

TITLE 31 NATURAL RESOURCES AND CONSERVATION
PART 4 SCHOOL LAND BOARD
CHAPTER 155 LAND RESOURCES
SUBCHAPTER A COASTAL PUBLIC LANDS

31 TAC §155.17 Emergency Provisions for Rebuilding Authorized Structures Damaged by Hurricane Harvey

Pursuant to §2001.034 of the Texas Government Code, the School Land Board (Board) adopts on an emergency basis new §155.17, concerning Emergency Provisions for Rebuilding Authorized Structures Damaged by Hurricane Harvey. This rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by Hurricane Harvey.

Hurricane Harvey made landfall near Corpus Christi, Texas, on August 25, 2017, as a Category 4 hurricane, and proceeded to move northeast, devastating coastal and inland areas with storm surge, extreme winds, unprecedented rainfall, and major/record flooding. Many structures on coastal public lands within bays, estuaries, and tidal rivers have been damaged or destroyed.

Coastal lease and easement holders, concerned littoral property owners, and citizens with interests in coastal public lands have begun contacting the General Land Office (GLO) for information and assistance regarding their ability to rebuild or repair structures on coastal public lands, or to take actions to address shoreline impacts. GLO staff anticipate receiving and responding to many more requests in coming days and weeks.

The Board has determined that it is necessary to adopt an emergency rule allowing immediate repair or rebuilding of structures currently under a coastal lease or easement, authorizing certain measures to restore and stabilize shorelines, and allowing GLO staff to waive certain fees. By facilitating rebuilding and restoration of these structures and areas, the rule will provide protection from further injury, damage, or destruction from subsequent storm events.

The Board 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 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 Texas Government Code, §2001.034. The section is also adopted under Texas Natural Resources Code, §33.064, which provides the Board with the authority to adopt procedural and substantive rules that it considers necessary to administer, implement, and enforce Chapter 33 of the Texas Natural Resources Code.

§155.17. Emergency Provisions Authorizing Actions Necessary to Respond to the Effects of Hurricane Harvey

(a) Purpose. This section is intended to:

(1) allow littoral owners who have School Land Board authorization to place and maintain certain structures on coastal public lands to repair and rebuild certain structures damaged or destroyed by Hurricane Harvey;

(2) authorize littoral owners to take certain actions to address shoreline impacts of Hurricane Harvey; and

(3) allow for the General Land Office (GLO) to waive certain fees for coastal lease or easement holders with structures impacted by Hurricane Harvey.

(b) Applicability.

(1) This section applies only to the following counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Liberty, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, Willacy.

(2) 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 Board for not longer than 60 days as necessary to protect public health, safety, and welfare.

(3) This section does not apply to any beaches bordering on the Gulf of Mexico or other areas fronting on or in the Gulf of Mexico.

(4) This section does not apply to any cabins or associated structures subject to permits issued under Texas Natural Resources Code, §33.119.

(c) Definitions. For the purposes of this section only, the following terms and words shall have the following meaning.

(1) Contract--Any easement, lease, or registration issued by the School Land Board authorizing a project on coastal public land. This term does not include a permit issued under §155.4 of this title and Texas Natural Resources Code, §33.119.

(2) GISWEB--An interactive mapping application that give the user access to the collection of spatial data and aerial photography available at the GLO at <http://gisweb.glo.texas.gov/glomap/index.html>.

(3) Grantee--Any person, company or entity that is currently under a contract authorizing a project on coastal public land.

(d) Structures authorized under current contracts.

(1) Rebuilding certain structures on coastal public lands to pre-Hurricane Harvey dimensions.

(A) Grantees shall adhere to any specific contractual provisions regarding repair and rebuilding structures as provided in the current contract unless permitted otherwise as provided in paragraph (2) of this Subsection.

(B) Grantees must rebuild or repair the structures to the original specifications and conditions as provided in the current contract in the absence of specific provisions regarding repair and rebuilding as described in the previous paragraph unless permitted otherwise as provided in paragraph (2) of this Subsection.

(2) Increasing or decreasing the size of structure.

(A) If grantee desires to rebuild the same type of structure but smaller than provided in the current contract, grantee may rebuild under the current contract, and the GLO will amend the current contract and waive the amendment fee. If GLO field office staff deems it appropriate, the GLO may convert the contract to a Structure Registration as authorized in §155.5 of this title (relating to Registration of Structures) and waive the one-time registration fee.

(B) If GLO field office staff determine that a grantee must rebuild a longer structure than provided in current contract and the need for a longer structure is due to bay, tidal river, or estuary shoreline change caused by Hurricane Harvey, grantee may rebuild under the current contract. The GLO will amend the contract to reflect the new dimensions, waive the amendment fee, and adjust the fees accordingly.

(C) If grantee, in consultation with the GLO, determines that an authorized structure is substantially destroyed due to damage caused by Hurricane Harvey and grantee determines that it is necessary to rebuild to a different configuration than previously authorized, grantee must obtain approval for the modification from the GLO. GLO field office staff will evaluate the proposal and may approve an enlargement or other modification of the authorized structure; provided, however, there are minimal impacts to critical habitat, the modified project will not impact safety or navigation, and the modified project complies with existing statutes, rules and guidelines. The GLO will amend the contract to reflect the new dimensions, waive the amendment fee, and adjust the rental fees accordingly.

(e) Shoreline of bays, tidal rivers, and estuaries.

(1) Grantees may rebuild previously permitted bulkheads on coastal public lands to the pre-Hurricane Harvey location as indicated on the most recent pre-storm aerial photographs available on GISWEB, and may fill to the same location as existed immediately prior to the storm and as specified in the current contract.

(2) Littoral owners with bulkheads previously constructed on private property may rebuild the bulkhead and may fill to the same location as existed immediately prior to Hurricane Harvey as indicated on the most recent pre-storm aerial photographs available on GISWEB.

(3) Littoral owners with bay, tidal river, or estuary shoreline that did not have a bulkhead may fill to the same location as existed immediately prior to Hurricane Harvey as indicated on the most recent pre-storm aerial photographs available on GISWEB; provided, however, this Section does not authorize placement of a new bulkhead on coastal public land. Any bay, tidal river, or estuary shoreline restored to the pre-Hurricane Harvey location must be stabilized by riprap, vegetative planting or other GLO-approved means of shoreline stabilization.

(4) Under no circumstance does this Section authorize any person to construct any bulkhead or place fill that extends the bay, tidal river, or estuary shoreline into the adjacent water body beyond the pre-storm location as indicated on the most recent pre-Hurricane Harvey aerial photographs available on GISWEB at the GLO, unless the littoral owner presents evidence satisfactory to the GLO that the location of the pre-Hurricane Harvey shoreline was in a different location.

(f) NOTICE. THIS SECTION IS PROMULGATED TO ASSIST LITTORAL OWNERS RESPONDING TO THE CATASTROPHIC IMPACTS OF HURRICANE HARVEY. UNDER NO CIRCUMSTANCE SHALL THIS SECTION BE CONSTRUED AS THE SCHOOL LAND BOARD OR GENERAL LAND OFFICE'S ACQUIESCENCE OR AGREEMENT TO THE LOCATION OF ANY SHORELINE DEPICTED ON THE MOST RECENT PRE-HURRICANE HARVEY AERIAL PHOTOGRAPHY AVAILABLE ON GISWEB AS THE BOUNDARY BETWEEN STATE-OWNED AND PRIVATE LAND (PARTICULARLY IF STATE-OWNED SUBMERGED LAND WAS PREVIOUSLY FILLED WITHOUT APPROPRIATE AND LEGAL AUTHORIZATION). THIS SECTION WILL NOT OPERATE TO WAIVE CLAIMS THAT HAVE BEEN OR MAY BE ASSERTED BY THE STATE FOR TITLE TO ILLEGAL FILLED STATE-OWNED SUBMERGED LANDS. ANY PERSON WHO PLACES FILL OR ANY OTHER STRUCTURE ON STATE-OWNED SUBMERGED LAND BEYOND THE SHORELINE DEPICTED ON THE MOST RECENT PRE-HURRICANE HARVEY AERIAL PHOTOGRAPHY AVAILABLE ON GISWEB WITHOUT A PROPER EASEMENT OR LEASE UNDER CHAPTER 33 OR CHAPTER 51 OF THE TEXAS NATURAL RESOURCES CODE IS LIABLE FOR A PENALTY OF NOT LESS THAN \$50 OR MORE THAN \$1000 PER DAY FOR EACH DAY THAT A VIOLATION OCCURS AS PROVIDED IN TEXAS NATURAL RESOURCES CODE, §51.302.