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TITLE 31**NATURAL RESOURCES AND CONSERVATION****PART 16****COASTAL COORDINATION COUNCIL****CHAPTER 501****COASTAL MANAGEMENT PROGRAM****SUBCHAPTER B****GOALS AND POLICIES****RULE §501.26****Policies for Construction in the Beach/Dune System**

(a) Construction in critical dune areas or areas adjacent to or on Gulf beaches shall comply with the following policies:

(1) Construction within a critical dune area that results in the material weakening of dunes and material damage to dune vegetation shall be prohibited.

(2) Construction within critical dune areas that does not materially weaken dunes or materially damage dune vegetation shall be sited, designed, constructed, maintained, and operated so that adverse "effects" (as defined in §15.2 of this title (relating to Coastal Area Planning)) on the sediment budget and critical dune areas are avoided to the greatest extent practicable. For purposes of this section, practicability shall be determined by considering the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Cost of the technology or technique shall also be considered. Adverse effects (as defined in Chapter 15 of this title (relating to Coastal Area Planning)) that cannot be avoided shall be:

(A) minimized by limiting the degree or magnitude of the activity and its implementation;

(B) rectified by repairing, rehabilitating, or restoring the adversely affected dunes and dune vegetation; and

(C) compensated for on-site or off-site by replacing the resources lost or damaged seaward of the dune protection line.

(3) Rectification and compensation for adverse effects that cannot be avoided or minimized shall provide at least a one-to-one replacement of the dune volume and vegetative cover, and preference shall be given to stabilization of blowouts and breaches and on-site compensation.

(4) The ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches shall be preserved and enhanced.

(5) Non-structural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods. Subdivisions shall not authorize the construction of a new erosion response structure within the beach/dune system, except as provided by subsection (b) of this section or a retaining wall located more than 200 feet landward of the line of vegetation. Subdivisions shall not authorize the enlargement, improvement, repair or maintenance of existing erosion response structures on the public beach. Subdivisions shall not authorize the repair or maintenance of existing erosion response structures within 200 feet landward of the line of vegetation except as provided in §15.6(d) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(b) Construction of structural shore protection projects, including geotextile shore protection projects, in critical dune areas or areas adjacent to or on Gulf Beaches shall comply with the following policies:

(1) The size and the length of a shore protection project shall be determined as part of a site-specific construction and maintenance plan, taking into account both technical requirements and policy issues as described under this subsection, and shall be limited to the minimum size necessary to fulfill the project's goals and purposes.

(2) A shore protection project shall only be used to protect community developments, public infrastructure, and for other lawful public purposes and shall not be used solely to protect individual structures or properties. A community development may include a neighborhood or aggregation of residences or commercial structures.

(3) A shore protection project located parallel to the shore shall be located landward of the boundary of state-owned submerged land as determined by a coastal boundary survey conducted in accordance with Texas Natural Resources Code §33.136, and shall avoid and otherwise minimize adverse effects to dunes and dune vegetation.

(4) To maximize the protection offered by a shore protection project, to enhance the survivability of the project, and to minimize adverse effects to natural resources, a shore protection project shall be located according to the following preferred order:

(A) In an area where a foredune ridge is present, where practicable, a shore protection project shall be located landward of the foredune ridge;

(B) Where there is no foredune ridge, a project shall be located landward of the line of vegetation, where practicable;

(C) Where it is not practicable to locate a shore protection project landward of the line of vegetation, a project shall be located at the line of vegetation; or

(D) Where there is no other practicable location, a shore protection project shall be located at the most landward point of the public beach provided that the project sponsor has provided financial assurance that the pre-project beach width will be maintained through beach nourishment.

(5) A shore protection project shall not adversely affect sea turtle nesting areas or an endangered species.

(6) Shore protection projects shall not be constructed on stable or accreting beaches.

(7) A shore protection project shall be designed to avoid and otherwise minimize any adverse effects to adjacent beaches or properties at either end of a project.

(8) To the extent allowed by law, a dune protection permit is required to authorize the construction of a shore protection project in the beach/dune system.

(9) A mitigation plan shall be submitted for any adverse effects to critical dune areas as a result of the construction and presence of a shore protection project.

(10) Public input shall be incorporated into a local government's review and approval of a shore

protection project. Methods to obtain public input include public meetings, notices by mail to affected property owners, publication of notices in local newspapers, the *Texas Register*, and web sites.

(11) The success criteria for a shore protection project shall be developed by a project sponsor with consideration for the health and maintenance of the beach/dune system.

(12) The sponsor of a shore protection project shall be responsible for the ongoing maintenance of the project and, if necessary, beach nourishment and/or removal of the project.

(13) Sand from the beach/dune system shall not be used to fill or cover a shore protection project. Where appropriate, a shore protection project shall remain covered with sand and dune vegetation with a preference for natural dune vegetation. The sand and vegetation used to cover a shore protection project shall conform to the standards for dune restoration projects as described in §15.4 (relating to Dune Protection Standards) and §15.7, (relating to Local Government Management of the Public Beach) of this title.

(14) Long-term monitoring of a shore protection project shall be required to determine the project's effect on the beach/dune system and the project's effectiveness. Prior to the construction of a shore protection project, a project sponsor shall collect scientifically valid baseline data for monitoring the line of vegetation, the extent of the dry beach, a beach profile, and any other characteristics necessary for evaluating the project's effectiveness.

(15) Existing public access in the area of a shore protection project shall be replicated if not enhanced. A local government shall not impair or close an existing public access point or close a public beach to pedestrian or vehicular traffic without prior approval of the GLO as required under the Open Beaches Act, Texas Natural Resource Code Annotated, Chapter 61, and the Beach/Dune rules, Chapter 15 of this title.

(c) The GLO shall comply with the policies in this section when certifying local government dune protection and beach access plans and adopting rules under the Texas Natural Resources Code, Chapters 61 and 63. Local governments required by the Texas Natural Resources Code, Chapters 61 and 63, and Chapter 15 of this title (relating to Coastal Area Planning) to adopt dune protection and beach access plans shall comply with the applicable policies in this section when issuing beachfront construction certificates and dune protection permits.

Source Note: The provisions of this §501.26 adopted to be effective October 6, 2004, 29 TexReg 9407; amended to be effective May 11, 2005, 30 TexReg 2682

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