

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
RULE §15.13 **Emergency Provisions for Stabilization and Repair of Damaged Structures In Response To Hurricane Rita**
ACTION: **Emergency Adoption of New Section**

The General Land Office adopts, on an emergency basis, new § 15.13, concerning Emergency Provisions for Stabilization and Repair of Damaged Structures in the aftermath of Hurricane Rita. The General Land Office recognizes that the following jurisdictions with authority to issue beachfront construction certificates and dune protection permits have areas where structures and public infrastructure are in need of emergency stabilization and repair: Jefferson County, Galveston County, the City of Galveston, the City of the Village of Jamaica Beach, Brazoria County, the Village of Surfside Beach, and the Village of Quintana Beach. This emergency rule is necessary to help local governments prevent imminent peril to the public health, safety, and welfare, and permit the repair of residential structures necessary to maintain habitability.

The sections are adopted on an emergency basis due to the imminent peril to public health, safety and welfare caused by high winds, storm surge, high tides and erosion resulting from Hurricane Rita. As a result of Hurricane Rita, September 23-25, 2005, hurricane and tropical storm winds, storm surge, extreme tides and wave action caused substantial property damage, coastal flooding and erosion. Hurricane Rita made landfall at 3 a.m. on Saturday, September 24, 2005, near Sabine Pass, Texas. Its widespread destructive force impacted the upper Texas coast. The local jurisdictions listed above experienced loss in elevation of beach sand. The structural integrity of many houses have been impacted as a result of these natural forces.

The General Land Office staff recognized the need for emergency rules as Hurricane Rita approached the Texas coast, and conferred with local government officials. The General Land Office has determined the necessity for emergency rules that allow emergency stabilization and repair of structures and provide for temporary suspension of the permit and certificate application requirements for these emergency stabilization and repair techniques and methods, as well as other hazard mitigation measures.

Emergency rule § 15.13 provides procedures and requirements for issuance of authorization to undertake emergency stabilization and repairs of structures impacted by Hurricane Rita. The

emergency rule is applicable only to Jefferson County, Galveston County, the City of Galveston, the City of the Village of Jamaica Beach, Brazoria County, the Village of Surfside Beach, and the Village of Quintana Beach . Section 15.13(b) provides that this section shall be effective for 120 days, and may be extended by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare. Section 15.13(c) provides definitions applicable to this section. Section 15.13(d) allows the local government to issue authorizations for emergency stabilization and repair of residential structures as necessary to eliminate the danger and threat to public health, safety, and welfare if the local government determines that the residential structure appears to be located wholly or partially seaward of the line of vegetation solely because of the effects of Hurricane Rita (or Hurricanes Katrina and Rita in the Village of Surfside Beach) and the local government provides a written statement to that effect with the written record described in subsection (f). Section 15.13(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 15.13(f) provides that the local government is required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency stabilization and repair actions. They are also required to maintain a written record of the specific activities that have been authorized, including pictures of the structure before and after the repairs are completed. Section 15.13(g) provides requirements and limitations with regard to emergency authorizations by the local government of emergency stabilization and repair. Section 15.13(h) provides additional limitations with regard to structures located on the public beach, and requirements related to the placement of beach quality sand. Except as permitted under § 15.12, a local government may not authorize emergency stabilization and repair under this section for a house that is 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). Sections 15.13(i), (j), (k) and (l) provide additional limitations and prohibitions related to the repair of hard structures, septic and sewage systems, the placement of materials on the public beach, and the removal of beach debris.

Under emergency rule § 15.13(g), a local government may permit the repair of a structure that appears to be partially or wholly seaward of the line of vegetation; however, a local government is prohibited from authorizing the following: repairing or constructing a slab of concrete or other impervious material; repairing or constructing an enclosed space, including a space with breakaway walls, below the base flood elevation, as identified on the pertinent community's flood insurance rate map, and seaward of the line of vegetation; increasing the footprint of the structure; repairing a structure without a functioning septic system or sewer connection as determined by the local government or the Texas Commission on Environmental Quality (TCEQ), unless the structure's septic system may be repaired as provided in § 15.13(j); repairing a 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. While the emergency rule prohibits the repair or construction of a slab or other impervious surface of concrete or other impervious materials seaward of the line of vegetation, the emergency rule does not require that an owner remove an existing slab or other impervious

surface when no repairs to the slab or other impervious surface is proposed. A local government may authorize the repair of a septic system landward of the line of vegetation if the system complies with the rules of the TCEQ and the local government governing on-site sewage facilities.

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 amendment 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 § 33.601, 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.

§ 15.13. Emergency Provisions for Stabilization and Repair of Damaged Residential 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 residential structure damaged as the result of Hurricane Rita.

(b) Applicability. This section applies only to structures located in Jefferson County, Galveston County, the City of Galveston, the City of the Village of Jamaica Beach, Brazoria County, the Village of Surfside Beach, and the Village of Quintana Beach, 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) House - A single or multi-family structure that serves as living quarters for one or more persons or families.

(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 residential 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 jurisdiction to issue dune protection permits and beachfront construction certificates may, in accordance with this section, authorize emergency stabilization and repair of a residential structure damaged by Hurricane Rita. 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. If a house appears to be located wholly or partially seaward of the line of vegetation solely because of the effects of Hurricane Rita (or Hurricanes Katrina and Rita in the Village of Surfside Beach) and the local government provides a written statement to that effect with the written record described in subsection (f) of 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 as permitted in subsection (g), (h), and (j) of this section. 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).

(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 residential 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 residential 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 6 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 residential 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 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 actions authorized under this section.

(g) Authorized Repairs. The local government may authorize emergency stabilization and repair of a residential structure only if the local government determines that the proposed action:

(1) is solely to make the house habitable or prevent further damage, including reconnecting the house to utilities;

(2) does not increase the footprint of the house;

(3) does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the natural line of vegetation;

(4) does not include the construction of an enclosed space below the base flood elevation and seaward of the natural line of vegetation;

(5) does not include the repair, construction, or maintenance of an erosion response structure seaward of the natural line of vegetation;

(6) does not occur seaward of mean high water; and,

(7) does not include construction underneath, outside or around the house other than for reasonable access to the house.

(h) Repair of existing structures on the public beach.

(1) A local government may grant authorization in accordance with this section for emergency stabilization of a structure that encroaches or may encroach on the public beach, 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 residential structure that encroaches or may encroach on the public beach, but only if the structure is:

(A) a house;

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

(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). An enforcement action includes a pending suit in district court or an active referral of a matter for enforcement to the attorney general or other public prosecutor; provided, that repairs may be authorized under § 15.12 if that section applies.

(3) Beach-quality sand may be placed on the lot in the area twenty feet seaward of a structure where necessary to prevent further erosion due to wind or water. The beach-quality 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 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 or repair of bulkheads or hard protective structures.

(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 public beach 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 residential structures.

(l) Removal of beach debris. Beach debris moved by wind or water can threaten Gulf-fronting properties. The local government, therefore, shall coordinate with the Texas Department of Emergency Management, the Texas General Land Office and property owners to remove debris such as pilings, concrete and garbage from the public beach as soon as possible.