

## **Texas Administrative Code**

**TITLE 31**      **NATURAL RESOURCES AND CONSERVATION**  
**PART 1**        **GENERAL LAND OFFICE**  
**CHAPTER 15**   **COASTAL AREA PLANNING**  
**SUBCHAPTER A** **MANAGEMENT OF THE BEACH/DUNE SYSTEM**  
                  **Emergency Provision for Stabilization and Repair of**  
**RULE §15.20**   **Damaged Residential Structures And To Protect Public**  
                  **Infrastructure In Response To Hurricane Ike Relating to**  
                  **The Use of Clay Fill**  
**ACTION:**      **Emergency Adoption of New Section**

The General Land Office adopts, on an emergency basis, new § 15.20, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures 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 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.

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 is 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 new § 15.17, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures, and 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 rule § 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 Rule 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 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 because the rule is adopted in response to a real and substantial threat to public health, safety, and welfare.

The new sections are adopted on an emergency basis under the Texas Natural Resources Code §§ 63.121, 61.011, and 61.015(b), 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 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 sections are also adopted pursuant to the Texas Natural Resources Code § 33.602, 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.

§ 15.20. 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) below, 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 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) above, all other provisions of § 15.17 of this title (relating to Emergency Provisions for Stabilization and Repair of Damaged Residential Structures in Response to Hurricane Ike) apply to authorizations issued under this section.