

**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 §15.19**

The General Land Office adopts, on an emergency basis, new §15.19, concerning Emergency Measures for Beach and Dune Restoration in response to Hurricane Laura. This rule applies to local governments with authority to issue beachfront construction certificates and dune protection permits in Galveston County and Brazoria County, Texas. These jurisdictions have areas 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 storm surge, high tides, and erosion resulting from Hurricane Laura. The barriers, including dunes, protect landward structures from future storms and high tide events. They also mitigate the threat to public health and safety from storm surge and flooding. Since it is still hurricane season, this threat is ongoing, and the repairs need to be completed as quickly as possible. As a result of Hurricane Laura, hurricane and tropical storm winds, storm surge, high tides, and overwash caused coastal flooding, and severe erosion of the sand dunes and shoreline. Hurricane Laura made landfall at 1:00 a.m. on August 27, 2020 near Cameron, Louisiana, although its destructive force impacted the upper Texas coast. The local jurisdictions listed above experienced loss in elevation of beach sand. The protective barrier provided by naturally occurring beaches and dunes in these areas has been severely impacted. The General Land Office finds that these emergency rules are necessary because coastal residents, public beaches, 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 emergency dune restoration by providing for temporary suspension of certain beachfront construction certificate and dune protection permit application and permitting requirements to enable the implementation hazard mitigation measures. These emergency rules will enable local governments to authorize the restoration of dunes in jurisdictions impacted by Hurricane Laura. 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 §15.19 provides procedures and requirements for issuance of authorization to undertake emergency dune restoration for littoral property impacted by Hurricane Laura. 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(i) 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 are, 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 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.

### **§15.19. 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 Laura 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 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 20feet 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 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 Laura. 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-foot 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;

(2) Under no circumstances may sand or other materials be placed below mean high water or mean higher high water; and

(3) Derelict structures and debris should be removed from the area before placement of allowable materials.

(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, increased 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, sandbags, riprap, concrete, 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;

(3) sand obtained by scraping or grading dunes or eroding beaches; or

(4) sand that is not beach-quality sand or an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system or contains clay.

(j) The local government is not authorized under this rule to allow the use of concrete or to allow the construction, maintenance or repair of bulkheads or other erosion response structures, or to 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.

