

TITLE 31. NATURAL RESOURCES AND CONSERVATION
PART 1. GENERAL LAND OFFICE
CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM
31 TAC §15.18, §15.19

The General Land Office adopts, on an emergency basis, new §15.18, concerning Emergency Provisions for Stabilization and Repair of Damaged Habitable Structures, and new §15.19, concerning Emergency Measures for Beach and Dune Restoration in response to Hurricane Harvey. This rule applies to local governments with authority to issue beachfront construction certificates and dune protection permits in Nueces County, Matagorda County, Brazoria County and Galveston County, Texas. These jurisdictions have areas where habitable structures are in need of emergency stabilization and repair and where emergency hazard mitigation measures are needed to reestablish the protective barrier provided by the beach and natural dunes damaged or destroyed by storm tidal surges and overwash.

These emergency rules are adopted on an emergency basis due to the imminent peril to public health, safety, and welfare represented by the damage to structures and protective barriers caused by high winds, storm surge, high tides, and erosion resulting from Hurricane Harvey. As a result of Hurricane Harvey, hurricane and tropical storm winds, storm surge, high tides, and overwash caused property damage, coastal flooding, and erosion. Hurricane Harvey made landfall at 10:00 p.m. on August 25, 2017 north of Port Aransas, Texas; but its destructive force impacted the middle and upper Texas coast. The local jurisdictions listed above experienced loss in elevation of beach sand. The structural integrity of many houses has been adversely impacted as a result of these natural forces. The protective barrier provided by naturally occurring beaches and dunes in these areas has been severely impacted. GLO is adopting these rules because coastal residents, public beaches, public and private coastal property, and coastal natural resources have been severely damaged and are extremely vulnerable to ongoing injury, damage, and destruction.

The General Land Office has determined it is necessary to adopt emergency rules that allow immediate stabilization and repair of habitable structures by providing for temporary suspension of certain beachfront construction certificate and dune protection permit application and permitting requirements to enable the implementation of emergency stabilization and repair techniques and methods as well as other hazard mitigation measures. These emergency rules will enable local governments to permit immediate stabilization and repair of habitable structures and authorize the restoration of dunes in jurisdictions impacted by Hurricane Harvey. The emergency rules shall be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.

Emergency new rule §15.18 provides procedures and requirements for issuance of authorization to undertake emergency stabilization and repairs of structures impacted by Hurricane Harvey. Section 15.18(c) provides definitions applicable to this new section. Section 15.18(d) allows the local government to issue authorizations for emergency stabilization and repair of habitable structures as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.18(e) provides that the normal permit process shall not apply to emergency

authorizations and that emergency authorizations are valid for no more than six months from issuance. Section 15.18(f) provides that the local government is required to maintain a written record of any emergency stabilization and repair actions that are authorized. Section 15.18(g) provides authorizations and limitations with regard to authorizations by the local government of emergency stabilization and repair of habitable structures. Section 15.18(h) provides authorizations and limitations with regard to habitable structures located on or seaward of the post-storm line of vegetation and requirements related to the placement of beach-quality sand. Sections 15.18(i), (j), (k) and (l) provide additional limitations and requirements related to the repair of septic and sewage systems, the placement of materials seaward of the post-storm line of vegetation, and the removal of beach debris.

Under emergency rule §15.18(g), a local government may permit the repair of a habitable structure; however, a local government is prohibited from authorizing the following: repairing or constructing a slab of concrete, fibercrete, or other impervious material; increasing the footprint of the habitable structure; repairing a habitable structure previously built, repaired, or renovated in violation of the Land Office's beach/dune rules or the local government's dune protection and beach access plan or without an approved certificate or permit; or constructing, repairing, or maintaining an erosion response structure or structural shore protection project. These limitations reflect limitations that currently exist in the provisions of §15.4, relating to Dune Protection Standards; §15.5, relating to Beachfront Construction Standards; and §15.6, relating to Concurrent Dune Protection and Beachfront Construction Standards. To the extent these activities are allowed under existing law, they must go through the standard application process and obtain a certificate and permit. A slab or other paving beneath the footprint of a habitable structure may be replaced by wooden decking, brick pavers, or other pervious materials. Under emergency rule Section § 15.18(h), a local government is authorized to allow certain emergency repairs to a habitable structure on the public beach.

Emergency rule §15.19 provides procedures and requirements for issuance of authorization to undertake emergency dune restoration for littoral property impacted by Hurricane Harvey. Section 15.19(c) provides a definition of emergency dune restoration that is applicable to this section. Section 15.19(d) allows the local government to issue authorizations for emergency dune restoration as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.19(e) provides that the normal permit process shall not apply to emergency authorizations and that emergency authorizations are valid only for six months. Section 15.19(f) provides that the local government is required to maintain a written record of any emergency dune restoration projects that are authorized. Section 15.19(g) provides requirements and limitations with regard to the location of emergency dune restoration projects. Section 15.19(h) provides guidelines for authorized methods and materials with regard to emergency dune restoration projects. Section 15.19(j) contains prohibitions with regard to dune restoration projects. Section 15.19(j) limits the materials that can be used in dune restoration and prohibits a local government from authorizing construction or repair of a bulkhead or structural shore protection project. Section 15.19(k) states that it does not prohibit a local government from authorizing the removal of portions of damaged bulkheads that threaten public health safety and welfare.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of these emergency rules. These rules are adopted in response to a grave and immediate threat to life and property

and is, therefore, exempt under §2007.003(b) of the Texas Government Code from the TIA requirements.

The new sections are adopted on an emergency basis under the Texas Natural Resources Code, §§63.121 and 61.011, which provide the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas's public beaches; protect the public beach easement from erosion or reduction caused by development or other activities on adjacent land; and establish other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The emergency sections are also adopted pursuant to the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection. Finally, the new sections are adopted on an emergency basis pursuant to Texas Government Code, §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

§15.18. Emergency Provisions for Stabilization and Repair of Damaged Habitable Structures.

(a) Purpose. The purpose of this section is to allow a local government to grant to a property owner the ability immediately to undertake emergency stabilization and repair of a habitable structure damaged as the result of Hurricane Harvey.

(b) Applicability. This section applies only to structures in jurisdictions that have authority to issue beachfront construction certificates and dune protection permits in Nueces County, Matagorda County, Brazoria County and Galveston County, Texas. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare.

(c) Definitions. The following words and terms, as used in this section, shall have the following meanings:

(1) The Code-The Texas Natural Resources Code.

(2) Habitable-The condition of the premises which permits the inhabitants to live free of serious threats to health and safety.

(3) Habitable Structure- Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure.

(4) Emergency repair-Those immediate response actions that must be undertaken to render a structure habitable or to prevent further damage.

(5) Emergency stabilization-Those immediate response actions that must be undertaken to stabilize a habitable structure that is subject to imminent collapse or substantial damage as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels.

(d) Local government authorization. The local governments with the authority to issue dune protection permits and beachfront construction certificates may, in accordance with this section, authorize emergency stabilization and repair of a habitable structure damaged by Hurricane Harvey. All authorizations issued under this section must otherwise be in accordance with applicable state and local law. The local government is responsible for assessing damage to such structures, determining whether the structures are eligible for approval of emergency stabilization and repair, and determining appropriate emergency stabilization and repair procedures. Under this section, the local government may only authorize emergency stabilization and repair as necessary to eliminate the danger and threat to public health, safety, and welfare. Any proposed stabilization and repair method or technique must comply with the standards provided in this section and §15.6(e) and (f) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) or §15.11 of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach).

(e) Procedure. The permit and certificate application requirements of §15.3(s)(4) of this title (relating to Administration) are not applicable to the emergency stabilization and repair of habitable structures under this rule. However, all property owners eligible to undertake emergency stabilization efforts and repair must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency stabilization and repair of habitable structures will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid for no more than six months from the date of issuance. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing emergency stabilization and repair of habitable structures shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each authorization, the local government must maintain a written record of the actions that it authorized, including the address of the structure, a description of the repairs, pictures of the structure before and after completion of the authorized activities, and will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of all actions authorized under this section.

(g) Authorized Repairs. The local government may authorize emergency stabilization and repair of a habitable structure only if the local government determines that the proposed action is necessary to render the structure habitable, to prevent further damage, or to protect public health, safety and welfare.

(1) Repairs may include:

- (a) repairs solely to make the structure habitable or prevent further damage, including reconnecting the structure to utilities;
- (b) placing fill material under habitable structures if it consists only of beach quality sand;
- (c) repairing or constructing an enclosed space under a habitable structure if it is constructed of breakaway walls or louvered walls and is consistent with the National Flood Insurance Program;
- (d) construction using pervious materials such as wooden decking, brick pavers, or other permeable materials, under the footprint of the structure only as necessary to make the house accessible, and;
- (e) repairs to pre-existing retaining walls only as necessary to prevent their collapse;
- (f) installation of new pilings.

(2) Repairs may not include:

- (a) increasing the footprint of the habitable structure;
- (b) the use of impervious material, including but not limited to concrete or fibercrete;
- (c) the repair of a bulkhead or other erosion response structure, or structural shore protection project, and;
- (d) repairs that may occur seaward of mean high water or mean higher high water.

(h) Repair of structures on or seaward of the post-storm line of vegetation.

(1) A local government may grant authorization in accordance with this section for emergency stabilization of a habitable structure that is on or seaward of the post-storm line of vegetation, but only to the limited extent necessary to prevent an immediate threat to public health, safety, and welfare.

(2) A local government may grant authorization in accordance with this section for emergency repair of a habitable structure that is on or seaward of the post-storm line of vegetation, but only if the structure is:

(A) a habitable structure;

(B) not in imminent danger of collapse or other imminent threat to public health and safety;

(C) is not subject to a pending enforcement action under this subchapter, the Open Beaches Act (Texas Natural Resources Code, Chapter 61), or the Dune Protection Act (Texas Natural Resources Code, Chapter 63) including the filing of a suit in district court or the referral of a matter for enforcement to the attorney general or other public prosecutor;

(D) is less than 50% damaged.

(3) Beach-quality sand may be placed on the lot in the area up to ten feet seaward of a habitable structure where necessary to prevent further erosion due to wind or water. The sand must remain loose and cannot be placed in bags. Such actions are authorized in situations where

- protection of the land immediately seaward of a habitable structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion.
- (i) The local government is not authorized under this rule to allow the use of concrete or the construction, maintenance, or repair of bulkheads or other erosion response structures, or construct or repair a structural shore protection project.
 - (j) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of Health, or a local health department has made a determination that a sewage or septic system located on or adjacent to the post-storm line of vegetation poses a threat to the health of the occupants of the property or public health, safety or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and §15.6(e)(1) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).
 - (k) Prohibitions. This emergency rule does not authorize the placement of materials on the public beach except in conjunction with authorized emergency stabilization and repair of habitable structures.
 - (l) Removal of beach debris. Beach debris moved by wind or water can threaten Gulf-fronting properties. The local government shall coordinate with the General Land Office to remove debris such as pilings, concrete, fibercrete, and garbage from the public beach.

§15.19. Emergency Measures for Dune Restoration

- (a) Purpose. The purpose of this section is to allow a local government to grant property owners the ability to immediately undertake emergency repairs to dunes that have been damaged by the effects of Hurricane Harvey and to construct dune restoration projects to minimize further threat or damage to coastal residents and littoral property.
- (b) Applicability. This section applies only to the emergency dune restoration projects in jurisdictions that have authority to issue beachfront construction certificates and dune protection permits in Nueces County, Matagorda County, Brazoria County and Galveston County, Texas. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.
- (c) Definitions. The following words, terms, and phrases when used in this section, shall have the following meanings:

 - (1) Emergency dune restoration-- those immediate response measures that must be undertaken to construct a dune, repair a damaged dune, or stabilize an existing dune in order to minimize further threat or damage to coastal residents and littoral property.
 - (2) Restoration Area—an area where dunes existed before the storm or an area no more than 20-foot seaward of the post-storm line of vegetation.
- (d) Local government authorization. The local government with jurisdiction to issue dune protection permits and/or beachfront construction certificates in Nueces County, Matagorda

County, Brazoria County and Galveston County, Texas, may, in accordance with this section, authorize emergency dune restoration projects in areas where dunes have been damaged by the effects of Hurricane Harvey. All authorizations issued under this section must otherwise be in accordance with applicable state and local laws. Under this section, the local government may only authorize emergency dune restoration projects as necessary to minimize the danger and threat to coastal residents and littoral property. Any proposed emergency dune restoration project must comply with the standards provided in this section.

- (e) Procedures. The permit and certificate application requirements and procedures of §15.3(s)(4) of this title (relating to Administration) are not applicable to emergency dune restoration projects. However, any person eligible to undertake an emergency dune restoration project must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency dune restoration project under this section will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid only for six months, after which it will expire. A local government shall not renew an authorization issued under this section.
- (f) Written Record. The local government authorizing an emergency dune restoration project shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each authorization, the local government must maintain a written record of the actions that it authorized, including the location of the dune and pictures of the emergency dune restoration project before and after completion of the authorized activities, and will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of actions authorized under this section.
- (g) Authorized emergency dune restoration. The local government shall require persons to locate restored dunes in the area where dunes existed before the storm, or no more than 20-feet seaward of the post-storm line of vegetation, referred to herein as the restoration area. To the extent practicable, the local government shall ensure that the restoration area follows the location of the post-storm vegetation line. The local government may authorize the restoration of dunes on the public beach only under the following conditions:

 - (1) The local government shall not allow any person to restore dunes, even within the restoration area, if such dunes would substantially restrict or interfere with the public access to or use of the public beach at normal high tide; and
 - (2) Under no circumstances may sand or other materials be placed below mean high water or mean higher high water.
- (h) Authorized methods and materials for emergency dune restoration. The local government may allow persons to use the following methods or materials for emergency dune restoration:

 - (1) beach-quality sand having similar grain size and mineralogy as the surrounding beach;
 - (2) organic brushy material including seaweed; and
 - (3) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the areas where scraping is authorized is monitored to determine any effect on the public beach, including, but not limited to, increase erosion of the public beach.
- (i) Prohibitions. The local government shall not allow any person to undertake dune restoration projects using any of the following materials:

- (1) materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;
 - (2) sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; or,
 - (3) sand obtained by scraping or grading dunes or eroding beaches.
- (j) The local government is not authorized under this rule to allow the use of concrete or the construction, maintenance or repair of bulkheads or other erosion response structures, or construct or repair a structural shore protection project.
 - (k) This rule does not prohibit a local government from authorizing the removal of portions of damaged bulkheads that threaten public health safety and welfare.

