



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

Galveston County Commissioners Court
June 25, 2008

Jerry Patterson
Commissioner

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Texas General Land Office





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

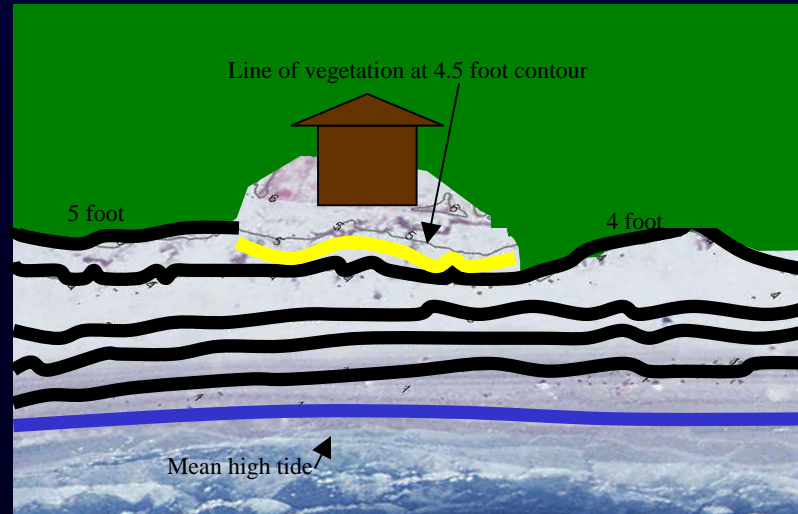
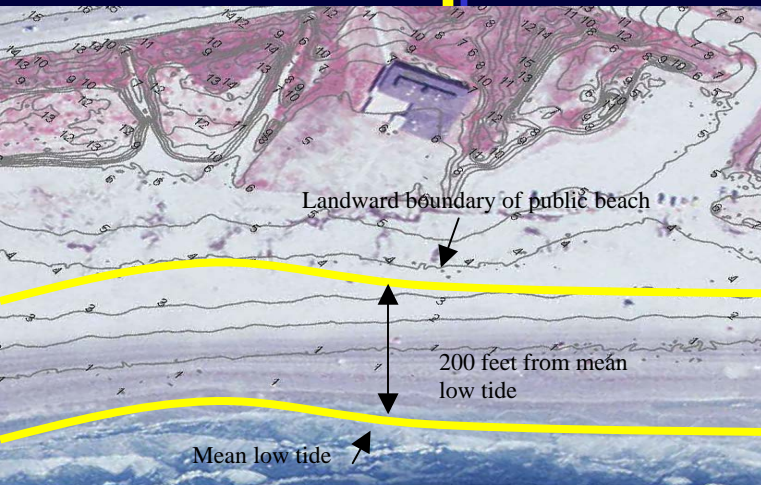
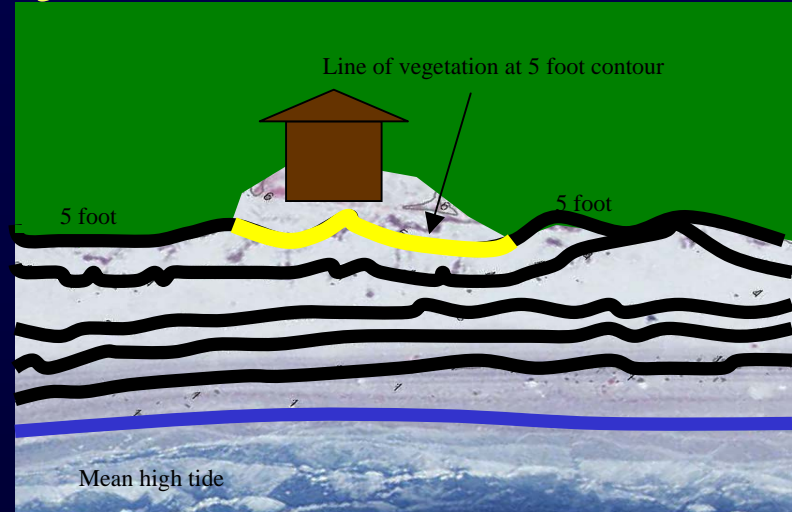
- Rules out for public comment ends July 16, 2008
- Definitions of small-scale construction, large-scale construction, and dune restoration
- Rules for determining the line of vegetation determination if no clearly marked line exists
- Dune protection lines re-established further landward to allow protection 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 CEPRAs 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 CEPRAs 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





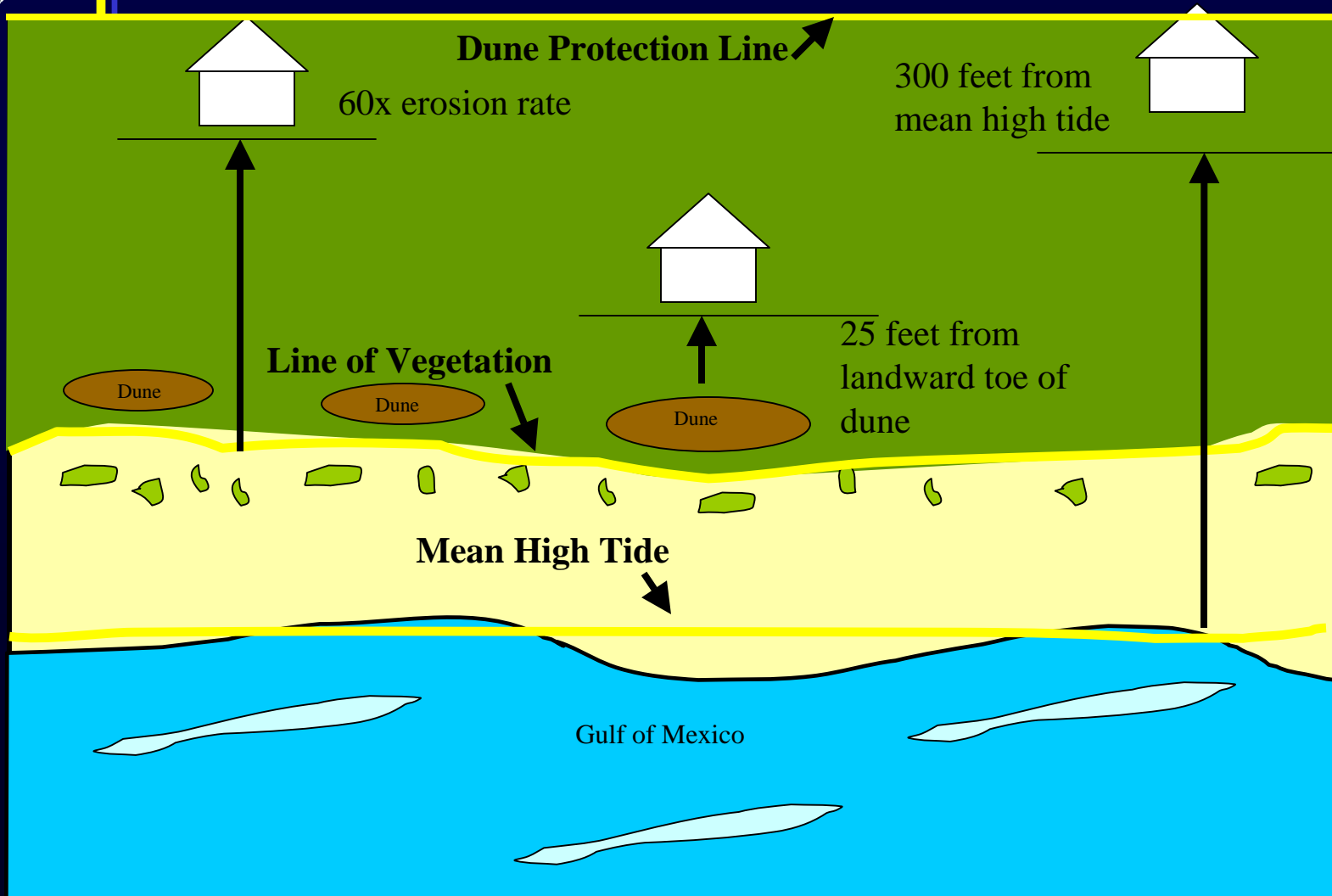
Considerations for Setback Lines

- 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



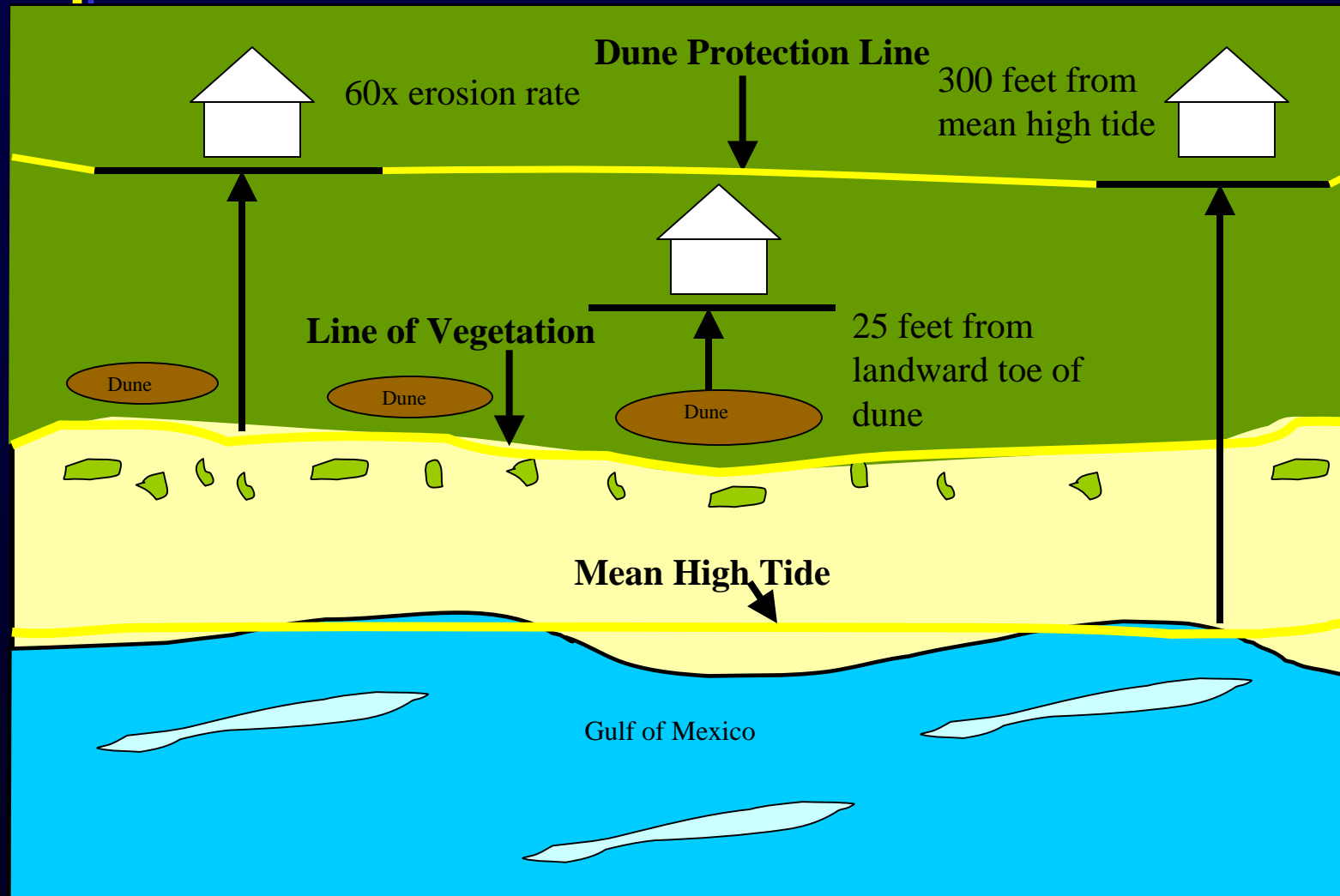


□ Possible Setback Scenarios





□ *Setback limited by DPL*





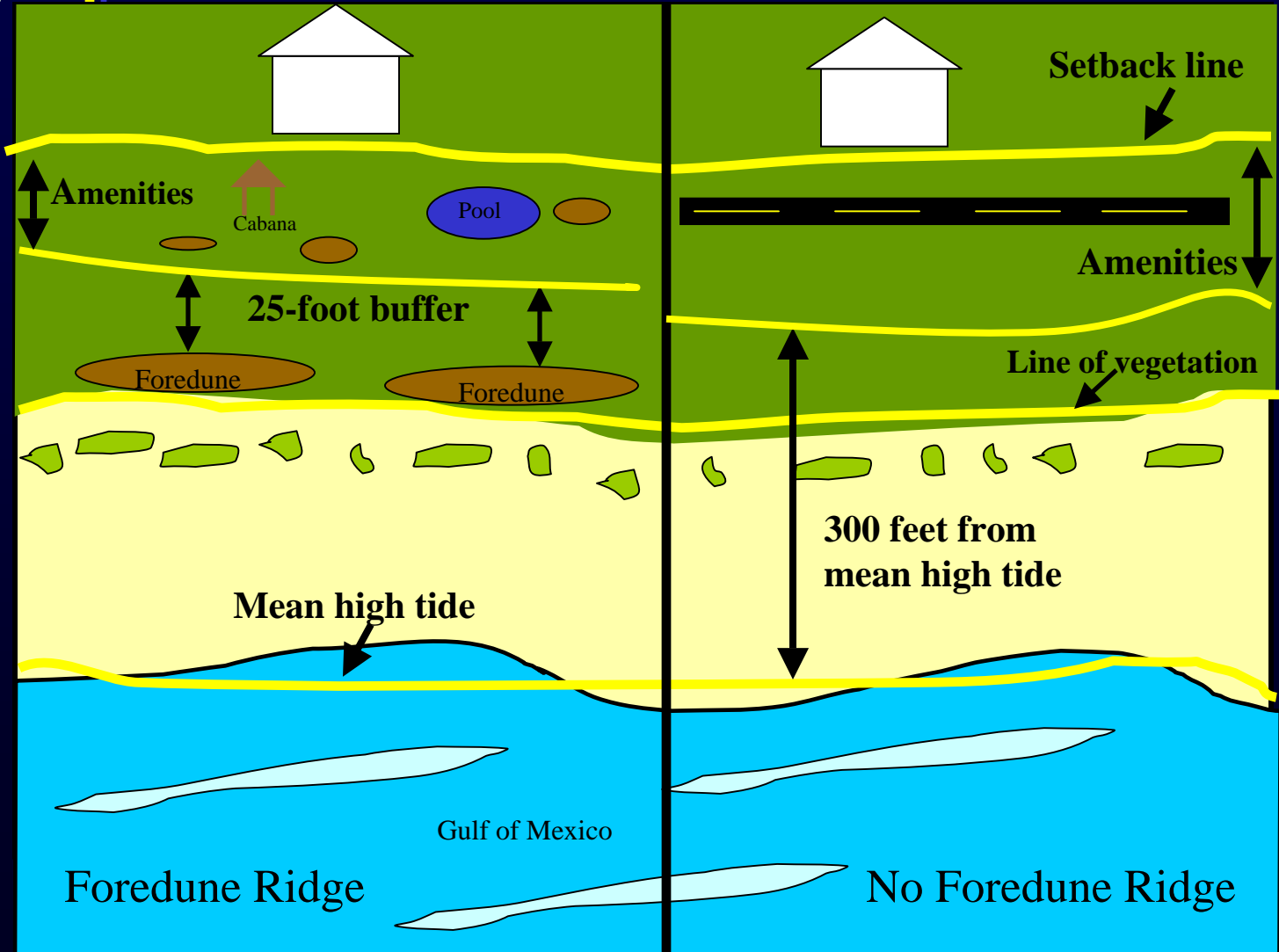
Considerations for Prohibition

- 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





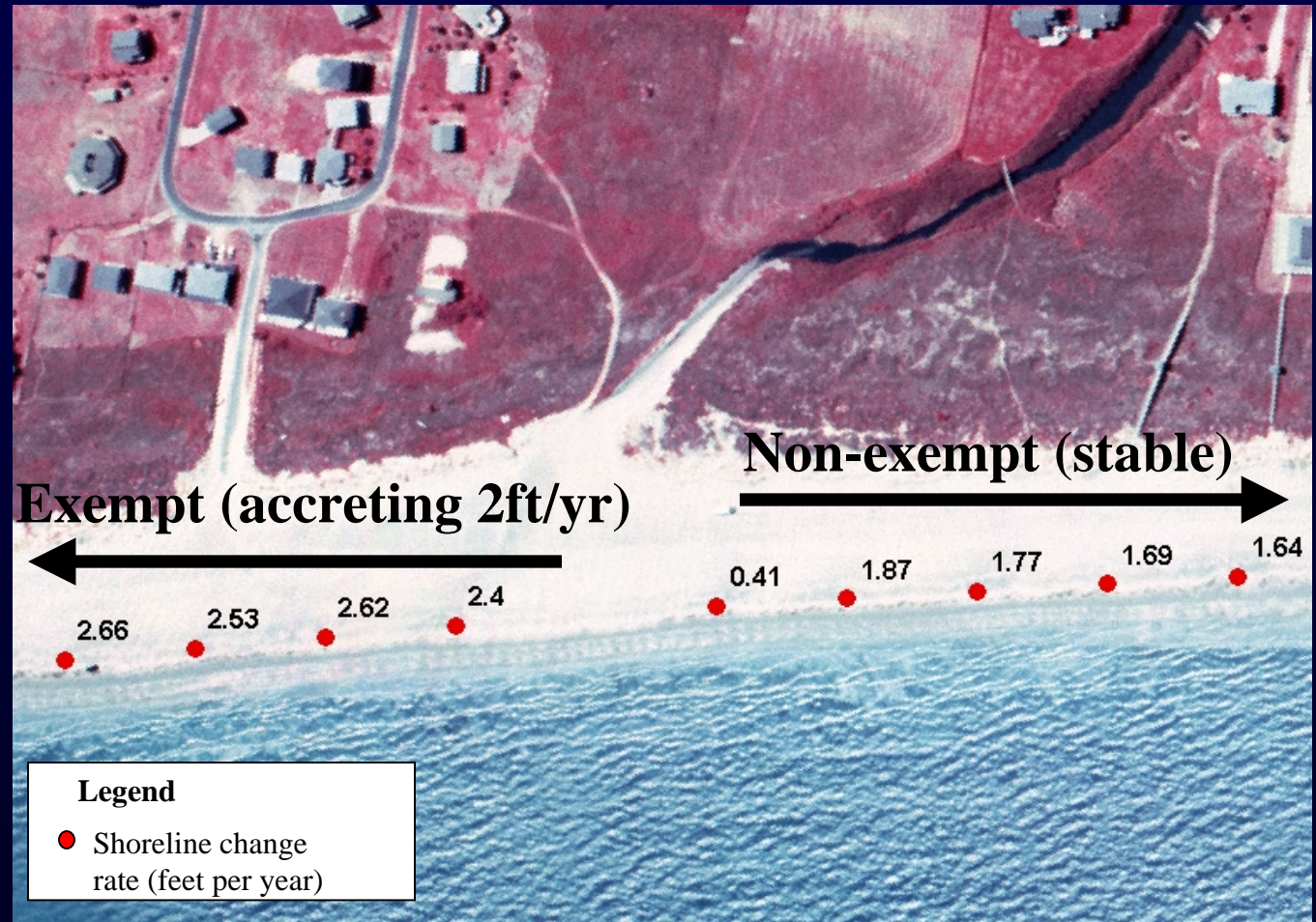
Considerations for Exemptions

- 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

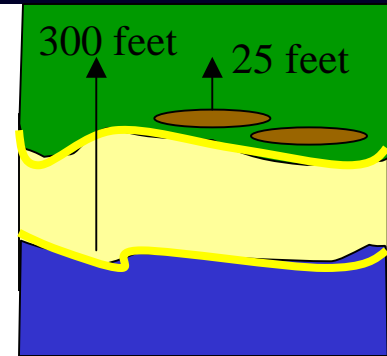
- Existing building practices
- Costs
- Siting alternatives
- Footprint of structure in relation to buildable portion of lot
- Overall development scheme for property





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





Public Hearings in Galveston County *Tuesday, July 8, 2008*

Jury Assembly Room
Galveston County Justice Center, 1st Floor
600 59th Street
Galveston, Texas
11:00 AM to 2:00 PM

Galveston County Annex Building
946 Noble Carl Road
Crystal Beach, Texas
4:00 PM to 6:00 PM

*** Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Carly Bohn at (512) 463-3550 or by e-mail at carly.bohn@glo.state.tx.us on or before July 7, 2008**



Texas General Land Office

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For More Information
about the GLO's
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www.glo.state.tx.us or
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