

Texas General Land Office Construction Certificate and Dune Protection Permit Requirements Checklist

The Texas General Land Office has created this checklist to ensure beachfront construction certificate and dune protection permit applications are administratively complete prior to submittal to our office for review. Submitting the required information listed below will allow GLO staff to expedite the review of your permit application and may prevent a request for additional information. Please note that some local governments may require additional information. A list of contacts at local beach/dune permitting authorities can be found on the same page you accessed this form (www.glo.state.tx.us/coastal/beachconstruct.html).

Applicant Information

- Name
- Address
- Phone number
- Fax (if applicable)

Property Information

- Name of property owner
- Complete legal description of tract
- Situs address (if available)

Site Information

- Approximate percentage of existing open spaces (areas completely free of structures)
- Dated photographs of the site that clearly show the current location of the vegetation line and the existing dunes on the tract and the adjacent property from directions south, north, east, and west
- Copy of FEMA elevation requirements
- Most recent local erosion rate data (based on published data from the Bureau of Economic Geology, University of Texas, Austin)
- Activity's potential impact on coastal erosion

Proposed Project

- Approximate duration of the construction
- Approximate percentage of finished open spaces (areas completely free of structures)
- Number of proposed structures (specify whether proposed structures are habitable structures or amenities)
- Number of parking spaces
- Description (including location) of any existing or proposed walkways or dune walkovers on the tract
- Floor plan and elevation view of the proposed structure to be constructed or expanded showing all plumbing plans
- Description including type and location of proposed impervious and pervious surface(s)
- Depiction of extent of proposed impervious and pervious surface(s)
- Description of any existing concrete or fibercrete on tract
- Statement written by applicant affirming that the construction, the completed structure, and use of or access to and from the structure will not adversely affect the public beach or public beach access ways or exacerbate erosion
- Proof of financial assurance for proposed structures **in eroding areas** to fund eventual relocation or demolition of proposed structure (e.g. Upton-Jones coverage in the National Flood Insurance Program)

Dune Mitigation Information (if dunes or dune vegetation are disturbed)

- Comprehensive mitigation plan that includes a detailed description of the methods that will be used to avoid, minimize, mitigate, and/or compensate for any adverse effects on dunes or dune vegetation
- Effects of the proposed activity on the beach/dune system, which cannot be avoided (including damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology)
- Proof of applicant's financial capability to mitigate or compensate for adverse effects on dunes and dune vegetation (e.g. an irrevocable letter of credit or a performance bond)

Maps and Surveys

Please submit applicable information on one or more map, site plan, or plat as needed.

- Survey by a licensed surveyor
- Accurate map, site plan, or plat of the site identifying the following:
 - Legal description of the site, including, where applicable, the subdivision, block, and lot
 - Location of property lines and a notation of the legal description of adjoining tracts
 - Size of the tract in acres or square feet
 - Location of proposed and existing structures
 - Location of the project area of the proposed construction on the tract
 - Size of proposed project area in acres or square feet
 - Location of footprint or perimeter of the proposed construction on the tract (specify whether proposed structures are habitable structures or amenities)
 - Location of proposed or existing roadways, driveways, and parking areas on the tract
 - Location of proposed or existing dune walkovers on the tract
 - Location of proposed landscaping activities on the tract
 - Location of dune protection line and the distance between the proposed construction and the dune protection line
 - Location of line of vegetation and the distance between the proposed construction and the line of vegetation
 - Distance between the proposed construction and mean high tide
 - Distance between the proposed construction and landward limit of beachfront construction area
 - Location of any retaining walls, seawalls, or erosion response structures on the tract and on properties immediately adjacent to the tract and within 100 feet of the common property line
 - Location and extent of any man-made vegetated mounds, restored dunes, fill activities, or other pre-existing human modifications on the tract (if known)
 - Location of any proposed impervious or pervious surfaces
 - Distance between any proposed impervious or pervious surfaces and the north toe of the dune
 - Distance between any proposed impervious or pervious surfaces and the line of vegetation
- A grading and layout plan identifying all elevations (in reference to the National Oceanic and Atmospheric Administration datum), existing contours of the project area (including the location of dunes and swales), wetlands, and proposed contours for the final grade
- Current topographic map, provided by a licensed surveyor, depicting any and all proposed changes to the terrain (topographic map should indicate any and all changes to the natural or man-made environment within the Critical Dune Area)

Information to be Submitted if Available

- Rate of erosion
- Copy of the FEMA Elevation Certificate

Additional Requirements for Large-scale Construction

- Plat or survey if tract is located in a subdivision and the applicant is the owner or developer of the subdivision (only one will apply)
 - Certified copy of the recorded plat of the subdivision
 - Plat of unrecorded subdivision certified by a licensed surveyor
 - Survey of un-platted tract
- Total area of subdivision in acres or square feet if tract is located in a subdivision and the applicant is the owner or developer of the subdivision
- Number of units proposed (for multi-unit dwellings)
- Alternatives to the proposed location of construction or to the proposed methods of construction which would have fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access
- Proposed activity's impact on natural drainage patterns of the site and adjacent lots

APPLICATION PROCEDURE FOR A
DUNE PROTECTION PERMIT

A Dune Protection Permit is required from the Brazoria County Commissioners' Court for any alteration (in elevation or vegetation) of the sand dunes in the area from mean high tide landward for a distance of 1,000 feet.

The application should be in letter form with a brief description of the proposed project. Also, any pertinent information regarding the preservation of the dunes that you propose to do may be discussed briefly. The application should be addressed to:

**BUILDING PERMIT DEPARTMENT
111 EAST LOCUST, BLDG. A-29, SUITE 210
ANGLETON, TEXAS 77515
ATTN: JOE RIPPLE**

In addition to the items stated above, the application should contain the following:

GRADING AND LAYOUT PLAN - Contours will be required of the existing area and proposed contours for the final grade. For the small areas, profiles will be sufficient with an existing and proposed profile. All elevations are to be on U. S. C. & G. S. datum. The location of structures should be shown on the map and identified and the proposed floor elevation should be indicated. The dimensions of the property should be clearly shown.

LOCATION MAP - A small map showing the project site location with respect to a permanent feature, such as an access road, should accompany the permit application. The subdivision, block and lot number should be indicated.

LANDSCAPE PLAN - Provisions must be made for stabilizing the dunes. A means of re-establishing the vegetation on the disturbed area must accompany the permit request. Indicate whether topsoil or sodden is to be used and the type of seeding.

ADDITIONAL DATA - Contained with the application should be the following additional data:

- (1) The distance from the seaward property line to mean high tide line
- (2) The number of units
- (3) The number of parking spaces
- (4) The total acreage contained in the property
- (5) The approximate percentage of open space (areas not having buildings, roads or parking)
- (6) The type of building material and the type of construction (floor plan and outside view)
- (7) Existing and finished elevation range

STAKING OF PROPERTY - The property corners should be staked so that an "on site inspection" can be made.

Submit two (2) copies of the information listed above with each application. Any questions pertaining to the permit may be addressed to the above.

ALLOW A MINIMUM TIME OF 6 TO 8 WEEKS FOR THE APPLICATION TO BE PROCESSED AND PERMIT RECEIVED OR DENIED.

SAMPLE

Brazoria County Application for Beachfront Construction

Owner information - Name, address and phone number. Same information for Contractor, if different than owner.

Legal Description - Legal description of the property of proposed construction. Lot, Block, Subdivision, Section or acreage tract number with Abstract number.

Development Description - Describe the plan for building construction. Number of structures, square footage, type of frame, and location of structures shown on plot plan. Reference location of structure from mean high tide and vegetation line. Indicate any existing structures on property. Floor plan of structure will be required. *If development is different from building a structure, please describe in detail.*

Parking Space - Define parking spaces needed. Is it within the footprint of the structure and driveway or is more parking necessary? Describe the type of material to be used.

Duration - Amount of construction and cleanup time necessary to complete job. This will include any re-vegetation necessary.

Walkway - Describe the type of walkover to be used and location shall be indicated on the plot plan of the property. Show diagram of style to be used. Will walkover be accessible to public or private use only? Will signs be posted, etc? *Construction standards are indicated in the "Dune Protection and Improvement Manual for the Texas Gulf Coast", a Texas General Land Office publication. Copies are available in the County Floodplain Administrator's Office.*

Grading and Layout - Describe the dunes located on property. Include the height, width, location from mean high tide, line of vegetation and the existing contours of dunes and swales. Indicate structures, septic and water lines and driveway location on property. Indicate location of sea-walls or any erosion response structures and on the properties immediately adjacent to the tract.

Photographs - Photographs help with documentation of dune location, damage done to vegetation, etc.

Page 2 - SAMPLE

Brazoria County Application for Beachfront Construction

Dune Effects - Describe the effect the construction will have to the dunes and vegetation. Consider the installation of the septic and water facilities.

Mitigation Plan - Comprehensive mitigation plan including details of the methods which will be used to avoid, minimize, mitigate and/or compensate for any adverse effects on dunes or vegetation. **Letter of Determination is required from the Corps of Engineers for wetlands.**

Septic System - Indicate the type of septic system to be used for structures. Systems will be approved by the County Environmental Health Department and installed under current State requirements by an approved contractor.

Landscaping - Describe lawn care, flower beds, type of shrubbery, etc. to be planted.

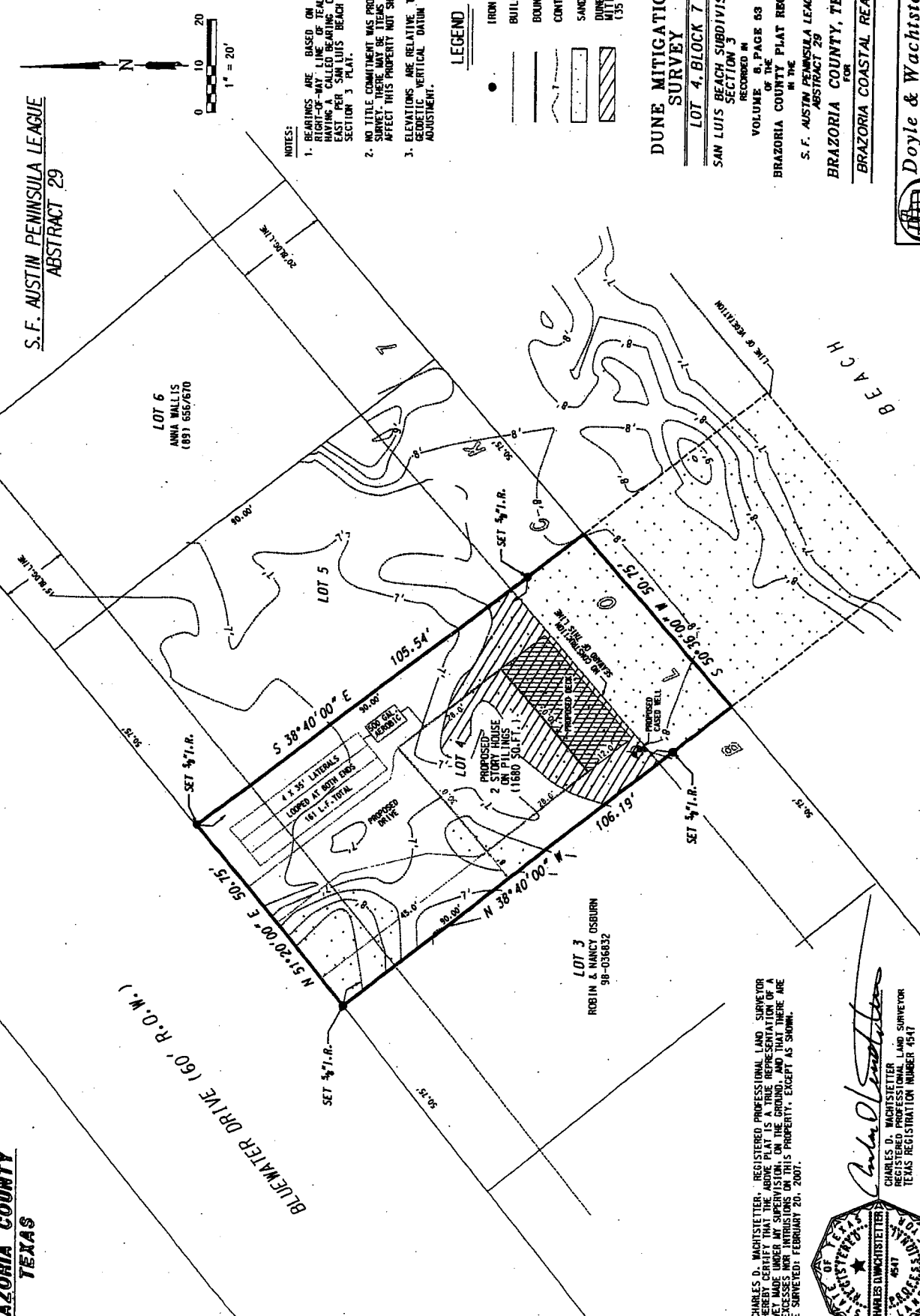
Map/plot - Provide an accurate location map to property and plot plan indicating adjacent property locations. Indicate the property measurement, line of vegetation, dunes, etc.

Statement of Concern - A written statement by the applicant affirming that the construction and use of or access to and from the structure will not adversely affect the public beach or public beach access ways or exacerbate erosion.

SAMPLE SURVEY

**BRAZORIA COUNTY
TEXAS**

**S. F. AUSTIN PENINSULA LEAGUE
ABSTRACT 29**



- NOTES:**
1. BEARINGS ARE BASED ON THE NORTHEAST BIGHT-OF-WAY LINE OF THE IRON PIPE/ROD HAVING A CALLED BEARING OF NORTH 51°20' EAST PER SAN LUIS BEACH SUBDIVISION, SECTION 3 PLAT.
 2. NO TITLE COMMITMENT WAS PROVIDED FOR THIS SURVEY. THERE MAY BE ITEMS OF EVIDENCE WHICH AFFECT THIS PROPERTY NOT SHOWN HEREON.
 3. ELEVATIONS ARE RELATIVE TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929, 1979 ADJUSTMENT.

LEGEND

- IRON PIPE/ROD
- ▬ BUILDING LINE
- ▬ BOUNDARY LINE
- ▬ CONTOUR LINE
- ▭ SAND DUNE AREA
- ▨ DUNE AREA TO BE REMOVED (135 CUBIC YARDS)

**DUNE MITIGATION
SURVEY**

**LOT 4, BLOCK 7
SAN LUIS BEACH SUBDIVISION
SECTION 3**

RECORDED IN
VOLUME 8, PAGE 63
BRAZORIA COUNTY PLAT RECORDS
IN THE

**S. F. AUSTIN PENINSULA LEAGUE
ABSTRACT 29
FOR
BRAZORIA COUNTY, TEXAS
BRAZORIA COASTAL REALTY**

I, CHARLES D. WACHSLETTER, REGISTERED PROFESSIONAL LAND SURVEYOR
HEREBY CERTIFY THAT THE ABOVE PLAT IS A TRUE REPRESENTATION OF A
SURVEY MADE UNDER MY SUPERVISION AND THAT THERE ARE
NO EXCESSES NOR INTRUSIONS ON THIS PROPERTY, EXCEPT AS SHOWN.
DATE SURVEYED: FEBRUARY 20, 2007.



Charles D. Wachsletter
CHARLES D. WACHSLETTER
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NUMBER 4647

Doyle & Wachsletter, Inc.
Surveying and Mapping GPS/GIS
OFFICES: 479-6441 511 COMMERCIAL STREET, CLUTE, TEXAS 77531
FAX: 479-265-0940
SURVEYING: 479-6441 511 COMMERCIAL STREET, CLUTE, TEXAS 77531
MAILING: 1107 W. 23RD ST., SUITE 100, CLUTE, TEXAS 77531
PHONE: 409-723-0111 FAX: 409-723-0111

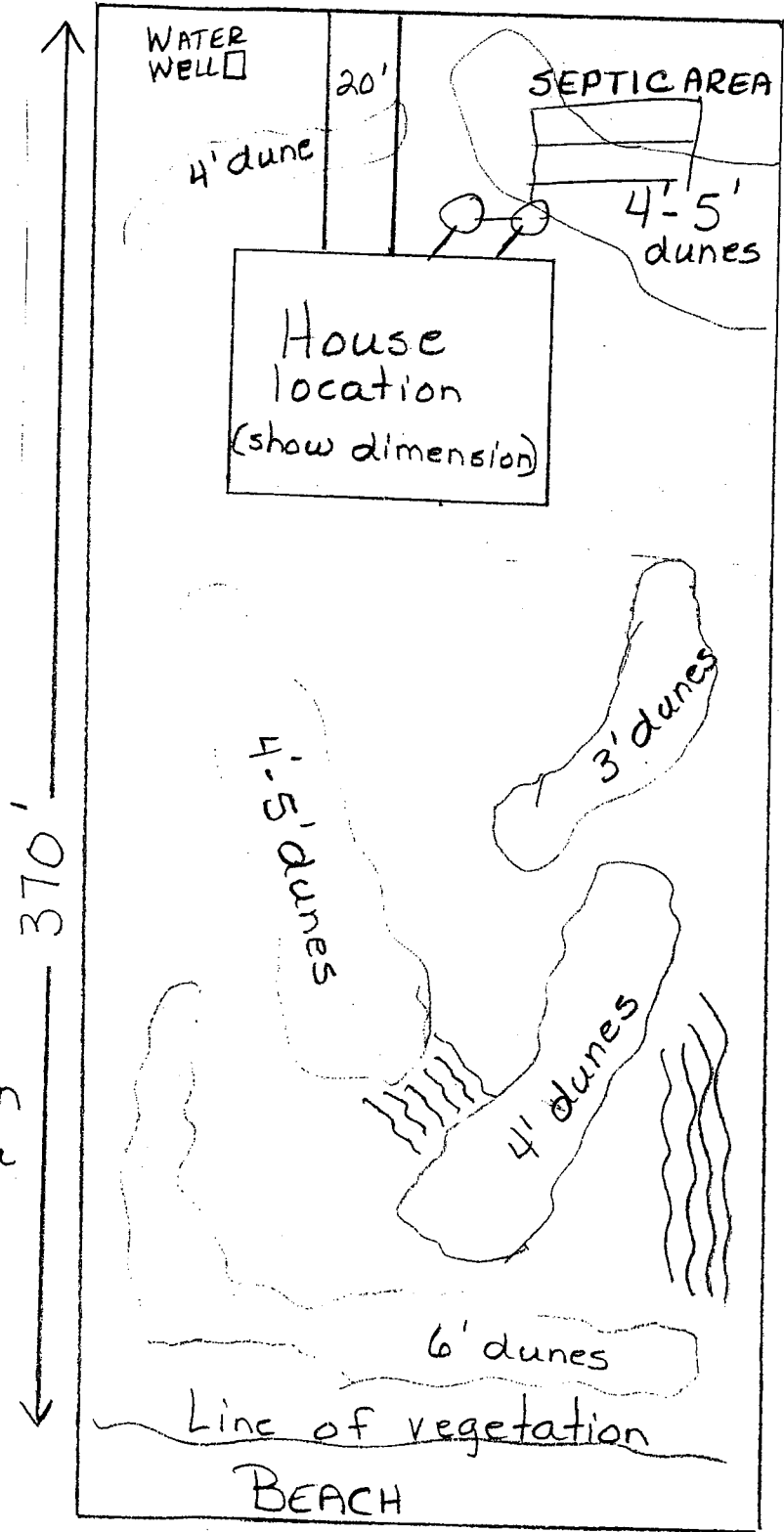
County Road 257

SAMPLE DRAWING

**PLAT OF PROPERTY
INDICATING**

- Construction location with driveway
- Dune heights and location
- Water well and septic lines
- Mitigation areas
- Vegetation line

mitigation
dune area



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 Disaster Recovery Orders
ACTION: Notice of Proposed Rulemaking

<p>The General Land Office (GLO) proposes new §15.13 concerning Disaster Recovery Orders to provide procedures for the use of temporary standards for dune restoration and structure stabilization and repair after a disaster and to assist local governments in restoring beach access and dune protection during such a period. The coastal destruction caused by Hurricane Ike in September 2008 demonstrates the need for long-term procedures that can be implemented when certain disaster conditions exist. These procedures will enable local governments and their citizens to better respond to coastal disasters and allow these areas to protect and rebuild in the most efficient and safe manner possible, while still protecting coastal areas and the public's right to use and access the public beach.

<p>The new rule is proposed under Texas Natural Resources Code §§61.011(d), 61.015(b) and 63.121, which provide the GLO with the authority to adopt rules: to preserve and enhance the public's right to use and have access to and from Texas's public beaches; to protect the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance; for other minimum measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system; for the reasonable exercise of the police power by local governments with respect to the public beaches; for determination of the line of vegetation and structures located near or on the public beach; and to identify and protect critical dune areas. The new section is also adopted pursuant to Texas Water Code §16.321, which provides the GLO with the authority to adopt rules on coastal flood protection.

ANALYSIS OF PROPOSED RULE

<p>The proposed new rule applies only to a local government with a local dune protection and beach access plan within a coastal county that has been included in a disaster declaration made by the governor or in which a natural disaster has occurred, as determined by the commissioner. A disaster recovery order issued by the commissioner pursuant to the proposed new rule will be effective for a period of two years unless a shorter period of recovery is specified.

<p>Pursuant to a disaster recovery order issued under the proposed new rule, local governments may authorize repairs necessary to render a structure habitable or to prevent further damage or to stabilize a residential structure that is subject to collapse or substantial further damage as a result of erosion or undermining. For structures with intact foundations after a disaster, local governments may also authorize enclosed spaces with breakaway or louvered walls at ground

level, if such authorization would be consistent with the local dune protection and beach access plan and the National Flood Insurance Program. A local government may grant authorization for recovery repairs of a residential structure that encroaches or may encroach on the public beach if the structure is eligible under §15.11 (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach) and is not subject to a pending enforcement action. Authorized repairs may include construction underneath, outside, or around the house that includes fibercrete or other materials necessary to restore reasonable access to a house for disabled persons that existed prior to the disaster. Finally, a local government may authorize the placement of beach-quality sand and, in certain instances, clay or sandy clay, on a lot if certain conditions are met and only if the placement is necessary to prevent further erosion due to wind and water.

<p>The proposed new rule also authorizes local governments to permit persons to construct dunes in an area no more than 30 feet seaward of the post-disaster landward boundary of the public beach if certain conditions are met. The proposed new rule authorizes the use of additional types of materials for restored dunes to provide additional stability for restored dunes and to encourage dune restoration activities by local governments and property owners. In accordance with the Beach/Dune rules, restoration of dunes may not result in increased flooding to the site or adjacent property, aggravate erosion, result in adverse effects to dune hydrology, increase the vulnerability to washouts or blowouts, or interfere with the public's right of access to the beach at normal high tide. The proposed new rule allows a local government to defer the review of the dune protection line up to one year from the date of the disaster recovery order rather than 90 days required under § 15.3(k).

<p>The proposed new rule provides guidelines for the continuation of authorized beach access and dune protection measures, including variances that permit the use of fibercrete within 200 feet of the line of vegetation in an eroding area. For a local government with a fibercrete variance, authorized repairs may include construction underneath, outside, or around the house that includes fibercrete or other materials necessary to restore reasonable access to a house for disabled persons, provided that such access existed prior to the disaster, including a house that has become located on the beach or where there is no dune.

<p>The proposed new rule allows a local government to temporarily close beach access points damaged beyond repair or temporarily blocked by emergency shore protection projects to prevent damage to infrastructure without a formal plan amendment with notice to the commissioner. The local government must ensure that the period of limited beach access in that area does not exceed the duration of the disaster recovery order and must submit to the commissioner a timeline for amending the local plan or a remedy to restore access no later than six months prior to the expiration of the disaster recovery order.

<p>The proposed new rule also outlines the specific situations that must exist before a local government may authorize repairs to an existing shoreline protection project in order to minimize impacts to adjacent property. The proposed new rule prohibits the use of materials such as bulkheads, riprap, concrete, asphalt rubble, building construction materials, non-

biodegradable items, sediments containing certain hazardous substances, and sand obtained by scraping or grading dunes or from beaches in eroding areas when making approved repairs or conducting dune restoration activities.

<p>The proposed new rule allows the commissioner to require that a local government suspend the authority of a permittee to scrape a beach under a previously issued permit for beach maintenance practices that include scraping of the beach based on a material change in circumstances. The local government may require that a permittee apply for a new permit or certificate for beach maintenance practices with an opportunity for comment by the commissioner.

<p>The proposed new rule requires a local government or other governmental entity authorized by law to clean, maintain, and clear debris from the public beach to coordinate with property owners to remove debris from the public beach as soon as possible to minimize the threat of damage to public health, safety, welfare, and property.

<p>Finally, the proposed new rule provides for review of permit applications by the GLO and requires local governments to monitor permitted actions, including dune restoration projects. The proposed new rule does not create a property right of any kind in a littoral property owner and removal actions may still be commenced against the owner of a structure regardless of whether the structure is eligible for repairs pursuant to the new rule.

FISCAL AND EMPLOYMENT IMPACTS

<p>Ms. Jodena Henneke, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no additional cost to state government as a result of enforcing or administering the new section.

<p>Ms. Henneke has determined that for each year of the first five years the new section as proposed is in effect there could be fiscal implications for local governments as a result of enforcing or administering the amended section. In areas affected by an order issued under the proposed new rule, Ms. Henneke estimates that local governments may incur between \$50,000 and \$60,000 in costs each year attributed to staff time devoted to the monitoring requirements contained in §15.13(q). Some of the fiscal implications attributed to local governments may be mitigated through reimbursement programs administered by the GLO, including the Coastal Management Program, the Coastal Erosion Planning and Response Act, and beach maintenance reimbursement.

<p>Ms. Henneke has also determined that the proposed new section will not have adverse economic impacts or increase the costs of compliance for small or large businesses and individuals required to comply with the new section. Thousands of small businesses and micro-businesses are located in coastal counties, and the projected economic impact of this new rule on

these small businesses will be neutral to positive in that businesses will be able to more efficiently conduct repairs after a disaster.

<p>Ms. Henneke has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code <*> 2001.022.

PUBLIC BENEFIT

<p>Ms. Henneke has also determined that each year for the first five year period the new section is in effect the public will benefit from the proposed regulations because they will provide more certainty of recovery measures allowed in the wake of a coastal disaster. In addition, property owners and business owners will be able to more efficiently repair structures and protect their property because the new rule provides clear standards by which repairs may be made and dunes may be restored.

<p>The proposed new rule provides additional types of materials for stabilization underneath structures and for restored dunes, providing additional defenses and stability for restored dunes and to encourage dune restoration activities by local governments and property owners. The GLO has determined that when dunes are obliterated, more than one season is generally required before dune vegetation can grow enough to stabilize the replacement dune. Therefore, the proposed new rule authorizes the use of clay material to provide strength and integrity to the dune and to stabilize structures until the natural vegetation recovers. In addition, the proposed new rule allows for an additional ten feet for the dune restoration area, provided that the project does not interfere with beach access or result in other adverse effects as listed in §15.13(h)(5). This larger area will facilitate a larger dune, thus providing better protection for property landward of the dune restoration project. Furthermore, recovery of the beach through natural processes will ultimately result in a dune no further seaward than if the normal 20 foot restoration area had been utilized.

<p>The public will benefit from the provisions pertaining to the use of fibercrete because it provides certainty for those jurisdictions that have a variance allowing the use of fibercrete and encourages dune restoration activities to provide protection from flooding and erosion. The public will also benefit from allowing restoration of access for disabled persons to eligible structures, including the use of fibercrete under the house.

<p>The public will benefit from the provision allowing a local government to delay reviewing the dune protection line up to a year, because it allows the local government to focus on recovery efforts before undertaking the technical review of the dune protection line, while at the same time requiring a time table for the required reevaluation.

<p>The provisions allowing a local government to temporarily close beach access points damaged beyond repair or temporarily blocked by emergency shore protection projects to prevent damage to infrastructure benefits the public by allowing a local government to address

threats to public safety in its exercise of its police power. The provision limits the duration of the closure to the recovery period, and requires a timeline for restoration of access or formal amendment to the beach access plan.

<p>Finally, the public will benefit from the increased scrutiny of beach maintenance practices, including those previously permitted by a local government. The damage to the beach/dune system caused by Hurricane Ike and resulting loss to the sediment budget left the beaches and dunes more vulnerable than ever to imprudent practices that do not protect these valuable resources. The abundance of seaweed in the spring, followed closely by the summer tourist season and the hurricane season necessitates a closer look at any beach maintenance practices in areas subject to a disaster recovery order to ensure that adverse impacts to the beach/dune system are minimized and that beach maintenance practices facilitate dune restoration.

CONSISTENCY WITH CMP

<p>The proposal to add §15.13 is subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. The GLO has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at §501.26 (relating to Policies for Construction in the Beach/Dune System) and §501.27 (relating to Policies for Development in Coastal Hazard Areas).

<p>The proposed action is consistent with the policy in § 501.26 in that the new rule encourages practices including dune restoration and measures other than structural erosion response measures. Although the new rule allows repair of certain structures located on the public beach, the practices allowed do not increase the impact to the right of the public to use and access the public beach. An existing erosion response structure that may be repaired under the rule must comply with the standards for shore protection projects found in § 501.26(b). Further, the provisions of the new rule that allow ground level enclosures are consistent with the policies in § 501.27 in that such enclosures must comply with the requirements of the National Flood Insurance Program.

<p>Consequently, the GLO has determined that the proposed action is consistent with the applicable CMP goals and policies. The proposed new section will be distributed to Council members in order to provide an opportunity for comment on its consistency with the CMP.

TAKINGS IMPACT ASSESSMENT

<p>The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code <*> 2007.043(b) and <*> 2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and

19 of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new rule.

ENVIRONMENTAL REGULATORY ANALYSIS

<p>The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

<p>To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register, Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

§ 15.13. Disaster Recovery Orders

(a) Purpose. This section is intended to provide procedures for the commissioner to implement by order the use by a local government of temporary standards for stabilization and repair of structures and dune restoration during a period of recovery following a severely damaging declared or natural disaster and to assist local governments in restoring beach access and dune protection.

(b) Applicability. This section applies only to a local government with a local dune protection and beach access plan within a coastal county that has been included in a disaster declaration made by the governor under Section 418.014, Government Code or in which a natural disaster has occurred, as determined by the commissioner. The temporary standards authorized by this section shall be effective for a period of two years from the date of the issuance of disaster recovery order by the commissioner, unless a shorter period of recovery is specified in the order.

(c) Disaster recovery order. The commissioner may issue a disaster recovery order pursuant to this section to authorize temporary standards for stabilization and repair of structures, dune restoration, and other minimum measures needed to mitigate for adverse effect to public access and dune areas caused by a damaging declared or natural disaster. The disaster recovery order shall identify the nature of the disaster, the name of the disaster and time and location of landfall (if applicable), any coastal county or counties to which the order applies, the date of issuance, and the expiration date of the order. The order is effective upon issuance by the commissioner. Notice of the order issued under this section shall be:

(1) posted on the General Land Office's Internet website;

(2) published by the General Land Office as a miscellaneous document in the Texas Register; and

(3) sent to the governing body of a local government to which the order applies.

(d) Conflict. The provisions of this section supplement the Beach/Dune Rules (31 TAC §§ 15.1 – 15.12). However, if there is a conflict between this section and the provisions of the Beach/Dune Rules, this section applies.

(e) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms, as used in this section, shall have the following meanings:

(1) Beach debris - Anything that is not native to the beach and beach/dune system, including but not limited to pilings, concrete, fibercrete, rebar, riprap, boulders, automobile parts, rubble mounds, damaged dune walkovers, garbage, septic systems, and other objects, that may

pose a hazard to public health and safety and/or no longer serve the purpose for which they were originally intended.

(2) Boundary of the public beach - The landward edge of the public beach, as described in §15.3(b) of this title (relating to Administration). For purposes of this section, the commissioner may provide local governments with a temporary standard that includes a demarcation of the landward boundary of the public beach based on a line of constant elevation to use when issuing beachfront construction certificates and dune protection permits in locations where the natural line of vegetation has been severely damaged by the disaster that precipitated the recovery order. If the commissioner provides such a temporary standard, the standard shall be publicized on the GLO's website and local governments shall be given adequate notice of the temporary standard and the duration of its effectiveness.

(3) Coastal county - Any Texas county with a Gulf-facing beach within its boundaries.

(4) Code - The Texas Natural Resources Code.

(5) Declared disaster - An event declared to be a disaster by the governor under Section 418.014, Government Code.

(6) Fibercrete - unreinforced concrete, consisting of a combination of pulped paper, or other cellulose-based raw material, and binders such as lime, cement, and/or clay in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joints.

(7) Habitable - The condition of the premises that permits the inhabitants to live free of serious hazards to health and safety.

(8) House - A single or multi-family structure that serves as permanent, temporary or occasional living quarters for one or more persons or families.

(9) Natural disaster - An event or force of nature that has catastrophic consequences, including, but not limited to, tropical storms, hurricanes, extreme high tides, tsunamis, earthquakes, tornadoes, and floods.

(10) Recovery dune restoration - Those response measures that must be undertaken during a recovery period 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. A local government shall require persons restoring dunes to use dune vegetation that will achieve the same protective capability as natural dunes in the area.

(11) Recovery period - A period of time commencing with the issuance of a disaster recovery order under this section and ending with the expiration of the order, during which temporary standards for stabilization and repair of structures and dune restoration are in effect to assist a local government in restoring beach access and dune protection.

(12) Recovery repair - Those actions that must be undertaken to render a structure habitable or to prevent further damage during the recovery period. The term "recovery repair" does not include reconnecting a house to utilities such as sewer, water, and electricity. Reconnection to such utilities may only be made in accordance with other applicable law or local ordinances.

(13) Recovery stabilization - Those actions that must be undertaken to stabilize a residential structure that is subject to collapse or substantial further damage as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels during a period of recovery from a disaster.

(14) Restoration Area - With respect to a dune restoration project on the public beach, an area extending no more than 30 feet seaward of the post-storm landward boundary of the public beach.

(15) Shoreline protection project repairs - Those response measures that must be undertaken during a period of recovery from a disaster to restore an existing shoreline protection project to a condition that affords protection from subsequent storms or tidal events or prevents accelerated damage to littoral property.

(f) Recovery repair and recovery stabilization of structures on the public beach.

(1) A local government may issue a certificate or permit in accordance with this section for recovery repair and recovery stabilization of a structure that encroaches or may encroach on the public beach to the extent necessary to prevent an immediate threat to public health, safety, and welfare.

(2) A local government may authorize construction 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, if the foundation of the structure is intact.

(3) A local government may grant authorization in accordance with this section for recovery repair of a residential structure that encroaches or may encroach on the public beach, but only if the structure is an eligible house under § 15.11 of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach) and 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 the filing of a suit in district court or the referral of a matter for enforcement to the attorney general or other public prosecutor or the issuance of a citation by a local government for a violation of its dune protection and beach access plan.

(4) A local government may authorize the placement of beach-quality sand underneath the footprint of an eligible house and in the area up to a distance of not more than five feet from

the structure's footprint where necessary to prevent further erosion due to wind or water. The beach-quality sand must remain loose and cannot be placed in bags.

(5) Clay or sandy clay may be placed 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. 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.

(6) A local government 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.

(7) Beach-quality sand, clay, or sandy clay must not be placed seaward of mean high tide without the consent of the commissioner.

(g) Authorized recovery dune restoration.

(1) A local government may issue a certificate or permit for persons to construct clay core dunes and dunes created solely with beach quality sand landward of the public beach and seaward of the boundary of the public beach in the restoration area. A local government shall ensure that the restoration area shall follow the natural meander or migration of the post-storm boundary of the public beach. A local government may issue permits and certification to allow the restoration of dunes on the public beach only under the following conditions:

(A) Restored dunes may be located farther seaward than the restoration area only to the limited extent necessary to minimize further damage to coastal residents and littoral property, provided such dunes shall not substantially restrict or interfere with the public use of the beach at normal high tide.

(B) A local government shall not allow any person to restore dunes, even within the restoration area, if such dunes would effectively prohibit 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 tide without the consent of the commissioner.

(h) Authorized methods and materials for recovery dune restoration. A local government may allow the following methods or materials for recovery dune restoration:

(1) Dune restoration methods or materials allowed in § 15.7(e)(6) of this title (relating to Local Government Management of the Public Beach);