

## 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 (GLO) adopts, on an emergency basis, new §15.19, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures in Response to Hurricane Ike Relating to Utilities and Ground Level Enclosures. Hurricane Ike hit the upper Texas coast on September 13, 2008, as a strong Category 2 hurricane, preceded by extremely high water, including storm surge and battering waves. The wind and water impacts of Ike on coastal Brazoria County, Galveston Island, and Bolivar Peninsula were catastrophic. The General Land Office recognizes that all jurisdictions within Nueces, Matagorda, Brazoria, and Galveston Counties with Dune Protection and Beach Access Plans may have areas where residential structures and public infrastructure need 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 in order to prevent imminent peril to the public health, safety, and welfare. The storm's widespread impact has created an extraordinary amount of debris both on land and in the coastal waters. The post-storm recovery has just begun, and the GLO has determined that issues relating to the imminent health, safety, and welfare of the local residents require the issuance of this new §15.19. The destruction of infrastructure has made public utilities unavailable to many areas with restoration of services expected to take months. Moreover, the reconnection of residential structures to utilities is a matter that should be handled at the sole discretion of the local government and utility providers. In addition, the urgent need for property owners to be able to store items of value on the ground level of damaged houses creates an imminent peril to the safety and security of personal property and the need for this new §15.19 to permit enclosing areas below houses in certain instances.

In anticipation of imminent landfall of Hurricane Ike, on September 12, 2008 the GLO issued new §15.17, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures, and new §15.18, concerning Emergency Measures for Dune Restoration and Existing Shore Protection Projects. Those emergency rules addressed the need of emergency stabilization and repair to protect property and the need for emergency hazard mitigation measures to reestablish the protective barrier provided by the beach and natural dunes damaged or destroyed by storm tidal surges in order to prevent imminent peril to the public health, safety, and welfare.

The City of Galveston, one of the local areas most heavily damaged by Hurricane Ike, has recently begun to consider permit applications for repairs under emergency §15.17 and §15.18. The post-storm situation is dire because of the extensive damage to houses and infrastructure, steep losses in elevation, and the enormous debris fields all over the island. The City has become concerned that property owners may mistakenly believe that emergency §15.17 creates an obligation for the local government to provide public utilities without regard to the location or

condition of the house or the ability of the community to provide such services. In this emergency new §15.19, the GLO modifies the provisions of emergency §15.17 to provide that the phrase "emergency stabilization and repair" does not include reconnection to utilities. The City of Galveston has also recognized an urgent need for property owners to enclose areas below the house with breakaway walls to protect and secure personal property. The GLO has determined that this construction is permissible under these circumstances because of the difficult recovery situation in the affected jurisdictions after Hurricane Ike.

Emergency §15.19 provides that "emergency stabilization and repair" does not include reconnection to utilities. It also provides that "emergency stabilization and repair" does include enclosing an area below the house if the house's foundation is intact. The section 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. Section 15.19(c) authorizes the local jurisdiction to issue permits for emergency stabilization and repair and to determine the appropriate procedures for such permitting to the extent necessary to eliminate health, safety, and welfare hazards. Section 15.19(d) provides the "emergency stabilization and repair" does not include reconnecting a house to utilities. Section 15.19(d) also provides that reconnection to utilities may be made as permitted under other applicable law or local ordinances. Section 15.19(e) provides that "emergency stabilization and repair" does include construction or repair of an enclosed space under the house in accordance with local requirements if the house's foundation is intact. Section 15.19(f) provides that all other provisions of emergency §15.17, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures apply to authorizations issued under this section, except as modified by subsections (d) and (e) pertaining to utilities and enclosures.

The General Land Office has determined that a takings impact assessment, pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this emergency rule because the rule is adopted in response to a real and substantial threat to public health, safety, and welfare.

The new section is adopted on an emergency basis under the Texas Natural Resources Code §§63.121, 61.011, and 61.015(b), which provide the GLO 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' public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The new section is also adopted on an emergency basis pursuant to the Texas Natural Resources Code §33.602, which provides the GLO with the authority to adopt rules on erosion, and the Texas Water Code §16.321, which provides the GLO with the authority to adopt rules on coastal flood protection. Finally, the new section is 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 Provisions for Stabilization and Repair of Damaged Residential Structures in Response to Hurricane Ike Relating to Utilities and Ground Level Enclosures.

(a) Purpose. The purpose of this section is to allow the local governments to which this rule applies to grant to a property owner the ability to undertake emergency stabilization and repair of a residential structure damaged as the result of Hurricane Ike.

(b) Applicability. This section applies only to structures located in all local jurisdictions with local dune protection and beach access plans within the Counties of Nueces, Matagorda, Brazoria, and Galveston. 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) Local government authorization. The local government may, in accordance with this section, authorize emergency stabilization and repair of a residential structure damaged by Hurricane Ike. 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. Except as provided in subsections (d) and (e) of this section, any proposed stabilization and repair method or technique must comply with the standards provided in the emergency rule issued September 12, 2008, §15.17 of this title (relating to Emergency Provisions for Stabilization and Repair of Damaged Residential Structures) 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).

(d) "Emergency stabilization and repair" does not include reconnecting the house to utilities such as sewer, water, and electricity. Reconnection to such utilities may be made in accordance with other applicable law or local ordinances.

(e) "Emergency stabilization and repair" does include construction or repair of an enclosed space with breakaway or louvered walls at ground level that is consistent with the local dune protection and beach access plan and National Flood Insurance Program, provided that the foundation of the structure is intact.

(f) Except as provided in subsections (d) and (e) of this section, all other provisions of §15.17 of this title apply to authorizations issued under this section.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Trace Finley  
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General Land Office  
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### 31 TAC §15.20

The General Land Office (GLO) adopts, on an emergency basis, new §15.20, concerning Emergency Provision for Stabiliza-

tion and Repair of Damaged Residential Structures and to Protect Public Infrastructure in Response to Hurricane Ike Relating to the Use of Clay Fill. Hurricane Ike hit the upper Texas coast on September 13, 2008, as a strong Category 2 hurricane, preceded by extremely high water, including storm surge and battering waves. The wind and water impacts of Ike on coastal Brazoria County, Galveston Island, and Bolivar Peninsula were catastrophic. The GLO recognizes that all jurisdictions within Nueces, Matagorda, Brazoria, and Galveston Counties with Dune Protection and Beach Access Plans may have areas where residential structures and public infrastructure need emergency stabilization and repair.

The tidal surge associated with Ike washed away sand that supported pilings for residential structures. The lack of sand under the residential structures may destabilize them and create an imminent danger that the houses may pose a threat to public safety. The tidal surge also created voids and gullies that pose physical hazards to the community and threaten the stability of certain public infrastructure. Property owners and local governments have an urgent need to fill the areas where sand was washed away. Beach quality sand is normally required for filling activities on the beach. But beach quality sand in critically short supply in the areas affected by Hurricane Ike. Therefore, allowing the limited use of clay or sandy clay fill is necessary to address an imminent threat to public health, welfare, and safety.

In anticipation of imminent landfall of Hurricane Ike, on September 12, 2008 the GLO issued emergency new §15.17, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures, and emergency new §15.18, concerning Emergency Measures for Beach and Dune Restoration and Existing Shore Protection Projects. Those emergency rules addressed the need of emergency stabilization and repair to protect property and the need for emergency hazard mitigation measures to reestablish the protective barrier provided by the beach and natural dunes damaged or destroyed by storm tidal surges in order to prevent imminent peril to the public health, safety, and welfare.

On October 7, 2008, the GLO issued new §15.19, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures in Response to Hurricane Ike Relating to Utilities and Ground Level Enclosures. That emergency measure provided that connection to utilities is not an emergency repair and that ground level enclosures could be repaired with breakaway or louvered walls. Both provisions were necessary to prevent an imminent threat to public health, safety and welfare in light of the extraordinary amount of damage and debris left in Ike's wake.

Emergency new §15.20 provides that local governments can authorize as "emergency stabilization and repair" the use of clay or sandy clay fill under the footprint of a residential structure. It also provides that clay or sandy clay fill may be used outside the footprint to restore a natural angle of repose with the fill under the house, but such fill must not extend more than five feet beyond the footprint of the structure. Beach quality sand must be used for additional fill outside the footprint of the structure and the perimeter area up to five feet. It also provides that local governments may authorize the use of clay or sandy clay fill to protect public infrastructure. In the case of residential structures and public infrastructure, any clay or sandy clay used must be covered with beach quality sand, where practicable, to a depth of at least 12 inches. The section 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. Section 15.20(c) authorizes the local jurisdiction to issue permits for emergency stabilization and repair and to determine the appropriate procedures for such permitting to the extent necessary to eliminate health, safety, and welfare hazards. Section 15.20(d) provides the "emergency stabilization and repair" does include the use of clay or sandy clay material to fill voids under within the footprint of a residential structure and outside the footprint to restore a natural angle of repose, but not more than five feet beyond the footprint. Such fill must be covered by beach quality sand, where practicable, to a depth of at least 12 inches. Section 15.20(e) gives the local government the authority to permit the use of clay or sandy clay material to fill voids to protect public infrastructure. Such fill must be covered by beach quality sand, where practicable, to a depth of at least 12 inches. Section 15.20(f) provides that all other provisions of emergency §15.17, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures apply to authorizations issued under this section, except as modified by subsections (d) and (e) pertaining to the use of clay fill.

The GLO has determined that a takings impact assessment, pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this emergency rule because the rule is adopted in response to a real and substantial threat to public health, safety, and welfare.

The new section is adopted on an emergency basis under the Texas Natural Resources Code §§63.121, 61.011, and 61.015(b), which provide the GLO 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 easement from erosion or reduction caused by development or other activities on adjacent land; and other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The new section is also adopted on an emergency basis pursuant to the Texas Natural Resources Code §33.602, which provides the GLO with the authority to adopt rules on erosion, and the Texas Water Code §16.321, which provides the GLO with the authority to adopt rules on coastal flood protection. Finally, the new section is 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.

§15.20. Emergency Provision for Stabilization and Repair of Damaged Residential Structures and to Protect Public Infrastructure in Response to Hurricane Ike Relating to the Use of Clay Fill.

(a) Purpose. The purpose of this section is to provide guidelines for the local governments under which they may authorize a property owner to utilize clay or sandy clay for the purpose of emergency stabilization and repair of a residential structure or to authorize such fill to protect public infrastructure damaged as the result of Hurricane Ike.

(b) Applicability. This section applies only to structures and public infrastructure located in all local jurisdictions with local dune protection and beach access plans within the Counties of Nueces, Matagorda, Brazoria, and Galveston. 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) Local government authorization. The local government may, in accordance with this section, authorize emergency stabilization and repair of a residential structure and to protect public infrastructure damaged by Hurricane Ike. 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 residential 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. Except as provided in subsections (d) and (e) of this section, any proposed stabilization and repair method or technique must comply with the standards provided in the emergency rule issued September 12, 2008, §15.17 of this title (relating to Emergency Provisions for Stabilization and Repair of Damaged Residential Structures), or October 7, 2008, §15.19 of this title (relating to Emergency Provisions for Stabilization and Repair of Damaged Residential Structures in Response to Hurricane Ike Relating to Utilities and Ground Level Enclosures), or §15.11(f) of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach).

(d) "Emergency stabilization and repair" does include the use of clay or sandy clay to fill voids under the footprint of a residential structure seaward of the line of vegetation and beyond the footprint to the extent necessary to restore a natural angle of repose up to a distance of not more than five feet from the structure's footprint; provided, however, that clay or sandy clay used for this purpose must be covered with beach quality sand, where practicable, to a depth of at least 12 inches.

(e) Local governments may authorize the use of clay or sandy clay to fill voids in order to protect public infrastructure; provided, however, that clay or sandy clay sand used for this purpose must be covered with beach quality sand, where practicable, to a depth of at least 12 inches.

(f) Except as provided in subsections (d) and (e) of this section, all other provisions of §15.17 of this title, apply to authorizations issued under this section.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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