

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

The General Land Office adopts, on an emergency basis, new §15.18, concerning Emergency Provisions for Dune Restoration and Stabilization and Repair of Damaged Habitable Structures in response to Hurricane Laura and Tropical Storm Beta. 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 dunes damaged or destroyed by storm tidal surges and overwash, and where habitable structures need emergency stabilization and repair. The General Land Office has withdrawn Emergency Rule 15.19 for Hurricane Laura, published on September 1, 2020, and adopts this new rule for Hurricane Laura and Tropical Storm Beta.

This emergency rule is 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 and Tropical Storm Beta. As a result of both Hurricane Laura and Tropical Storm Beta, 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. Tropical Storm Beta made landfall at 10:00 p.m. on September 21, 2020 near Matagorda Peninsula. These two storms resulted in a loss in elevation of beach sand in both Galveston and Brazoria Counties. The protective barrier provided by dunes in these areas has been severely impacted by both events. In addition, the structural integrity of many houses has been adversely impacted as a result of these natural forces. GLO finds that this emergency rule is necessary because coastal residences, public beaches, and coastal natural resources are extremely vulnerable to ongoing injury, damage, and destruction. Since it is still hurricane season, this threat is ongoing, and the repairs need to be completed as quickly as possible.

The General Land Office has determined it is necessary to adopt an emergency rule with provisions that provide for temporary suspension of certain beachfront construction certificate and dune protection permit application and permitting requirements for certain specified activities and provide for an alternative authorization process. The emergency rule will enable local governments to permit immediate stabilization and repair of habitable structures and authorize the restoration of dunes in jurisdictions most impacted by Hurricane Laura and Tropical Storm Beta. The emergency rule 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 for issuance of local authorization to undertake emergency dune restoration and emergency stabilization and repairs of structures impacted by Hurricane Laura and Tropical Storm Beta. Section 15.18(c) provides definitions applicable to this new section. Section 15.18(d) allows the local government to issue authorizations for

emergency dune restoration and emergency stabilization and emergency repair of habitable structures as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.18(e) provides an alternative authorization process that shall apply to emergency authorizations and specifies 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 dune restoration or emergency stabilization and emergency repair actions that are authorized. Section 15.18(g) provides requirements and limitations with regard to the location of emergency dune restoration projects. Section 15.18(h) provides guidelines for authorized methods and materials with regard to emergency dune restoration projects. Section 15.18(i) contains prohibitions with regard to dune restoration projects. Section 15.18(j) provides authorizations and limitations with regard to authorizations by the local government of emergency stabilization and repair of habitable structures. Section 15.18(k) provides that houses under enforcement will require a standard permit and may not use the emergency rule. Sections 15.18(l) and (m) provide additional limitations and requirements related to the repair of septic and sewage systems and the placement of materials on the beach. Section 15.18(n) and (o) allow a local government to remove portions of damaged bulkheads that threaten public health, safety and welfare and prohibit a local government from authorizing construction or repair of a bulkhead or structural shore protection project under this rule and acknowledge that houses repaired under this section may also be an encroachment on and interference with the public beach easement.

Under emergency rule §§15.18(j) and (k), a local government may permit the some repairs to a habitable structure; however, a local government is prohibited from authorizing the following under the emergency rule: 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, Texas Natural Resources Code Ch. 61 or Ch. 63, 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 activities and others not specifically authorized in this emergency rule must follow the permitting rules and limitations 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, Applicants must go through the standard application process and obtain a certificate and permit. Specifically, impervious cover can only be authorized through the standard, non-emergency permitting process.

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 this emergency rule. This rule is 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 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.

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

(a) Purpose. The purpose of this section is to allow a local government to authorize a property owner to immediately undertake certain emergency repairs to restore dunes and to stabilize and repair a habitable structure damaged as the result of Hurricane Laura or Tropical Storm Beta, so as to minimize further threat or damage to coastal residents and littoral property.

(b) Applicability. This section applies only to emergency dune restoration projects and structure stabilization and emergency repairs 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 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 dune restoration -- those immediate and authorized 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.

(5) Emergency repair -- Those immediate and authorized response actions that must be undertaken to render a structure habitable or to prevent further damage or loss of property to high tides.

(6) Emergency stabilization -- Those immediate and authorized 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.

(7) Restoration Area--

(A) An area where dunes existed pre-storm;

(B) An area no more than 10 feet seaward of a habitable structure if no dunes existed in the area before the storm;

(C) In no case does the Restoration Area include the area seaward of the mean high tide line or an area where placement of restored dunes would result in substantial interference with the public's ability to access the beach at mean high tide.

(d) Local government authorization. The local governments with the authority to issue dune protection permits and beachfront construction certificates in Brazoria County and Galveston County may, in accordance with this section, authorize emergency dune restoration projects or the emergency stabilization and emergency repair of a habitable structure damaged by Hurricane Laura or Tropical Storm Beta.

(1) The local government is responsible for assessing damage to dunes and structures, determining whether the proposed dunes and structures are eligible for restoration or emergency stabilization and emergency repair, and determining appropriate restoration methods and emergency stabilization and emergency repair procedures. Under this section, the local government may only authorize emergency dune restoration or emergency stabilization and emergency repair as necessary to eliminate the danger and threat to public health, safety, and welfare, or to minimize the danger and threat to coastal residents and littoral property.

(2) Any proposed emergency dune restoration project or emergency stabilization and emergency repair of a habitable structure must strictly comply with the standards and requirements provided in this section and §15.6(e). In order to be eligible for use of emergency rules for emergency repair or emergency stabilization, no portion of the habitable structure may be located seaward of mean high tide, the habitable structure must not have been damaged more than 50 percent or destroyed, and the habitable structure must not present an imminent threat to public health and safety.

(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 or emergency stabilization and emergency repair of habitable structures that are authorized under this rule. However, any person eligible to undertake an emergency dune

restoration project or emergency stabilization and emergency 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 dune restoration or emergency stabilization and emergency repair of habitable structures under this section must undergo the standard application and approval process before such action is undertaken. An authorization issued by a local government under this section shall be valid only for six months from the date of issuance, after which it will expire. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing emergency dune restoration or emergency stabilization and emergency 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 emergency dune restoration 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. For each emergency stabilization and emergency repair of a habitable structure, 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, and pictures of the structure before and after completion of the authorized activities. The local government 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 emergency dune restoration. The local government shall require persons to locate restored dunes in the restoration area, as defined in subsection (c)(7). The local government may authorize the restoration of dunes only under the following conditions:

- (1) if the restored dunes would not substantially restrict or interfere with access points or public access to or use of the public beach at normal high tide, including causing pedestrian or vehicular traffic to enter the water in order to traverse the beach at normal high tide;
- (2) if the placement of sand or other authorized materials will be above the mean high tide line; and
- (3) if derelict structures and debris have been 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 dune vegetation; 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 regarding emergency dune restoration. 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.

(j) Authorized Stabilization and Repair of Damaged Habitable Structures. 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 the footprint of habitable structures if it consists only of beach quality sand or a sandy clay mixture. Sandy clay may be placed to fill voids only directly under the footprint of a residential structure; provided, however, that sandy clay used for this purpose must be covered with beach quality sand, where practicable, to a depth of at least 12 inches. Such actions are only authorized in situations where stabilization of the structure is required to prevent foreseeable undermining of habitable structures in the event of future storms and high tide events.
- (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 local dune protection and beach access plan and the National Flood Insurance Program;
- (D) construction of wooden decking or stairs under or directly adjacent to the footprint of the habitable structure only as necessary to make the house accessible;
- (E) installation of new pilings or repair of existing pilings. and
- (F) placement of beach-quality sand 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.

(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 or construction of a bulkhead, retaining wall, other erosion response structure, or structural shore protection project;
- (D) the use of sandbags;
- (E) repairs that occur seaward of mean high tide; and,
- (F) placement of beach-quality sand or sandy clay must not be placed seaward of the mean high tide line.

(k) Repair of structures subject to ongoing enforcement. Any repairs to structures that are subject to an ongoing enforcement action under this subchapter, the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), or a local government beach access and dune protection plan must go through standard permitting process.

(l) 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).

(m) This emergency rule does not authorize the placement of materials seaward of the mean tide line.

(n) 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. This rule does not prohibit a local government from authorizing the removal of portions of damaged bulkheads that threaten public health safety and welfare.

(o) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. The right of the commissioner, the attorney general, a county attorney, district attorney, criminal district attorney or local authority to file suit in the future to pursue enforcement or obtain an injunction, to remove a house from the public beach is preserved regardless of whether the house is eligible for emergency stabilization and repairs under this section.