

House Bill 2819 - Changes to the Open Beaches Act, Dune Protection Act, and the Management of Coastal Public Land

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House Bill 2819

September 1, 2007 - Amendments to Open Beaches Act and Dune Protection Act enacted by 80th Legislature Session became effective

Amendments to statute require promulgation of new rules and rule revisions.

General Land Office (GLO) is working to amend the Beach/Dune rules and assisting the local governments with plan amendments to reflect the new statutes.

May 16, 2007 - Revisions to Beach/Dune rules pertaining to administrative changes and Erosion Response Plans posted for comments in the Texas Register

Highlights of the Bill

Determine what factors constitute an imminent threat to public health and safety, or interference with the public beach easement

Denial of insurance from Texas Windstorm Insurance Program for houses located on public beach

Order removal of structures that encroach on public beach easement

Administrative penalties, costs for removal, or the sale of salvageable parts

Order restoration for damage to dunes and dune vegetation

Highlights of the Bill

Administrative penalties for violation of OBA and DPA

Line of vegetation determination constitutes *prima facie* (legally sufficient) evidence of the landward boundary of the public beach easement until court adjudication finds differently

Increase GLO review period for large-scale construction to 30 working days

Increase GLO review period to formally review local governments plans and plan amendments to 90 working days

Changes to the Beach/Dune Rules

Rules out for public comment ends July 16, 2008

Definitions of small-scale construction, large-scale construction, and dune restoration

Rules for determining the line of vegetation determination if no clearly marked line exists

Dune protection lines re-established further landward to allow protection of all critical dune areas

Beach user fees - allow revenue accounts

Large-scale construction - 30 working days

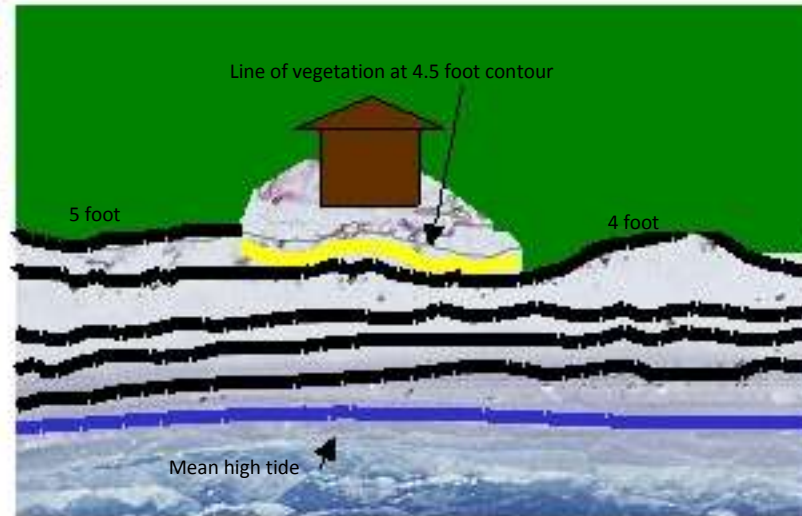
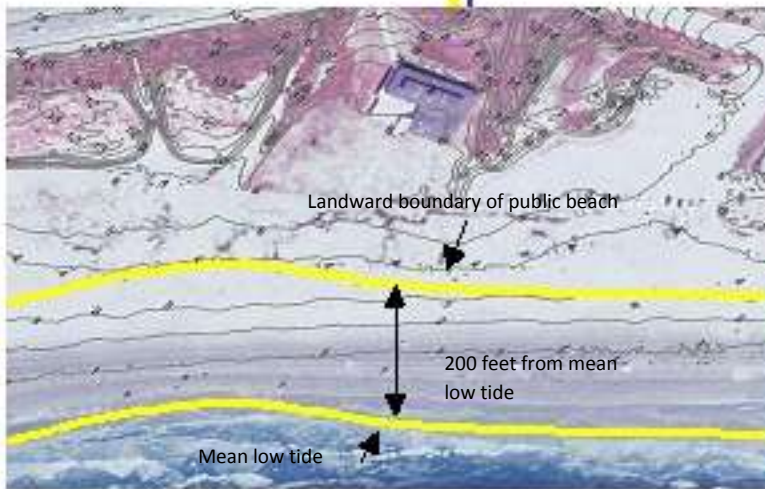
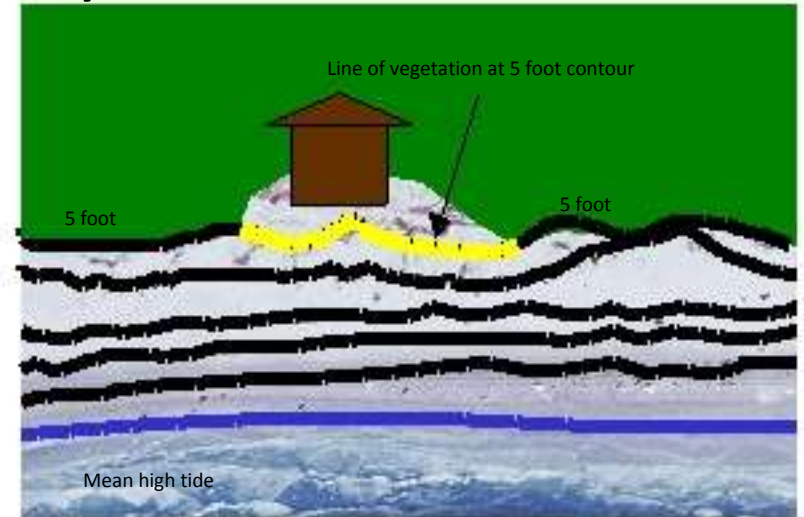
Plan amendments - 90-day, 60-day, and 30-day review

Erosion Response Plans (ERPs)



Rules for determining the line of vegetation if no clearly marked line exists

If there is no clearly marked line of vegetation then the line of constant elevation connecting two clearly marked lines of vegetation on either side



If no clearly marked line of vegetation exists then the average elevation connecting two clearly marked lines of vegetation of unequal elevation on each side

If no clearly marked vegetation line exists on either side then line of vegetation is 200 feet from mean low tide*

* Must consider historic use

Purpose and Benefits of ERPs

- Reduce public expenditures for erosion and storm damage losses to public and private property
- Reduce disaster response costs
- Prevent loss of human life
- Reduce need to install hard erosion control structures
- Protect critical dunes and dune vegetation that provide protection during storm events
- Preserve and enhance public access and use of beach
- Reduce loss of dune area habitats and biodiversity
- Reduce structure encroachment on the public beach that interferes with natural sediment cycle

Erosion Response Plans

Voluntary

Consideration for CEPRA funding *

Should be prepared in consultation with the GLO*

Must be consistent with local dune protection and beach access plan

Incorporated into local plan as appendix

Updated every 5 years with dune protection line

* Local governments must be in compliance with local Beach/Dune plan to receive CEPRA funds

Overview of ERP Contents

1. Establish setback line
2. Construction prohibitions, exemptions, and requirements
3. Potential funding sources for acquiring fee title or lesser interest in properties seaward of setback
4. Procedures to preserve and enhance public access and use of the beach from erosion and storm damage
5. Procedures for preserving, restoring, and enhancing critical dunes for protection and conservation
6. Reasoned justification for any variances

Considerations for Setback Lines

Establish building set-back line to accommodate shoreline retreat

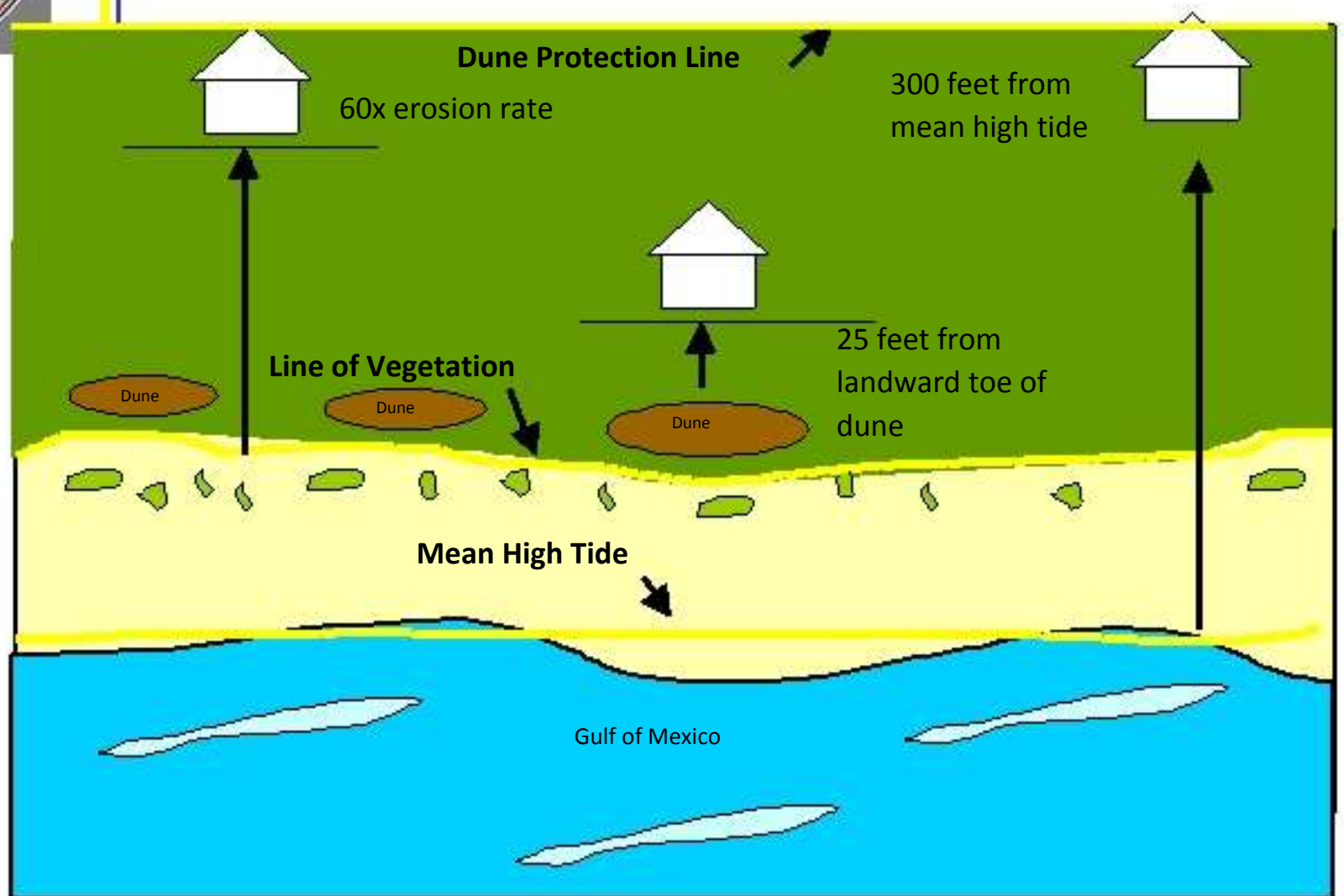
Historical erosion rates as determined by the BEG (setback recommended to be the greater of the following):

- 60 times the annual erosion rate measured from the line of vegetation
- 25 feet landward of the landward toe of the foredune ridge
- 300 feet landward of mean high water of the Gulf of Mexico (no foredune ridge)

Limited to the dune protection line

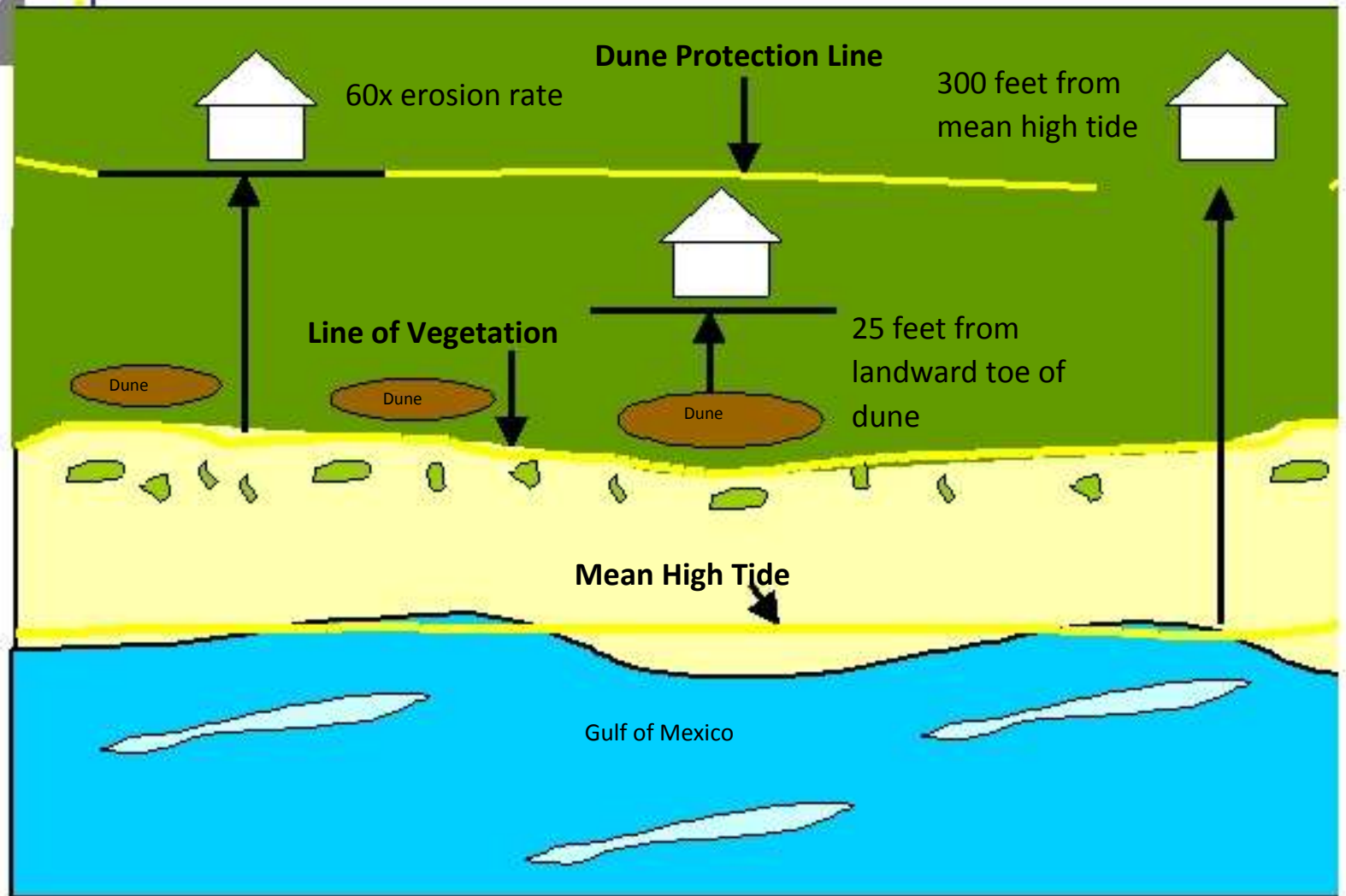


Possible Setback Scenarios





Setback limited by DPL



Considerations for Prohibition

Habitable structures must be constructed landward of setback to the extent practicable

Allow amenities seaward of setback

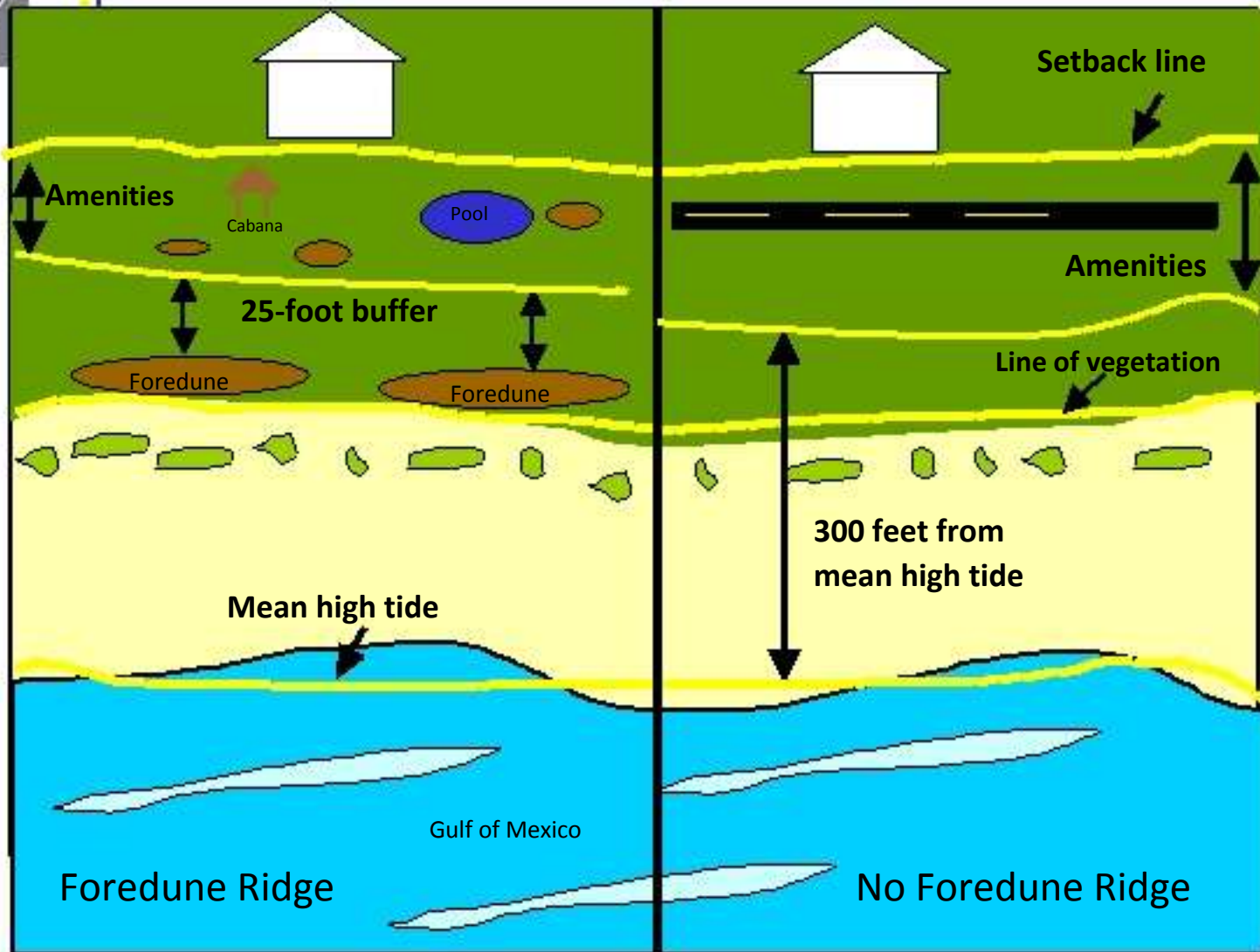
- 25 feet landward of the landward toe of foredune ridge
- 300 feet landward of mean high water (no foredune ridge)

Minimize use of impervious surfaces

Avoidance and minimization presumed (not exempt from mitigation)



Amenities exempted seaward of setback



Considerations for Exemptions

Accreting beaches (greater 2 ft/yr according to BEG)

No practicable alternative exists

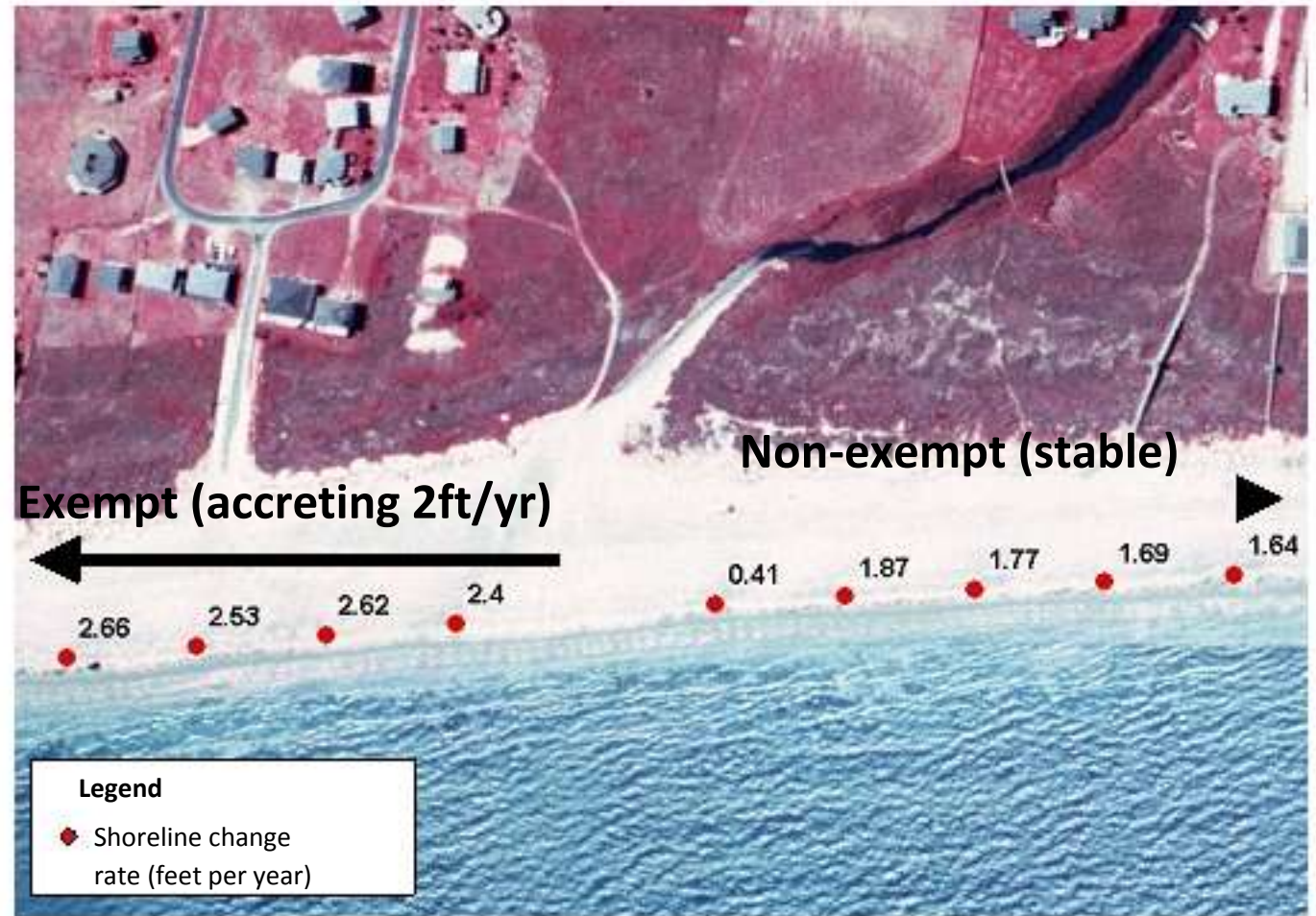
Previously approved setbacks certified by GLO

Modifications to existing structures that do not increase footprint; not including structures destroyed more than 50% by meteorological event

Property subject of expired permit in previously platted subdivisions or expired master plan (construction must be consistent with permit)



Exemptions based on shoreline change





No practicable alternative exists





Practicable alternative exists



"Practicable" Considerations

Existing building practices

Costs

Siting alternatives

Footprint of structure in relation to buildable
portion of lot

Overall development scheme for property



Considerations of Standards for Exempted Construction Seaward of Setback

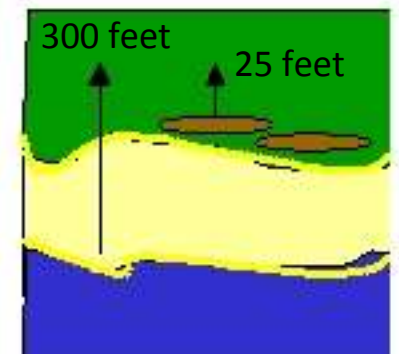
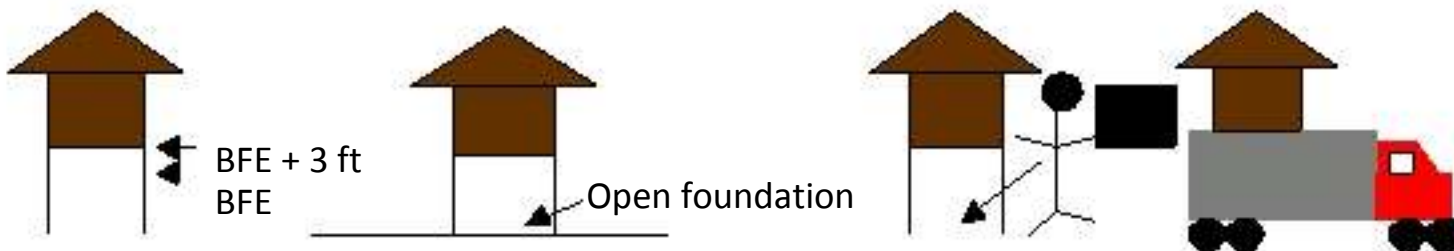
Minimum 3 foot freeboard above base flood elevation

Open foundations

Certification of foundations and fill by registered professional engineer or architect

Feasible relocation plans for small-scale structures by registered professional engineer

Construction located at least (where practicable) 25 feet from landward toe of foredune ridge or 300 feet from mean high water (areas without foredune ridge)





■ More of this...





■ Less of this...



Preserving and Protecting Public Beach Access and Dunes

Identify areas of public access that require protection from erosion and storm surge

Identify goals and implementation schedules

- Protecting dunes
- Existing dunes withstand 100 year storm surge
- Dune restoration projects to fill in gaps in foredune ridge
- Design improvements for public beach access

Adoption Procedures

Local governments must hold public education meetings before implementing setbacks

GLO must review and approve ERPs as amendment to existing plan

Requires adoption by local government prior to formal submission to GLO

CEPRA Funding

Considers adoption of ERP

ERP must be submitted by December 31 preceding the year funding is sought

Funding for state fiscal biennium beginning in September 1, 2009 must submit draft to GLO by July 1, 2009

ERPs must be submitted by December 31, 2010 for CEPRA cycle 7 funding

Amendments or changes to ERP must be submitted to GLO by July 1 preceding state fiscal year funding is sought

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For More Information
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