaches: Public Rights
The Beaches: Prior Legislation
Parks and Recreation
Problems of State-Owned Land
Protecting the Coastal Environment
Hurricane and Flood Protection
Government and Administration

I hope that the members of the public and the members of the committee will give each of these problems the careful consideration they deserve, so that we may act together to preserve the unique heritage of the coastal zone.

Sincerely,

A handwritten signature in dark ink, appearing to read "A. R. Schwartz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Senator A. R. Schwartz, Chairman
Coastal Zone Study Committee



History of State Coastal Policy

EARLY STATE POLICY

The general principles that have guided Texas coastal zone policy can be traced back to medieval England. The early common law recognized that the seashore, though owned by the king, was held in trust for the people, and only Parliament – the legislative branch – could grant it to private individuals. The Republic of Texas did not adopt the common law until 1840 but Spanish law also recognized the public nature of the seashore, and when the Republic began selling land in 1837 it issued no patents for lands covered by the ebb and flow of the tides except through the Legislature. One such Legislative grant of tidal flats was contested and reached the Texas Supreme Court, which upheld the right of the Legislature to grant the seashore, but affirmed the traditional common law principle that the Land Office could not sell these lands without authorization by the Legislature. Following this decision, various land commissioners urged the Legislature to establish some means of managing these State-owned lands, but the pleas fell on deaf ears.

ECONOMIC DEVELOPMENT

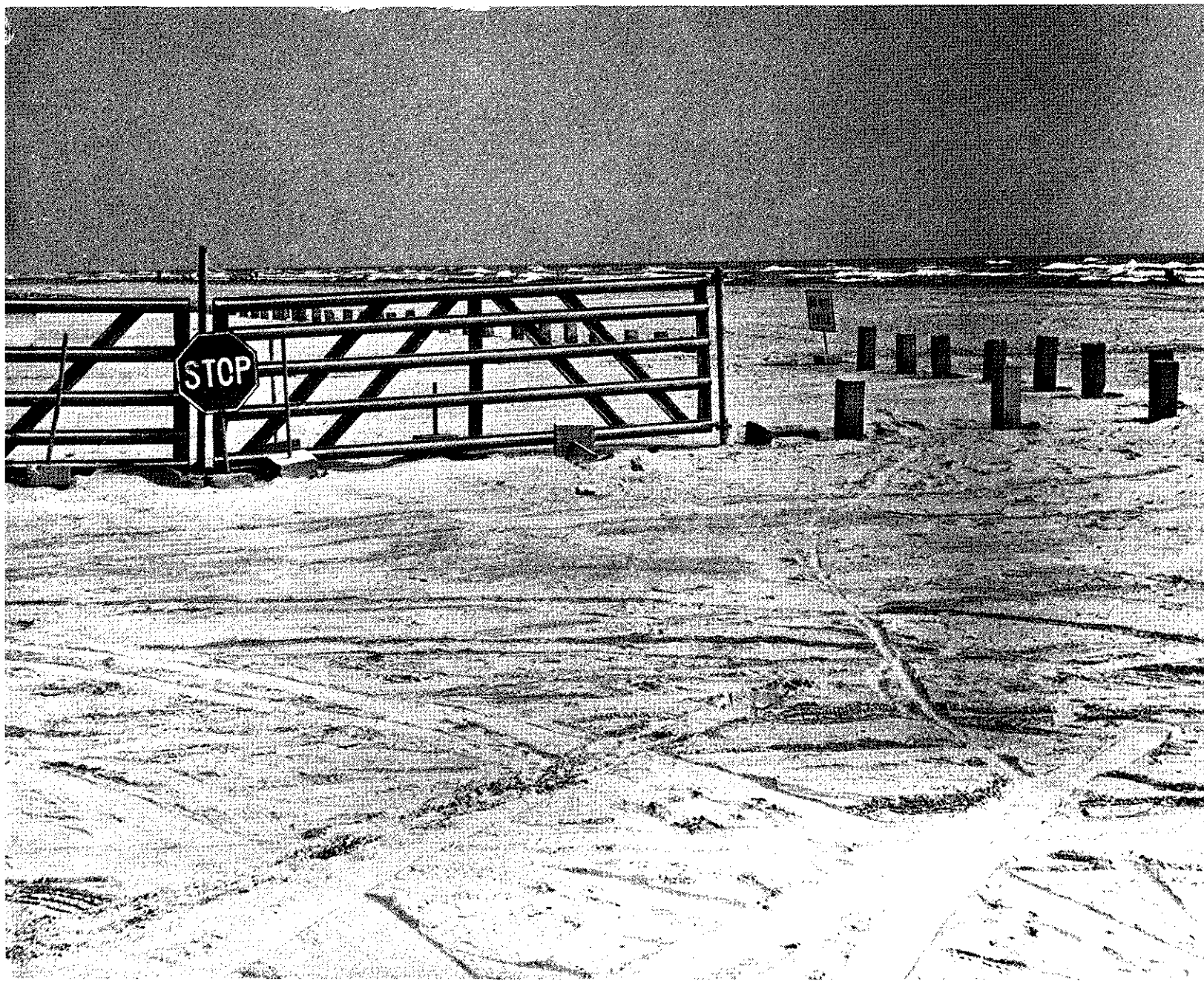
Not until oil was discovered in the coastal zone did the Legislature begin to take an active interest in coastal zone legislation, although it had given the old Game, Fish, and Oyster Commission the power to regulate the bay bottoms in 1911. By 1917, however, the economic potential of the coastal zone was rapidly becoming apparent, and during the next quarter century, the Legislature passed a series of laws designed to stimulate economic development in the area. Specifically, State-owned lands were opened to mineral production; pipeline and cable routes over State-owned lands were authorized; these lands could be leased for power substations; and quasi-public corporations could acquire these lands to build docks, causeways, and toll roads. By 1942, more than 30 laws had been passed which opened State-owned lands to public and private interests desiring leases to facilitate economic activity.

THE GROWTH OF PUBLIC AWARENESS

Public interest in the coastal zone as a public resource began to grow in the late 1950's. The Legislature requested the Texas Legislative Council to undertake a four-year study of State-owned submerged lands and islands in the coastal zone beginning in 1957. The study was designed to recommend a means of stimulating economic development of these State-owned lands. What really shocked the Legislature and the people of Texas into action, however, was a decision of the Texas Supreme Court in 1959. The decision overturned the general assumption that public ownership on most of the Texas shoreline reached inland as far as the line of vegetation; the public and the Legislature feared that public access to public waters might be eliminated by the construction of barriers down to the waterline. To confirm their fears, barricades appeared virtually overnight on Galveston beaches. The Legislature responded in a special session by passing the Open Beaches Act, a declaration of State policy recognizing the right of the public to gain access to the State-owned beach across the privately-owned portion of the beach. Two years later came the Reagan-de la Garza Act, which provided upland owners with a means of acquiring adjacent State-owned land under bays and inlets for industrial purposes.

THE BEACH COMMITTEE

Before these laws were a decade old, it was apparent that additional legislation was needed to protect public rights and public resources in the Texas coastal zone. The Open Beaches Act was little more than a declaration of State policy regarding public access, and was not intended to cope with some of the major problems involving public use of the beach. Beach littering, unregulated use of the beach for commercial purposes, the removal of sand from the beach for commercial purposes, the failure of local and State governments to provide park facilities on the beach, ingenious methods of restricting the public easement such as construction of seawalls or artificial changes in the vegetation line — all of these were problems which had to be solved if the public was going to be able to enjoy its right of access. In 1967 Senator A. R. Schwartz authored a resolution creating a Beach Study Committee, which dealt with these problems for the next two years, and recommended six bills which became law in 1969. With Senator Schwartz serving as chairman, the Beach Committee broadened its area of study to include the entire coastal zone, and recommended that the Legislature authorize a four year inventory of coastal resources. This also became law, and is scheduled for completion in December, 1972. In 1971, Senator Schwartz reconstituted the committee as the Coastal Zone Study Committee, which will make recommendations to the Legislature in 1973 concerning the subjects discussed in this report.



The Beaches:

Public Rights

THE NATURE OF PUBLIC RIGHTS

THE PROBLEM:

The Open Beaches Act, which is the cornerstone of State policy regarding public rights on the beaches, declared that the public has the free and unrestricted right of access to the public beaches bordering on the Gulf of Mexico. But what makes a beach area public? Contrary to popular belief, most of the beach is privately owned, including the entire area between the line of mean high tide and the line of vegetation. Only that portion of the beach covered by the ebb and flow of the tide is State-owned. The declaration of policy in the Open Beaches Act is based not on public ownership, but on legal rights established through long public use. In order to guarantee public rights for any particular beach area, the State has to be able to prove that the public has acquired an easement either with the consent of the landowner (known as "dedication") or through long continued adverse use (known as "prescription"). Other states have rejected these theories in favor of the ancient English doctrine of "custom," which is a broader legal principle. Under Texas law, a new lawsuit and new proof is necessary for every different parcel of beach; under the law in Oregon, for example, the public's claim to the entire beach was settled in one lawsuit.

THE GOAL:

The beach should be regarded as a whole, rather than as the sum of its parts, and the public should be able to prove its rights by reference to broad historical facts rather than by having to win repeated court tests involving narrow and obscure historical data.

RECOMMENDATION:

The Committee recommends that the Open Beaches Act be amended to reflect the Legislature's approval of the doctrine of custom as a viable source of public rights on the beaches of Texas.

THE EXTENT OF PUBLIC RIGHTS

THE PROBLEM:

The Open Beaches Act recognizes that the public may acquire rights over the entire beach area up to the line of vegetation. In defining "line of vegetation," however, the Act declares that where the vegetation line is located more than 200 feet from the line of mean low tide, the 200 foot line should constitute the landward boundary of the area *presumed to be* subject to public easement until final court adjudication finds otherwise. Landowners and developers have seized on this language to justify excluding the public from the beach area between the 200 foot line and the line of vegetation, sometimes through permanent means such as construction of a seawall or erection of a bulkhead creating an artificial vegetation line.

THE GOAL:

Private owners must not be permitted to destroy or barricade any beach area which may be subject to a public easement. The landowner should have the burden of proving in court that the public has no claim to a portion of the beach, and the public should be entitled to rely on a State policy that preserves the entire beach area for public use and enjoyment.

RECOMMENDATION:

The Committee recommends that all references to the 200 foot line be eliminated from the Open Beaches Act to avoid any confusion over the extent of public rights on Texas beaches.

PUBLIC RIGHTS ON UNSTABLE BEACHES

- THE PROBLEM:** Public rights on Texas beaches depend on facts which must be proved in court. The only case involving public rights which has reached the appellate level found in favor of the public under two theories: the beach area had been "dedicated" to the public by previous private owners, and in any event, the public had established its claim through long continued use, a process known as "prescription." But suppose there has been erosion of the shoreline and the line of vegetation. Suppose the area originally subject to public rights is now under water, and the public is now using beaches which were once behind the vegetation line. Are public rights washed away by the eroding sand? This is exactly what landowners on west Galveston Island are now claiming in a lawsuit which finds the State trying to establish public rights on those beaches for the second time in 12 years.
- THE GOAL:** The public should be protected against loss of its easement due to a change of location of the beach, either through erosion or accretion.
- RECOMMENDATION:** The Committee recommends that the Open Beaches Act be amended to include in the declaration of State policy recognition of the English legal principle that public rights on the beaches follow the changing shoreline. This doctrine of a "rolling" or "shifting" easement was followed by a Galveston trial court but was never appealed.

TRAFFIC REGULATION

- THE PROBLEM:** The Open Beaches Act authorizes cities and counties to regulate vehicular traffic on the beaches in the interest of safety. Developers of beachfront property have asked governing bodies to utilize this power to prohibit vehicles from the beaches, ostensibly for safety reasons, but inevitably with the unstated purpose of creating what amounts to a private beach. Beaches have been closed by governmental action inside the Galveston city limits and in Cameron County, and other requests have been rejected by Galveston and Nueces counties. There are no safeguards in the Act to guarantee public access against this public action for private benefit.
- THE GOAL:** Cities and counties should utilize their regulatory powers in such a manner that public safety is guaranteed without interfering with public rights of access to, and use and enjoyment of, the public beaches of Texas.
- RECOMMENDATION:** The Committee recommends that the Open Beaches Act be amended to provide that the beach in front of any subdivision development or hotel may not be closed to traffic unless the land on the beach is given in fee to the city or county having jurisdiction and the public is provided with adequate parking and access to the publicly owned beach.



The Beaches:

Prior Legislation

BEACH CLEANING AND MAINTENANCE

THE PROBLEM:

The beaches of Texas are used and enjoyed by citizens from all portions of the State and attract visitors from many other states. The seashore is therefore a recreational resource which benefits the entire State. Yet prior to 1969, the entire burden of costly clean-up operations fell to local governments, which did not have adequate financial resources to perform necessary maintenance. Acting upon a recommendation of the Beach Study Committee, the Legislature that year instituted a program of State matching funds for public beach maintenance.

THE GOAL:

State matching funds for beach cleaning should be available in whatever amounts are necessary to keep the beaches clean. The law should be written in a manner which provides maximum flexibility to meet all maintenance contingencies, including emergencies and enforcement.

RECOMMENDATION:

The Committee recommends that the \$50,000 ceiling for matching funds available to any one city or county be removed and that funds be appropriated as the Parks and Wildlife Department determines they are needed; that the State share be increased from one-half to two-thirds; that "beach maintenance" be defined to include the operation of beach patrols; and that a portion of the funds be reserved for emergencies such as oil spills and other contingencies.

COMMERCIAL ACTIVITY ON THE BEACH

THE PROBLEM:

Before the Legislature enacted the Beach Committee proposals regulating businesses operating on public beaches, there was nothing to prevent individuals from erecting permanent structures on the beach for commercial purposes. These interfered with the public easement and essentially destroyed an area of the beach as a recreation site. The Beach Committee recommendation limited commercial activity on the beach to mobile businesses which traverse the beach while doing business, allowing the public to obtain desired commodities, but still preserving the beach primarily for recreational use. Unfortunately, the Act applied only to counties, and did not give the Parks and Wildlife Department broad authority to enact rules and regulations to carry out the purposes of the Act.

THE GOAL:

The beach should be regarded as a recreational park, even though it is privately owned, and commercial activity should be secondary to public use. No distinctions should be made between beaches under city or county jurisdiction.

RECOMMENDATION:

The Committee recommends that the Parks and Wildlife Department be authorized to make rules and regulations to carry out the policy of regulating commercial activity on the beaches, and that these rules and regulations apply equally to beaches inside and outside city limits.

EXCAVATIONS OF SAND

THE PROBLEM:

Beach erosion is a serious problem in the coastal zone. One activity which the Beach Committee found contributed heavily to beach erosion was unregulated excavation of sand from or near the beach. Usually sand was removed by private persons who then sold it commercially, but occasionally local governments contracted for sand removal themselves. Equally damaging were large excavation sites located behind the vegetation line, but close enough to the beach that heavy rains caused a temporary "washout," or a channel cut through to the surf. There was even some fear that narrow peninsulas or islands could be severed permanently if excavations continued unchecked. The Beach Committee recommendation that counties be allowed to regulate removal of sand near the beach was adopted by the Legislature. Cities were not included in the Act because they already had the necessary power to regulate sand removal – but the City of Galveston, through its unwise authorization of sand removal from beaches inside the city limits, has demonstrated the need for cities to be subject to State-imposed limitations.

THE GOAL:

The right of the public to use the beaches should be paramount. Since beach erosion directly threatens this right belonging to the public, no sand removal should be permitted which might destroy any public beach.

RECOMMENDATION:

Cities should be subject to the same restrictions as counties regarding the removal of sand from beaches within their jurisdiction.

MORATORIUM ON LAND SALES

THE PROBLEM:

The State owns approximately 1.5 million acres of land in the coastal zone, most of it either under or surrounded by the waters of bays, lakes, inlets, and lagoons. Although private individuals generally cannot purchase these submerged lands and islands, various statutory provisions have authorized sale or lease of these lands for certain economic purposes. Navigation districts have virtually unlimited power to buy State-owned submerged lands, and upland owners may lease submerged lands for industrial purposes under the Reagan-de la Garza Act. When the Interagency Natural Resources Council began its four year inventory of coastal resources in 1969, little was known about the importance or potential of these State-owned lands. The Beach Committee proposed, and the Legislature enacted, a moratorium on sales and leases during the period of the study to insure that lands found to be valuable would still be under State control upon the completion of the inventory. The ban on sales and leases are scheduled to be lifted no later than May, 1973.

THE GOAL:

The findings of the coastal study should be used to determine which State-owned lands are most suitable for industrial, commercial, and residential development, and which lands should be preserved for recreational use or environmental protection. A State land use management program for the coastal zone would then insure protection for ecologically critical areas, while allowing development on State-owned lands which will tolerate it.

RECOMMENDATION:

The Committee recommends that the moratorium be extended at the earliest possible date to remain in force until land use management in the coastal zone becomes a reality.



Parks and Recreation

EARLY STATE PARKS

State efforts to develop the coastal zone as a recreational area could hardly be described as ambitious prior to 1970. The Beach Committee found in 1968 that less than one thousand acres of the coastal zone could be described as usable park land. One State park was wholly inaccessible except by boat. Another suffered the mild handicap that it was underwater much of the time – not by accident, but by design. (The Brazoria County coastline between mean high tide and mean low tide is designated as a State park.) Two other State parks were actually little more than abandoned causeways used as fishing piers. The only true park located on the Gulf shoreline had no recreational facilities and was designated as a scenic, rather than recreational, site. Only at Goose Island, near the Aransas National Wildlife Refuge, was there a major recreational attraction accessible to the public, with the necessary sanitary, camping, and water oriented facilities that are normally associated with a coastal park.

RECENT ACQUISITIONS

The Parks and Wildlife Department, acting on its own initiative and at the urging of the Beach Committee, has acquired or is in the process of obtaining three major park sites bordering on the Gulf of Mexico. One is the Galveston State Park, a two thousand acre tract on west Galveston Island, which will be developed for heavy recreational use on the beachfront, but maintained in its natural state in the interior. A second site which has apparently cleared the last hurdle in a long series of legal and political obstacles will be located on Mustang Island near Corpus Christi. This spectacular acquisition includes extensive beach frontage and several tiers of dunes in the interior, plus the ever present coastal marsh. Finally, the latest acquisition is the McFaddin Ranch State Park, situated on the upper Texas coast below Port Arthur in Jefferson County. It has a six mile Gulf frontage, although the upper three mile stretch is mud rather than beach. But its most spectacular asset is its marshy interior, which offers a habitat for several rare and endangered species, plus nesting grounds for numerous birds. More than either of the other two major State parks, it is an ecosystem in itself, a slice of the coastal zone forever preserved in its natural environment.

LOCAL RECREATIONAL FACILITIES

The Committee surveyed the number and quality of county and city parks along the Gulf shoreline and found that some areas were well ahead of the State's pace in providing coastal recreation, while others lagged far behind. Nueces and Cameron Counties, for example, each have three county parks on the beachfront. Other large counties – Jefferson, Galveston, and Brazoria – have a less enviable record. Jefferson has no beach park at all, but has far less demand than either Galveston or Brazoria, which serve the populous Houston metropolitan area. Galveston does have a fine city park at Stewart Beach, and the county has plans for a series of small parks on the west Galveston Island beach to be developed under the beach park board concept recommended by the Beach Committee in 1969. Brazoria County had its lease expire for a county park at Bryan Beach, and has substituted a far smaller tract that is not really adequate. Nevertheless, in most areas local park development is keeping pace with or is actually ahead of State efforts.

PADRE ISLAND NATIONAL SEASHORE

No discussion of recreational facilities along the Gulf Coast would be complete without reference to the Padre Island National Seashore, which incorporates a continuous beach frontage of more than 80 miles. Plans call for heavy recreational development and use at both the southern and northern ends of the park, but the wild interior is to remain isolated and undeveloped. No roads will reach into the center of the park, and the only access will be by four-wheel drive vehicles, on park buses, or on foot. The park is an appropriate means of preserving the fascinating history and legend of the island, in addition to its matchless beaches and scenery.

FUTURE PARK DEVELOPMENT

- THE PROBLEM:** With the development of three coastal areas as major beach park sites, the Parks and Wildlife Department has made great strides toward providing needed recreational facilities on the Gulf Coast. The new parks are strategically located on the upper coast (McFaddin Ranch), the Middle Coast (Galveston) and the lower coast (Mustang Island), supplemented by an older park at Brazos Island near the mouth of the Rio Grande. But a major park is still badly needed in the Freeport area. In addition, all major parks should be supplemented by a series of smaller satellite parks designed for beach recreation only. The Parks and Wildlife Department should immediately start acquiring these "pocket park" sites in areas of heavy population concentrations.
- THE GOAL:** Major State parks which offer beach recreation and preserve samples of the coastal environment should be established on every beach area subject to high density public use. Smaller pocket parks should be situated at intervals along the remainder of the coastline, so that adequate recreational and sanitary facilities are readily available to members of the public wherever they might choose to enjoy Texas Gulf beaches.
- RECOMMENDATION:** The Committee recommends that the Parks and Wildlife Department establish a major State beach park in Brazoria County, and that the Department thereafter acquire and develop pocket park sites in areas of heavy use. In addition, the Legislature should encourage local park development by allowing counties to regulate park use and enforce these regulations with county park rangers.



Problems of State - Owned Land

ENCROACHEMENTS ON STATE-OWNED LAND

- THE PROBLEM:** The State is faced with three different problems involving private encroachment on its property in the coastal zone. First, and easiest to deal with, squatters have built shacks on islands and in the water, claiming them as their own. Not only do they create sanitary and navigation hazards, but also they exclude the remainder of the public from these islands. Second, persons whose property fronts on coastal waters have built piers and docks, claiming the ancient riparian right of an owner of waterfront property to build such structures. The State has no means of regulating or controlling the location or size of these structures. Third, and most serious, the Land Office is currently embroiled in a number of controversies with coastal landowners who claim private ownership of salt water lakes and tributaries. In order to win these disputes, the State must convince hostile juries in small counties that its view of the evidence is correct. This has proved to be an overwhelming burden in the past.
- THE GOAL:** State-owned land is held in trust for the use and benefit of all the people, and any private use without authorization by the Legislature should be speedily halted.
- RECOMMENDATION:** The Committee recommends (1) that squatters be phased out over a period of five years, beginning with critical environmental areas such as the vicinity of the Aransas National Wildlife Refuge; (2) that the Legislature recognize the basic riparian right of waterfront landowners to build piers and docks, and establish a system of permits to regulate their location and size; (3) that the problem of hostile juries be solved by establishing venue in the district court of Travis County for any lawsuit involving the State's claim of ownership of land.

MINERAL LEASES

- THE PROBLEM:** State-owned submerged lands are rich in oil, gas, and other minerals. Emphasis in the past has been placed on economic development of these resources, with protection of the estuarine environment having secondary standing at best. Recently, however, the General Land Office has succeeded in placing environmental restrictions in oil and gas leases for coastal waters. The Land Office is still hampered, however, by conflicts of jurisdiction with the Railroad Commission, which regulates all matters involving drilling and production of oil and gas, and by an insufficient number of field personnel who inspect lessees to insure compliance with the restrictions in the lease.
- THE GOAL:** The production of minerals from State-owned land should be carried out in a manner consistent with maintaining environmental quality.
- RECOMMENDATION:** The Committee recommends (1) that the Land Commissioner be authorized to regulate all aspects of drilling and production of oil and gas from State-owned land, with the Railroad Commission to establish minimum standards; (2) that the Land Office tighten environmental safeguards on existing leases, and that the Legislature authorize the Land Office to employ additional personnel to enforce these restrictions; (3) that the Land Office should establish sanctuaries in environmentally sensitive areas and near heavily used public beaches where no oil and gas production would be allowed in the water because of the danger from pollution.

THE REAGAN-DE LA GARZA ACT

- THE PROBLEM:** In 1961 the Legislature provided a mechanism through which an upland owner could lease State-owned land adjacent to his property for industrial purposes. Supporters touted this law as establishing a submerged lands management program; opponents predicted a giveaway of State-owned land because the primary thrust of the act was economic benefit rather than environmental protection. The law actually proved to be ineffective because of the industrial purposes limitation; only three leases were granted in the eight years before sales were suspended by the coastal moratorium in 1969.
- THE GOAL:** State-owned submerged lands should be available for lease by the upland owner for a variety of purposes, so long as the proposed use does not interfere with or disturb critical environmental areas.
- RECOMMENDATION:** The Committee recommends that the Reagan-de la Garza Act be repealed, and that a new leasing system be established based on land use planning in the coastal zone.

NAVIGATION DISTRICTS

THE PROBLEM:

Navigation districts are political subdivisions of the State, but in some ways they are more powerful than the State itself. No private individual may purchase submerged lands from the State without a special act of the Legislature, but a navigation district can purchase unlimited amounts at \$1 per acre merely by applying to the Land Commissioner, who has no authority to refuse or place any conditions on the use of the submerged lands. Unlike the State, navigation districts may sell these submerged lands to private individuals without restriction merely by declaring them surplus. Theoretically, the entire 1.5 million acres of the coastal zone now owned by the State could be bought by various navigation districts and resold to private groups to be filled and developed.

THE GOAL:

Navigation districts should have sufficient powers of acquisition of State-owned lands to promote marine commerce, but they should not have such unlimited powers as would allow them to ignore State policy that State-owned submerged lands are held in trust for all the people.

RECOMMENDATION:

The Committee recommends (1) that the Texas Water Code be amended to allow navigation districts to lease, rather than purchase, State-owned land, and that the Land Commissioner be given the authority to refuse such leases for good cause, or to impose such restrictions on the use of the property as environmental considerations may dictate; (2) that navigation districts be limited to leasing, rather than selling, surplus submerged lands, and that such leases be limited to navigation purposes approved by the Land Commissioner; and that the Commissioner be authorized to recover submerged lands not being used for navigation purposes by paying the original purchase price of \$1 per acre.

SPOIL DISPOSAL

- THE PROBLEM:** The placement of spoil produced by dredging operations may be crucial to the environmental balance in an estuary. Spoil may contain toxic material which can pollute a bay, or it may be placed in such a manner that it will destroy productive bay bottom or interfere with water circulation patterns. Unfortunately, even though spoil is usually placed on State-owned bay bottom, the State's power to manage spoil disposal is limited by federal supremacy in matters involving navigation. The State's ability to influence federal decisions on spoil disposal sites and methods is hampered by the lack of a unified State policy.
- THE GOAL:** Spoil should be located onshore wherever possible, and where this is not feasible, the State should recommend (for federal projects) or specify (for nonfederal projects) methods and sites which will not disrupt the environment of an estuary.
- RECOMMENDATION:** The Committee recommends (1) that the Legislature establish State spoil management guidelines in a resolution to be forwarded to appropriate federal agencies; (2) that State responsibility in the area of spoil management should be placed with one agency, preferably the Parks and Wildlife Department, which must approve all nonfederal disposal sites and which will make recommendations to the federal government on all federal projects; (3) that the Legislature should attempt to preserve the bay bottom by authorizing the General Land Office to acquire onshore sites for spoil disposal.



The Coastal Environment

WETLANDS PROTECTION

THE PROBLEM:

The coastal wetlands – marshes, mud flats, and grass flats – are as important to the environment of the coastal zone as the more noticeable features such as bays and estuaries. Wetlands are a nesting ground for birds, a natural habitat for other wildlife, and breeding grounds for much of the marine life which populates the Texas coastal zone. If the wetlands are destroyed, the productivity of the coastal zone will be greatly diminished if not eliminated, for the wetlands are the essential source of organic material for the water bodies they surround. Yet only a few wetlands are owned by the State; most are not under tidal waters and are privately owned. There is no law which restricts the use a private owner can make of his wetlands; indeed, the Texas constitution suggests that the filling and reclamation of wetlands is to the advantage of the people of Texas – when, of course, the opposite is true.

THE GOAL:

Valuable, productive wetlands essential to the life are public resources even if privately owned, and should be preserved and maintained in their natural condition.

RECOMMENDATION:

The Legislature should enact a Wetlands Protection Act, which would authorize the Parks and Wildlife Department to name vital wetlands areas. These could not be developed in any manner not approved by the Department as having no adverse effect on the coastal environment.

EROSION PROTECTION

- THE PROBLEM:** A recent report published by the U.S. Corps of Engineers revealed that several portions of the Texas coastline had critical erosion problems. The entire upper Texas coast has long been known as a trouble spot, and the Texas Highway Department has several times been forced to relocate State Highway 87 which runs close to the beach. Persons who bought beach homes at Sargent Beach below Freeport have been dismayed to find the Gulf of Mexico invading their front yards. The entire Matagorda Peninsula may simply disappear into the sea one day. Galveston Island is losing territory near San Luis Pass. Other areas have similar but less critical erosion problems.
- THE GOAL:** The Texas coastline should be stabilized as much as possible, with areas having critical erosion given top priority.
- RECOMMENDATION:** The Committee recommends that the State cooperate with the Corps of Engineers in developing shoreline restoration projects, with emphasis on beach nourishment techniques. This involves taking sand from sand bars in the Gulf of Mexico and pumping it onto the shore to rebuild the beach. The Legislature should immediately appropriate funds to match federal funds. In addition, legislation should be enacted which would provide State technical and financial assistance to private owners who attempt to control erosion by use of methods which do not interfere with public rights or the environment.

DUNE PROTECTION

- THE PROBLEM:** It is well known that sand dunes on barrier islands offer the best protection against storm tides, better even than seawalls. The difficulty with relying on dunes is that seawalls will tolerate immediate nearby development, while the dunes will not. Subdivision development inevitably begins with the levelling of the dunes to provide homesites close to the water. Under a State land use management plan, dunes could be protected, but no such system presently exists.
- THE GOAL:** Dunes on barrier islands should be preserved as the first line of defense against hurricanes, and development should be restricted to uses which are compatible with maintenance of the dunes in their existing condition.
- RECOMMENDATION:** The Committee recommends that no development be allowed within 100 feet of the front line of dunes on a barrier island, and that this prohibition be enforced by the establishment of set back lines which must be followed before counties may approve subdivision plats.

FRESH WATER INFLOW

- THE PROBLEM:** Present Texas water law contains no requirement that fresh water be made available to reach bays and estuaries. Municipalities are given first priority in removing water from rivers and streams; other favored users may remove water for irrigation. Many watercourses are so over-appropriated that fresh water rarely reaches the coastal estuary. Failure to guarantee fresh water to these estuaries will inevitably cause the salinity of the wetlands and estuaries to rise, resulting in a corresponding drop in productivity (which currently is ten times the rate of the best farmland).
- THE GOAL:** Fresh water necessary to maintain productive salinity levels in bays, estuaries, and wetlands should be guaranteed by law.
- RECOMMENDATION:** The Committee recommends that the Texas Water Code should be amended to provide that sufficient water for bays and estuaries be given second priority after municipalities in determining how water will be appropriated from rivers and streams.

OCEAN DUMPING

THE PROBLEM:

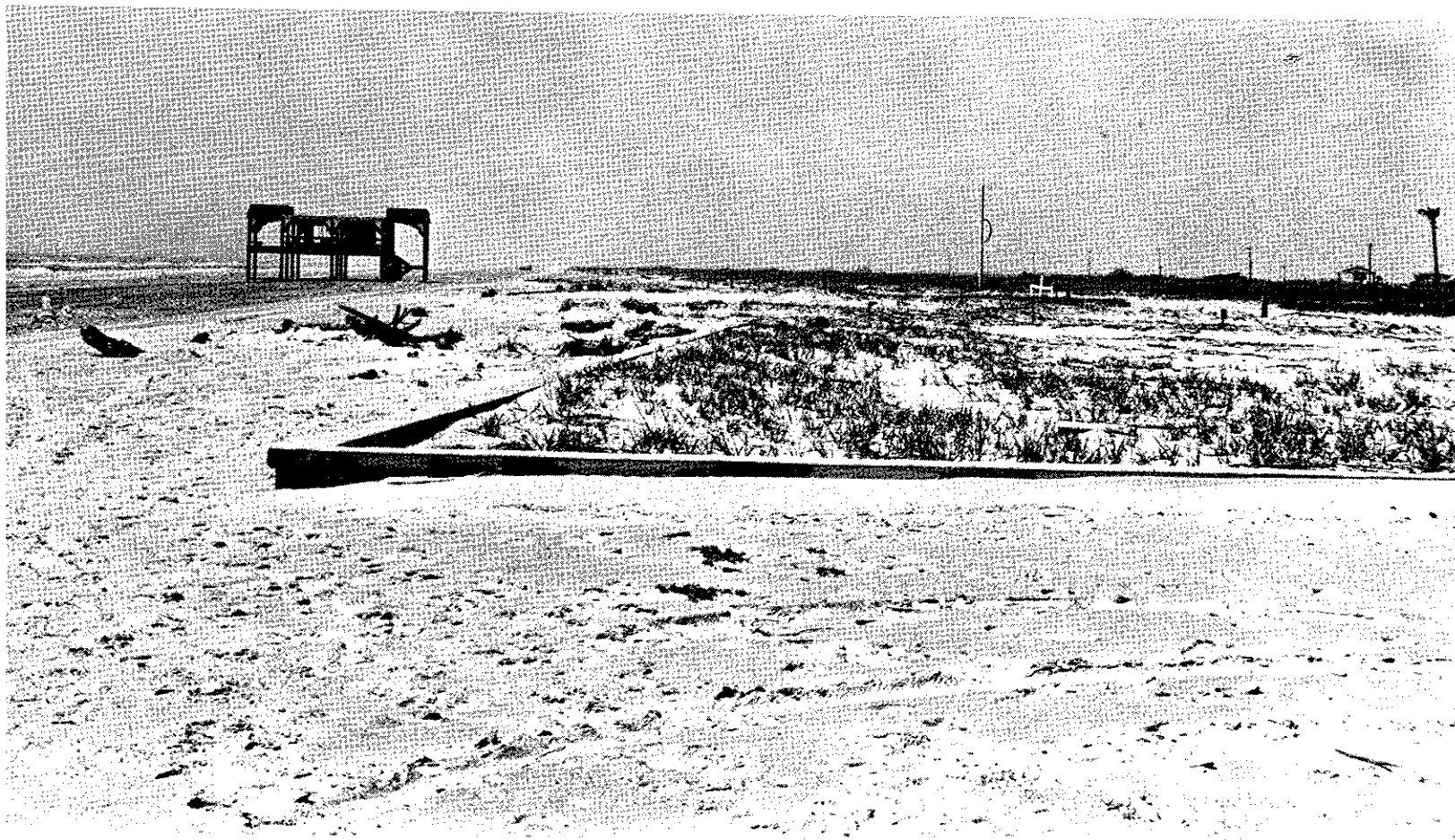
A profitable, if obscure, commercial activity in the coastal zone is the disposal of industrial waste at sea. Waste materials are loaded in Texas ports and hauled through Texas waters into international waters, supposedly beyond the continental shelf. There tightly packed drums are dumped overboard to find a resting place in deep water at the bottom of the sea. However, some of these containers have recently washed up on Texas beaches, which indicates that some dumping is taking place well in advance of the continental shelf. The dumpers claim that they are immune from State regulation because they work in international waters; however, the State could set standards for activities which require the use of Texas ports and Texas waters.

THE GOAL:

Ocean dumping of industrial waste should be carried on in a manner which guarantees that there will be no pollution hazard to Texas waters or Texas beaches.

RECOMMENDATION:

The Committee recommends that the Legislature set standards specifying (1) markings on containers to identify when, where, and by whom the waste was disposed; (2) how the waste is to be packed; (3) where the waste may be disposed. Failure to comply would result in cancellation of a permit which would be necessary in order to use Texas port facilities to load industrial waste.



Hurricane and Flood Protection

HURRICANE INSURANCE

THE PROBLEM:

Seawalls and other barriers such as dunes offer protection against rising water, but there is no protection against the fierce winds of a hurricane. With windstorm insurance becoming increasingly difficult to obtain, the Legislature in 1971 created a windstorm insurance pool to guarantee property owners some protection against the devastation caused by hurricane winds. Unfortunately, the State Board of Insurance allowed insurance companies to gouge the public by approving unreasonable rates and policies recommended by insurance companies. After numerous protests by Coastal Zone Committee chairman Senator A. R. Schwartz, the Board held public hearings and reduced the surcharge on many pool policies in addition to adopting a more standard policy form. Several defects remain, however. Most serious is the definition of "beach" property, which is so broad that it includes the inland towns of Rockport and Palacios. A 10% surcharge, which amounts to an outright penalty, still exists on pool policies. Finally, the State Board of Insurance must be given broader powers to deal with the arbitrary and unconscionable actions of the insurance companies who run the pool.

THE GOAL:

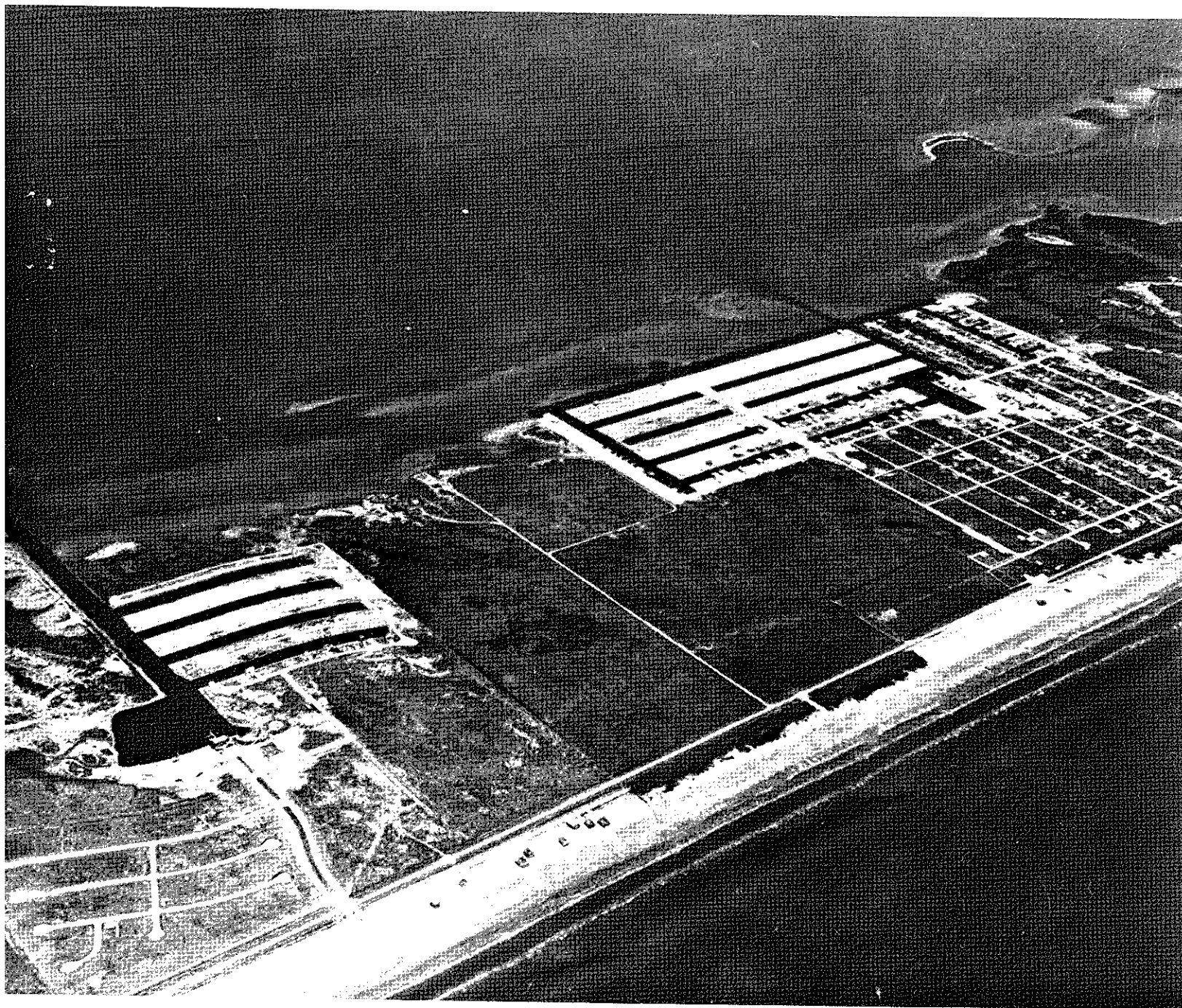
Windstorm insurance should be available to the maximum number of property owners at the lowest possible cost. Ordinary risks should be able to receive coverage at ordinary manual rates, and pool rates should likewise be reasonable.

RECOMMENDATION:

The Legislature should act as soon as possible to give the State Board of Insurance greater authority to carry out the policy of the windstorm insurance pool legislation by stopping the rate gouging activities of the insurance industry.

FLOOD PROTECTION

- THE PROBLEM:** The entire coastal zone is a low lying area, but some sections are more susceptible to flooding than others, particularly the flood plains of creeks and tributaries. A vicious cycle seems to occur in these areas: as developers sell land to prospective home owners, the demand grows for straightening and controlling the creeks; once this is done the more suitable the area is for further development. Not only is this flood control damaging to the environment through its destruction of the creek or marsh as a productive area, but also it is largely futile. The area is often low enough that flooding will occur during large storms. A second flood control problem is even more difficult to counter. Portions of the coastal zone are sinking – a phenomenon known as subsidence – sometimes at rapid rates. Part of the San Jacinto Battlefield is now underwater, and fine homes in nearby Baytown are seriously threatened.
- THE GOAL:** Development of flood plain areas should be discouraged to avoid reclamation projects which are costly to the taxpayer and to the environment.
- RECOMMENDATION:** The Committee recommends that a State coastal zone land use management program establish guidelines to restrict development of flood plain areas.



Government and Administration

LAND USE PLANNING

- THE PROBLEM:** The most serious—and most basic—problem in the coastal zone is that government lacks the tools and the flexibility to deal with most of the issues discussed in this report. Four years ago the state also lacked knowledge, but at the recommendation of the Beach Study Committee, the Legislature authorized and funded a four-year study of coastal resources. Now that we have acquired a vast body of knowledge about the coastal zone and its vital processes, we are prepared to manage the multitude of public and private resources which make the coastal zone unique. Congress is expected to act in the immediate future to require coastal states to institute land use planning in the coastal zone, but Texas should not wait for federal action. Land use planning cannot, and should not, be put off any longer.
- THE GOAL:** Preservation and use of coastal resources is a matter of state policy and should be determined at the state level with the aid of land use planning.
- RECOMMENDATION:** The committee recommends that land use planning in the coastal zone be established by the Legislature to be co-ordinated through the Governor's Office with the co-operation of existing agencies. All regulations should be designed with the primary goal of protecting the coastal environment.