ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.25

The State Board for Educator Certification (SBEC) adopts an amendment to 19 Texas Administrative Code (TAC) §230.25, concerning test exemptions for persons with a hearing impairment. The amendment is adopted with a change since published as proposed in the December 30, 2022 issue of the *Texas Register* (47 TexReg 8848) and will be republished. The adopted amendment creates a carve-out for the Science of Teaching Reading (STR) examination, removing the requirement that a candidate be unable to process only written linguistic information to allow an exemption; removes the requirement that to qualify for an exemption, a person who is already certified in another state and seeking a one-year certificate in Texas must have a recommendation from an SBEC-approved Texas educator preparation program (EPP); and eliminates the limitation that persons who qualify for an exemption to one certification examination cannot ever take another certification examination unless they have regained their ability to process written linguistic information.

REASONED JUSTIFICATION: Texas Education Code (TEC), §21.048(b) and (d), require the SBEC to give exemptions from required written examinations for persons with hearing impairments. TEC, §21.048(d), defines hearing impairment as "so severe that the person cannot process linguistic information with or without amplification." The SBEC has tailored this to the context of written exams in 19 TAC §230.25(b)(1) to require proof "that the person cannot process written linguistic information."

Since 19 TAC §230.25(b)(1) was last revised, the Texas Legislature has created TEC, §21.048(a-2), which requires that in order to teach Prekindergarten-Grade 6, a person must have passed the STR examination. The STR examination is different from the other written certification examinations the SBEC requires, in that it requires the test-taker to listen to recorded speech and phonetic sounds and answer written questions about them. Since this examination requires that test-takers be able to hear and process the linguistic information on the recording without any subtitles or other written translation indicating the errors in the speech, the exemption for individuals who are unable to process only written linguistic information is insufficient to address the difficulty that candidates who are Deaf or Hard of Hearing face when attempting the STR examination. To address this issue, the adopted amendment to §230.25(b)(1) and adopted new §230.25(b)(1)(A) and (B) create a carve-out for the STR examination to allow an exemption for any person who is unable to process any linguistic information with or without amplification--not only written linguistic information. The adopted amendment maintains the requirement that a candidate be unable to process written linguistic information to qualify for an exemption for the other SBEC-required certification examinations, which do not include a listening component that requires interpretation of phonetic sounds.

The adopted amendment to §230.25(b)(2) and (d) removes the requirement that to qualify for an exemption, a person who is already certified in another state and seeking a one-year certificate in Texas in accordance with 19 TAC Chapter 230, Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States, must have a recommendation from an SBEC-approved Texas EPP. This amendment allows candidates who are Deaf or Hard of Hearing who have already been vetted and certified in other states to get certified and begin teaching in Texas without incurring the additional time and expense required to get approval from a Texas EPP, which is not required of out-of-state candidates who are Deaf or Hard of Hearing.

The adopted amendment to §230.25(c) creates a relettering of subsections (c) and (d) and eliminates the limitation that persons who qualify for an exemption to one certification examination cannot ever take another certification examination unless they have regained their ability to process written linguistic information. The SBEC initially enacted this prohibition to prevent persons who are Deaf or Hard of Hearing from attaining certification in areas for which they were not qualified. In practice, however, it prevents qualified educators who are Deaf or Hard of Hearing from attaining more than one certification and from advancing their careers with administrator certifications. The number of individuals who request an exemption based on hearing impairment averages fewer than 20 annually. Given that Texas certifies approximately 20,000-30,000 educators every year, this small minority of educators who are Deaf or Hard of Hearing will not significantly harm the Texas education system, even if a few attain certificates through waived examinations for which they are not qualified.

At adoption and in response to public comment, the SBEC changed the amended language of 19 TAC §230.25(b)(1)(A) to add "auditory" to create a contrast with "written" in 19 TAC §230.25(b)(1)(B) to clarify the difference between the types of linguistic information presented by the STR examination as compared with the other written educator certification examinations.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 30, 2022, and ended January 30, 2023. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 10, 2023 meeting in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

Comment: Twelve individuals and the Texas School for the Deaf commented in support of the proposed amendment, noting that the portion of the STR examination that involves listening to a child reading a book in a video is not accessible for candidates who are Deaf or Hard of Hearing, making it unfairly difficult or even impossible for candidates who are Deaf or Hard of Hearing to pass the STR examination.

Response: The SBEC agrees. The listening portion of the examination is not accessible to individuals who are Deaf or Hard of Hearing, even if those individuals are able to read and write. An exemption from the STR examination is therefore necessary for a candidate with a hearing impairment, regardless of whether the candidate is able to process written linguistic information.

Comment: The Texas School for the Deaf and one individual commented in support of the proposed amendment to remove "written" from the description of hearing impairments that would be exempt from taking the STR examination. The commenters recommended that the SBEC add "access auditory" instead of "process" in proposed 19 TAC §230.25(b)(1)(A), so that the phrase would read "the person cannot access auditory linguistic information with or without amplification."

Response: The SBEC agrees Adding "auditory" to 19 TAC §230.25(b)(1)(A) would create a contrast with "written" in 19 TAC §230.25(b)(1)(B) to clarify the difference between the types of linguistic information presented by the STR examination as compared with the other written educator certification examinations. However, the authorizing statute, Texas Education Code (TEC) §21.048(d)(1), allows the examination exemption when "the person cannot process linguistic information with or without amplification." It is therefore necessary to maintain "cannot process" rather than "cannot access" as the verb in the rule.

Comment: Five individuals commented in support of the proposed amendment because many of the methods of teaching reading tested on the STR examination such as phonics cannot be used to teach reading to students who are Deaf or Hard of Hearing that are usually assigned to educators who are Deaf or Hard of Hearing.

Response: The SBEC agrees. Candidates who are Deaf or Hard of Hearing should not be required to take an examination that requires listening to and identifying phonetic mistakes in a student's reading, since that portion of the examination would be inaccessible to them and tests on a teaching method they would not use as educators.

Comment: Two individuals and the Texas School for the Deaf commented in support of the proposed amendment that eliminates the prohibition on hearing-impaired educators receiving an examination exemption more than once. The commenters stated that the current rule is unfair to educators who are Deaf or Hard of Hearing because it prevents them from changing careers or advancing within the education profession. The commenters also noted that school district administrators can evaluate candidate's qualifications and abilities when making hiring decisions.

Response: The SBEC agrees. Qualified hearing-impaired educators should not be prohibited from either attaining more than one certification or from advancing their careers with administrator certifications. Given the small number of individuals who apply for examination exemptions for hearing impairment each year, allowing individuals who are hearing impaired to attain more than one certification through an examination waiver will not have a significant impact on the overall preparedness of educators in Texas.

Comment: One individual commented in opposition to the proposed amendment, stating that teachers certified in another state such as Arizona or Oklahoma should be exempt from taking the STR examination, even if the teacher did not take an STR examination to get certified.

Response: The SBEC disagrees. TEC, §21.048(a-2), requires that anyone certified in Texas after January 1, 2021, to teach Prekindergarten-Grade 6 must have passed an STR examination, regardless of whether they were previously certified in another state. The commissioner of education has created exception from the STR examination requirement in 19 TAC §152.1001(c)(2)(B) for educators who were previously certified in states that require a similarly rigorous examination on the science of teaching reading for certification. Oklahoma is among the listed states, but Arizona is not. However, any Oklahoma-certified candidate who achieved certification without taking the Oklahoma STR examination would not meet the requirements for the exemption, or the statutory requirement for certification. SBEC does not have the statutory authority to create an exception to the STR examination requirement for out-of-state educators who have not taken an STR examination for certification in the other state.

Comment: The Texas School for the Deaf commented in opposition to the proposed amendment because it preserves the existing requirement that a licensed audiologist issue a report "addressing the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process linguistic information." The Texas School for the Deaf noted that audiologists are not generally trained to judge a person's ability to process language, only to test and to document a person's hearing levels on an audiogram.

Response: The SBEC disagrees. The requirement for the audiologist's analysis is not significantly changed by the amendment and has been in place for several years. During that time, candidates have been able to get reports with the required information from audiologists and to attain exemptions.

Comment: The Texas School for the Deaf commented in opposition to the use of the term "hearing impaired" in the proposed rules.

Response: The SBEC disagrees. The authorizing statute that provides the SBEC rulemaking authority for this amendment, TEC, §21.048, uses the term "hearing impairment" and defines it to mean "a hearing impairment so severe that the person cannot process linguistic information with or without amplification."

The State Board of Education (SBOE) took no action on the review of the amendment to §230.25 at the April 14, 2023 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school

educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(a),which allows SBEC to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.045(a)(1), which authorizes the SBEC to propose rules necessary to establish standards to govern the continuing accountability of all EPPs based on the following information that is disaggregated with respect to race, sex, and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); TEC, §21.048(a) and (a-2), which state that the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and that all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; and TEC, §21.048(b), (c), and (d),which state that the SBEC may not administer a written examination to an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability and validity for persons with hearing impairments. It defines "hearing impairment" as "so severe that the person cannot process linguistic information with or without amplification;" that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; and that the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.031; 21.041(a) and (b)(1)-(4); 21.045(a)(1); and 21.048(a), (a-2), (b), (c), and (d).

§230.25. Test Exemptions for Persons with a Hearing Impairment.

(a) A candidate who has a hearing impairment may request exemption from educator certification and competence examinations that have not been field-tested for appropriateness, reliability, and validity as applied to persons with hearing impairments.

(b) A request for such an exemption shall include:

(1) a report by a licensed audiologist dated no more than one year from the date of the request for the exemption, addressing the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process linguistic information, and documenting that the candidate has a hearing impairment so severe that:

(A) for a person requesting an exemption from the Science of Teaching Reading (STR) examination, the person cannot process auditory linguistic information with or without amplification; or

(B) for a person requesting an exemption to an examination other than the STR examination, the person cannot process written linguistic information; and

(2) for candidates who are not seeking certification under Chapter 230, Subchapter H, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), a recommendation for exemption and certification of the candidate by an approved Texas educator preparation program (EPP). The recommendation shall be based on the EPP's determination of the candidate's qualification for the exemption and competency in each certification class and category in which certification is sought. The EPP shall make and document its determination of educator standards competency, as follows:

(A) by reviewing and approving transcripts from an accredited institution of higher education that demonstrate that the candidate has completed 24 semester credit hours in the educator standards, including 12 semester credit hours of upper division coursework, and documenting that the coursework is aligned to the Texas educator standards;

(B) if an EPP uses an alternative assessment to measure competency in any certification class and category in which a certification is being sought, by documenting the method and validity of the means of assessment, the results of the assessment, and the alignment of the assessment to the applicable Texas educator standards; and

(C) for the Texas pedagogy and professional responsibilities examination, by documenting successful completion of EPP coursework and training covering educator standards for the grade level for which certification is sought.

(c) This section does not affect the procedures for one-year certificates, extensions, and permits based on out-of-state credentials pursuant to §230.113 of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States).

(d) As with other EPP completion and admission documentation under §228.40 of this title (relating to Assessment and Evaluation of Candidates for Certification and Program Improvement), all documentation required under this section shall be retained by an EPP for five years and is subject to audit by Texas Education Agency staff.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2023.

TRD-202301439
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: May 11, 2023
Proposal publication date: December 30, 2022
For further information, please call: (512) 475-1497

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1 - 233.3, 233.5, 233.8, 233.10, 233.14, 233.15

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§233.1-233.3, 233.5, 233.8, 233.10, 233.14, and 233.15, concerning categories of classroom teaching certificates. The amendments are adopted without changes to the proposed text as published in the December 30, 2022 issue of the *Texas*

Register (47 TexReg 8850) and will not be republished. The adopted amendments remove certificates no longer issued by the SBEC; strike, where applicable, language referencing deadlines for use of test scores for certificate issuance; add three new special education certificates into rule; update language specific to licensure requirements for cosmetology certification; and propose the addition of a new foreign language certificate to the list of credentials issued by the SBEC. Technical changes also provide clarification and consistent information related to the classroom teacher certificates issued by the SBEC.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, establish separate certificate categories within the certificate class for the classroom teacher. These categories identify the content area or special population the holder may teach, the grade levels the holder may teach, and the earliest date the certificate may be issued.

Following is a description of the proposed amendments.

§233.1. General Authority.

The adopted amendment in 19 TAC §233.1(e) deletes references to use of test scores for certificate issuance and applicability of catastrophic illness and military service since these provisions are addressed in other SBEC rules. The adopted amendment also ensures that there is clarity around required tests for certification and deadlines for certificate issuance as reflected in Figure §230.21(e) of 19 TAC Chapter 230, Subchapter C, Assessment of Educators.

§233.2. Early Childhood; Core Subjects.

The adopted amendment in §233.2(b) Core Subjects: Early Childhood-Grade 6 and §233.2(c) Core Subjects: Grades 4-8 certificates deletes these certificate references since they are no longer credentials issued by the SBEC. The adopted amendment in §233.2(d) Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6 certificate deletes references to use of passing scores on Core Subjects examinations and related deadlines for purposes of certificate issuance. The remaining rules in this section are lettered subsections (b) and (c).

§233.3. English Language Arts and Reading; Social Studies.

The adopted amendment to §233.3(a) English Language Arts and Reading: Grades 4-8 and §233.3(d) English Language Arts and Reading/Social Studies: Grades 4-8 certificates deletes these certificate references since they are no longer issued by the SBEC. The adopted amendment to §233.3(b) also deletes references to use of passing scores on the 117 ELAR 4-8 TExES examination and related deadlines for purposes of certificate issuance. The remaining rules in this section are lettered subsections (a)-(h).

§233.5. Technology Applications and Computer Science.

The adopted amendment to §233.5(a) deletes the reference to the Technology Applications: Grades 8-12 certificate that is no longer issued by the SBEC. The remaining rules in this section are lettered subsections (a) and (b).

§233.8. Special Education.

The adopted amendment adds the following three new special education certificates into rule: §233.8(a), Core Subjects with Science of Teaching Reading/Special Education: Early Childhood-Grade 6; §233.8(b), Deafblind Supplemental: Early Childhood-Grade 12; and §233.8(d), Special Education Specialist: Early Childhood-Grade 12. The adopted addition of these new certificates reflects years of work completed by Texas Education Agency (TEA) staff and stakeholders in developing new special education standards approved by the SBEC and honors the continuing test development work completed by stakeholders and advisory committees. The adopted amendment also specifies that the new special education certificates would be issued by the SBEC no earlier than September 1, 2025, and September 1, 2026, accordingly. The remaining rules in this section are lettered subsections (c)-(g).

§233.10. Fine Arts.

The adopted amendment to §233.10(d) deletes the Dance: Grades 8-12 certificate that is no longer issued by the SBEC. The remaining rules in this section are lettered subsection (d).

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area).

The adopted amendment to §233.14(d)(2), Trade and Industrial Education: Grades 6-12 certificate, provides a technical edit by clarifying the acronym, NOCTI, which refers to the National Occupational Competency Testing Institute. NOCTI's teacher assessments are designed to measure an individual's knowledge of high-level concepts, theories, and applications in specific technical areas and to evaluate individuals with a combination of education, training, and work experiences. The adopted amendment also updates references to the credentials that must be held by a cosmetology teacher (i.e., a valid Cosmetology Operator license or Class A Barber Operator license) and aligns with legislation to eliminate the outdated reference to a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

The adopted amendment to §233.14(d)(3) clarifies that individuals seeking initial certification in Trade and Industrial Education: Grades 6-12 certificate satisfies the required years of classroom teaching experience on an intern or probationary certificate, and not on an emergency permit. The emergency permit reference is removed because SBEC rules do not allow the experience serving on that credential to count toward completion of EPP preparation and certification requirements for licensure. This amendment aligns with other SBEC rules and does not reflect a change in procedures.

§233.15. Languages Other Than English.

Adopted new §233.15(a)(14), Tamil: Early Childhood-Grade 12, adds a new foreign language certificate area to the list of certificates to be issued by the SBEC no earlier than September 1, 2025. The addition of the Tamil certificate addresses a petition for a new certificate area from 2018 and aligns with the certification examination and corresponding implementation date being added as an amendment to Figure: 19 TAC §230.21(e) in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter A, General Provisions, and Subchapter C, Assessment of Educators, presented to the SBEC for discussion at its February 2023 meeting. The adopted deletion of §233.15(15), Urdu: Early Childhood-Grade 12, removes this credential from the list of certificates issued by the SBEC as standards or test development activities were never initiated for this certificate area. The remaining rules are numbered paragraphs (15) and (16).

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 30, 2022, and

ended January 30, 2023. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 10, 2023 meeting in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

Comment: One individual and the Texas Tamil Academy commented in support of the proposed amendments because they open a pathway for a Tamil educator certification and for high school-level courses in Tamil that allow students to learn about Tamil language and culture while still in high school.

Response: The SBEC agrees.

Comment: One individual commented in opposition to striking from rule the certificates that the SBEC no longer offers and expressed concern that the proposed amendments would mean that educators would lose these certificates if they already held them.

Response: The SBEC disagrees. Removing certificate categories from this rule only means that the SBEC will no longer issue them. Any educator who has previously earned a certificate will keep the certificate, and it will remain a valid credential that allows the educator to teach in Texas public schools as long as the educator continues to renew it.

Comment: The Texas Council of Administrators of Special Education commented neither in support nor in opposition to the proposed amendments but requested that consideration be given in the future regarding how the new special education certificates are implemented in Chapter 231.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking; however, TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

The State Board of Education (SBOE) took no action on the review of amendments to §§233.1-233.3, 233.5, 233.8, 233.10, 233.14, and 233.15 at the April 14, 2023 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); TEC, §21.0442, which requires the SBEC to create an abbreviated educator preparation program (EPP) for trade and industrial workforce training; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; TEC, §21.048(a-2), which requires the SBEC to adopt rules to require individuals teaching any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading; TEC, §21.0487, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps teaching certificate; TEC, §21.0489, which requires the SBEC to create a Prekindergarten-Grade 3 certificate; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4) and (6); 21.044(e) and (f); 21.0442; 21.048(a) and (a-2); 21.0487; 21.0489; 21.0491; and 22.0831(f)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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State Board for Educator Certification
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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 §§15.1 - 15.13

The General Land Office (GLO) adopts amendments to 31 Texas Administrative Code §§15.1 - 15.13 relating to Management of the Beach/Dune System, with changes to the text of §§15.1 - 15.13, made in response to public comments. The proposed amendments were published in the December 30, 2022, edition of the *Texas Register* (47 TexReg 8920). The rules will be republished.

BACKGROUND AND JUSTIFICATION OF AMENDMENTS

Many of the amendments are not substantive and were made to improve structural organization and clarity. Other amendments include modifications to the mitigation and compensation deadlines for adverse effects to dunes and dune vegetation, new width limitations and height requirements for dune walkovers, and an allowance for a limited use of impervious cover for accessibility enhancements at commercial or public beach access facilities, as otherwise required by law. Also in the rulemaking is the addition of a requirement for at least one access way with a stable, slip-resistant surface from the dry beach to the approximate high tide line to better facilitate access to the water for persons with disabilities in areas where vehicles are prohibited from the beach. The rules will be effective coastwide immediately with no amendments to local governments' Beach Access and Dune Protection plans required, unless otherwise noted below.

The GLO is adopting amendments to the following sections: §15.1 (relating to Policy) to enhance the goal of minimizing public expenditures on erosion and storm damage losses; §15.2 (relating to Definitions) to revise multiple definitions by providing supporting citations, clarifying language, or removing unnecessary language; §15.3 (relating to Administration) to clarify the local government plan amendment processes, extend administrative record retention, clarify and add minor requirements for permit applications, and provide more detailed standards for material changes to permits; §15.4 (relating to Dune Protection Standards) to incorporate additional minimization requirements for adverse impacts to dunes and dune vegetation and to modify mitigation or compensation deadlines; §15.5 (relating to Beachfront Construction Standards) to provide clarification and consistency; §15.6 (relating to concurrent Dune Protection and Beachfront Construction Standards) to allow impervious surfaces for certain parking areas or walkways, modify construction standards to dune walkovers related to width, height, deck board spacing, and to increase access for persons with disabilities; §15.7 (relating to Local Government Management of the Public Beach) to require a stable, slip-resistant surface to the approximate high tide line or require an alternate means of access for persons with disabilities in certain circumstances; §15.8 (relating to Beach User Fees) to expand the required information for a new or amended beach user fee proposal; and §15.9 (relating to Enforcement, Penalties and Remedial Orders) to clarify notice of violation and hearing requirements. Amendments to §15.10 (relating to General Provisions), §15.11 (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach), §15.12 (relating to Temporary Orders Issued by the Land Commissioner), and §15.13 (relating to Disaster Recovery Orders) provide clarification and consistency with the rest of Chapter 15 and with Texas Natural Resources Code (TNRC) Chapter 61, the Open Beaches Act, and with Chapter 63, the Dune Protection Act.

References to the Attorney General were removed throughout the chapter to reflect current statutory authority under TNRC Chapters 61 and 63, "state " was changed to "General Land Office" where appropriate, and changes were made to ensure consistency throughout the chapter and with TNRC Chapters 61 and 63. Clarifying language and supporting citations were added and duplicative language was removed.

The terms mean high tide and mean high water were replaced with coastal public land, where appropriate, since the terms can be ambiguous and to ensure consistency with TNRC Chapter 33, Management of Coastal Public Land. References to fax numbers were also removed because it is no longer a prevalent form of communication.

SECTION BY SECTION ANALYSIS OF THE AMENDMENTS

§15.1 Policy

The GLO added new §15.1(11) to include the GLO's policy and goals related to minimizing public expenditure on erosion and storm damage losses to public and private property in rule, in accordance with TNRC Ch. 33.

§15.2 Definitions

Throughout this subchapter, supporting citations and clarifying language were added to multiple definitions, and duplicative language was removed. For example, language regarding the local government's role in determining consistency of proposed construction with their dune protection and beach access plan was removed from the definition of "beachfront construction certificate or certificate" in renumbered §15.2(12) because the requirement is already in §15.3(s)(8).

The GLO also removed the definitions for "all-terrain vehicle" and "recreational off-highway vehicle" from §§15.2(2) and (62) and added a definition for "off-highway vehicle" to renumbered §15.2(52), which encompasses both all-terrain vehicles and recreational off-highway vehicles, for consistency with the Transportation Code.

The modification of the definition of "beach maintenance" in renumbered §15.2(8) was made to clarify that the redistribution of seaweed on the beachfront is considered a beach maintenance activity. Redistribution of seaweed to ensure that the public can use and access the beach is a common beach maintenance activity, and the inclusion in the definition clarifies that this type of activity is subject to the requirements regarding beach maintenance activities in 31 TAC Chapter 15 and local government plans.

GLO added new §15.2(17) to define "coastal public land" as having the meaning assigned by TNRC §33.004 to be consistent with TNRC Ch. 33.

GLO modified the definition of "construction" in §15.2(19) to include the removal or demolition of a structure and to clarify that alteration of land is considered a construction activity. Language was also added to clarify that fencing that may adversely affect public access, dunes or dune vegetation is considered a construction activity. These additions clarify that these are activities that are considered construction and for which a permit or certificate is required since they have the potential to adversely affect public beach access or critical dunes and dune vegetation.

GLO removed the 21-day camping duration limit from the definition of "recreational activity" in renumbered §15.2(63) to allow each local government to establish a permissible duration of camping.

In order to clarify the use of the term "restoration" when used in reference to violations and subsequent remedial actions, the GLO expanded the definition of "restoration" in renumbered

§15.2(65) to include the restoration of a site to a condition that is compliant with applicable requirements in TNRC Chapters 61 and 63, 31 TAC Chapter 15, and a local government plan, including removal or abatement of unauthorized construction or structures. Previously, this definition only referred to the restoration of dunes or dune vegetation. The amended definition encompasses its use in the context of resolving a violation.

§15.3 Administration

References to TNRC Ch. 33 and erosion response plans were added in multiple places to clarify that erosion response plans are subject to the same requirements as local government beach access and dune protection plans. GLO also deleted §15.3(b)(4) regarding individual requests for line of vegetation (LOV) determinations since conducting a LOV determination at the time of the construction application saves costs and achieves the same goals. Also, an LOV determination can often be done without a site visit.

GLO modified renumbered §15.3(o)(4) to formalize the requirement that plan amendment submissions include the governing body's formal approval of changes, a description of the changes, and a version of the plan identifying all proposed changes. This information was previously informally requested by the GLO and submitted by local governments since it is needed for the GLO to determine if proposed plan amendments are consistent with state law. GLO also added language to renumbered §15.3(o)(5) requiring local governments that submit a proposed plan amendment that includes a variance to provide a reasoned justification and a clear demonstration of how the variance is equal to or more protective of the goals and policies contained in §15.1.

GLO added new §15.3(q)(2) clarifying that the Open Beaches Act applies to state and national park and wildlife management areas located on islands or peninsulas, regardless of whether the park is accessible by public road or ferry, as provided for in TNRC §61.0211.

GLO added new §15.3(s)(4) stating that no person shall violate TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit issued pursuant to Chapter 15. This addition clarifies that any unauthorized activities or activities that are not compliant with TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit are subject to enforcement action.

GLO added language to renumbered §§15.3(s)(5)(A)(viii) and 15.3(s)(5)(B)(vi) requiring that design plans and elevation views for any proposed walkways or dune walkovers be included in an application since this information is needed to determine consistency with new rules relating to height and width of dune walkovers in §15.6 and elsewhere in this chapter. GLO added a requirement for construction applications to renumbered §15.3(s)(5)(A)(x) for photographs of dunes immediately adjacent to the site since dunes are a connected system that often cross property boundaries and measures may need to be taken to avoid or mitigate for damages to dunes on adjacent properties. GLO also included "survey" in renumbered §§15.3(s)(5)(A)(xv) and 15.3(s)(5)(B)(viii) as a type of map that may be submitted with a permit application.

GLO added language to §15.3(t)(1) clarifying that permits and certificates are valid for no more than three years from the date of original issuance unless additional time has been provided by a renewal. New §15.3(t)(2)(A) - (D) was created using language from §15.3(t)(1) to clarify that permits and certificates are only renewable prior to the expiration of the permit and certificate, and may be renewed only if there are no material changes to the site or the proposed activities. Permittees must provide a statement describing the absence of or any changes to the site, project plans, or other original information as part of a renewal request.

In §15.3(t)(4), language was added that specifies that it is the local government that has the authority to void a permit under various circumstances. The language in renumbered §15.3(t)(5) was modified to clarify that an applicant or permittee must either amend or obtain a new permit or certificate in the event of a material change to the site conditions or proposed construction activities, and to clarify that the local government must submit the amendment or new permit to the GLO for review and comment.

GLO added new §15.3(u)(1)(A) to clarify that a permit, certificate, or other relevant authorization is part of the administrative record, and §15.3(u)(1)(B) clarifies that any information submitted as part of a permit renewal or amendment is part of the administrative record. Renumbered §15.3(u)(1)(D) was added to clarify that all correspondence sent or received by the local government regarding the permit or certificate is also part of the administrative record.

In §15.3(u)(2), GLO changed the mandatory retention time of the administrative record by a local government from three years from the date of a final decision on a permit or certificate to four years from the expiration date of a permit or certificate or from the date that the required mitigation or compensation has been determined to be complete, whichever is later. This change to the retention record timeframe is necessary to include the entire three-year deadline that is required for mitigation and compensation to be completed.

§15.4 Dune Protection Standards

The GLO added language to §15.4(a) stating that no person shall initiate or perform construction in violation of TNRC §§ 63.051, 63.091, or this chapter to further support the regulatory prohibitions in the Dune Protection Act. This addition clarifies that any unauthorized activities or activities that are not compliant with TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit are subject to enforcement action.

The GLO created new §15.4(f)(2)(B)(iii) to highlight that local governments may use their planning and development authority to limit private access points to the beach to only the minimum number needed to service the development. Although there is an existing requirement in renumbered §15.4(f)(2)(iv), some local governments have concerns over implementing this provision if private access pathways are already platted. This addition highlights that local governments can use other existing authorities to minimize the proliferation of excessive private access in the initial planning stages of a development when approving proposed plats to protect public infrastructure and private property from storm surge and further minimize potential adverse impacts to dunes and dune vegetation.

GLO also created new §15.4(f)(2)(B)(vi) to prohibit the construction or maintenance of a structure on previously mitigated or compensated dunes that are seaward of a dune protection line except for permitted dune walkovers or similar access ways. This addition clarifies that existing requirements in §15.7(e)(8) also apply to mitigated or compensated dunes and is intended to protect less robust artificial or man-made dunes from being

weakened, and to limit the extent of recurring damages to dunes and dune vegetation.

The amendments include the addition of the term "mitigation" to all areas where "compensation" is mentioned, and vice versa, in §§15.4(g)(1) - (5), since this section describes the deadlines for both mitigation and compensation. GLO also added "in accordance with the mitigation or compensation plan" to §15.4(g)(1) to clarify that permittees must provide local governments with proof of financial responsibility for mitigation or compensation costs if mitigation or compensation is not completed in accordance with the mitigation or compensation plan prior to the commencement of construction of any structure. This addition clarifies that a permittee must provide the local government with proof of financial responsibility for mitigation costs if the sand placement and dune vegetation planting components of the required mitigation or compensation are not completed in adherence to the mitigation plan before construction of any structure begins.

GLO also added a requirement to §15.4(g)(5) for permittees to complete sand placement, and if applicable, dune vegetation relocation and/or planting portions of a mitigation plan within one year of initiation of construction. The deadline by which mitigation or compensation must be complete was changed to three years after the initiation of construction instead of three years after beginning compensation. Under the previous mitigation and compensation deadline requirements, some permitted construction projects did not begin the required mitigation or compensation until years after construction was initiated, which leaves an inadequate amount of time for the planted vegetation to become established by the three-year completion deadline and allowed for an unnecessary and extended period of time where public infrastructure and private property were at greater risk to storm damage. By requiring a one-year deadline for sand movement and vegetation planting after the initiation of construction and changing the mitigation or compensation deadline to three years after the initiation of construction, the GLO is encouraging prompt restoration of the protective capacity of the dune system after impacts occur, which minimizes the risk of damage to natural resources from floods and erosion. The inclusion of a one-year deadline for vegetation planting will also help permittees meet the three-year mitigation or compensation deadline since planted vegetation needs time to become established and for the vegetative cover to match the surrounding natural dunes, as required in §15.4(g)(3).

§15.5 Beachfront Construction Standards

GLO created new §15.5(a)(2), stating that no person shall initiate or perform construction in violation of TNRC §61.013 or this chapter, to further support the regulatory prohibitions in the Open Beaches Act. Non-substantive changes were also made to §15.5(b)(3) to ensure consistency throughout the chapter.

§15.6 Concurrent Dune Protection and Beachfront Construction Standards

GLO added new §15.6(g), which would allow for the construction of certain parking areas or walkways landward of the line of vegetation to enhance ease of access for persons with disabilities, as required by law. For commercial facilities or public beach access facilities that are required to be accessible for persons with disabilities, a change was made to allow concrete slabs or other impervious surfaces so long as the area does not exceed 5% of the square footage of the property to be used for parking areas or walkways, when the use of permeable materials is not practicable. A demonstration of necessity must be provided by the applicant. There are many instances where commercial facilities or public beach access facilities are required to be accessible for persons with disabilities under other laws and regulations, and this addition provides more flexibility in complying with those standards.

To ensure dune walkovers or similar structures are constructed in a manner that is protective of the critical dune area and to minimize the amount of building materials in the dune system that may end up as debris on the public beach, GLO added various construction requirements for dune walkovers and similar structures to new §15.6(i). The requirement for dune walkovers to be constructed to allow for the growth of dune vegetation and migration of dunes was relocated to this section from §15.7(g), and specific requirements for maximum width limitations, minimum height above the dunes, and deck board spacing were added. In response to comments made on the proposed amendment, the GLO changed the specific requirements for maximum width limitations and minimum height above the dunes in §15.6(i).

GLO also added new §15.6(i)(3) requiring local governments to construct dune walkovers that are accessible for persons with disabilities, where practicable, for all new construction of public dune walkovers in areas where vehicles are prohibited from the public beach. This addition is intended to enhance public beach access opportunities for persons with disabilities and ensure equal access to the beach, as already required under other laws and regulations.

The new requirements in §§15.6(i)(1) - (3) apply to all new construction of dune walkovers and similar structures after the date of adoption of the rules and any major repairs to existing dune walkovers and similar structures. A few examples of major repairs to existing dune walkovers subject to the new provisions include widening and replacing a substantial portion of the deck boards or replacing some pilings. If there is a conflict between the new dune walkover requirements in §§15.6(i)(1) - (3) and the requirements in a local government's Beach Access and Dune Protection Plan, then the more protective requirements will apply.

§15.7 Local Government Management of the Public Beach

The amendments include modifications to §15.7(e)(6)(B) authorizing local governments to allow sand fencing that is discontinuous and temporary to restore dunes and recommending that the fencing conform to the guidelines in the most recent edition of the GLO's Dune Protection and Improvement Manual for the Texas Gulf Coast. This change was made after a review of best dune restoration practices along the Texas coast and in recognition of the benefits of discontinuous sand fencing to nesting sea turtles.

The requirements for local governments to require permittees to shorten dune walkovers after a major storm and for local governments to assess the status of the public beach boundary after a major storm or other event causing significant landward migration of the public beach was removed from §§15.7(g)(4)(A) - (B) to be consistent with TNRC Ch. 61. In an effort to give the beach time to recover naturally, dune walkovers are typically not shortened immediately after a major storm unless they are impacting the public's ability to use the beach, and the language was modified accordingly.

A modification to §15.7(h) requires prior approval from the GLO before a local government modifies public beach parking. Additionally, the requirement for the GLO to approve and certify a local government's beach access and use standards was moved

from §15.7(h)(1)(C) to §15.7(h), and language was added to clarify that any modification to a local government's beach access and use plan must be approved and certified by the GLO based on the GLO's affirmative finding that such modifications preserve or enhance the public's right to use and access the beach.

Language added to §15.7(h)(4) clarifies that local governments must notify the GLO of any emergency beach access point closures as soon as practicable if a local government has had to make a closure for an emergency related to public safety. Historically the GLO has not always been promptly notified by local governments of emergency beach closures, and this addition will ensure timely communication and coordination between a local government and the GLO.

GLO added new §§15.7(h)(5)(A)(i) - (ii) requiring at least one access way with a stable, slip-resistant surface to the approximate high tide line to be provided in each jurisdiction where vehicles are prohibited from driving to mean high tide, and signs identifying the accessible beach access route to be conspicuously posted at the landward terminus of the access route. If a local government can demonstrate that providing and maintaining a stable, slip-resistant surface to the approximate high tide line is not practicable, local governments will be required to provide an alternate means of access for persons with disabilities, such as beach wheelchairs. Local governments will have until December 31, 2023 to come into compliance with these provisions. These changes will enhance public beach access for persons with disabilities and are modeled after the United States Access Board accessibility standards for federal outdoor developed areas, which are currently the only federal accessibility standards with specific guidelines for beach access routes.

GLO also clarified that golf carts must be prohibited in areas where vehicles are prohibited from driving on and along the beach in §15.7(h)(5)(B) unless they have a valid disabled parking placard and are transporting a person with a physical disability or a veteran with disabilities.

GLO also created new §15.7(l) using language from §15.7(i)(4)(E) requiring a local government to prepare a compliance plan if the GLO determines that existing beach access or proposed changes to vehicular controls are not consistent with state standards. The compliance plan must include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements.

§15.8 Beach User Fees

Amendments to §15.8 include reformatting and language additions for clarity. GLO also expanded the list of information that must be included in a new or amended beach user fee plan proposal in §15.8(b) to include information that is needed for the GLO to be able to determine consistency with state law and regulations. For example, the GLO added §15.8(b)(7) requiring an estimate of the projected beach user fee revenues and expected budget for expenditures on beach-related services, including a description of how the projections and budget were determined, for the next five years, which is needed for the GLO to determine if the proposed beach user fee is reasonable, would recover the cost of providing and maintaining beach-related services, and would not exceed the necessary and actual cost of providing beach-related services, as required by this subchapter.

The GLO also added §15.8(b)(6) requiring a report detailing a local government's previous five years of beach user fee revenue and expenditures on beach-related services; §15.8(b)(10) requiring a description of how the beach user fee will be collected and managed by the local government and an explanation of how the method of fee collection and management is consistent with the requirements of this chapter; §15.8(b)(11) requiring where appropriate, evidence of the cost to the local government of providing existing beach-related services and how the proposed beach user fee will maintain or enhance those or additional beach-related services; and §15.8(b)(12) for any additional information required for the GLO to determine if the fee is reasonable. Detailed historical revenue and expenditure information is needed so the GLO can ensure that a proposed price increase in beach user fees (BUFs) is appropriately determined and review previous local government management of these funds for efficiency and effectiveness in providing beach-related services to the public. Obtaining detailed information on the cost of providing existing beach-related services and how a new BUF or a BUF increase will enhance those services is critical to the GLO's responsibility to ensure that BUFs are reasonable. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services but does not exceed the necessary and actual cost of providing reasonable beach-related public facilities and services. Much of this information has been informally requested by the GLO during the plan amendment process since a high level of detail is needed to determine consistency with existing regulations and state law. In addition, administrative costs must be directly related to providing support for beach related services. Examples of administrative costs were added.

GLO also added new §15.8(g)(2), requiring documentation sufficient to substantiate the proper collection and expenditure of beach user fees to be maintained by the local government and for such documentation to be kept by the local government for four years following the date the fees are spent. This information must be provided to the GLO within 10 working days of a request by the GLO to the local government. In addition, language was added in renumbered §15.8(h) allowing beach user fee revenues to be separately tracked in local governments' accounting systems as an alternative to being maintained in entirely separate revenue accounts. GLO added new §15.8(i) using language previously in §15.13(f) stating that the GLO shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent section of a dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related services.

§15.9 Enforcement, Penalties and Remedial Orders

GLO created new §15.9(b)(3) to clarify that a person damages a dune or dune vegetation when their conduct results in the destruction or removal of a dune or dune vegetation or weakens a dune or dune vegetation by increasing the potential for flood damage, washovers, or blowouts, by changing runoff or drainage patterns in a way that aggravates erosion on or off the site or in a way that may result in adverse effects to dune hydrology and dune complexes or dune vegetation. This addition incorporates the prohibition of the approval by local governments of permits that materially weaken dunes or dune vegetation, as required in this chapter, and clarifies the circumstances under which a person who damages a dune or dune vegetation may be subject to the administrative penalties and restoration requirements in this section.

GLO changed §15.9(b)(5) to state that a person must apply for a permit and complete restoration rather than just initiate restoration of damages in order to avoid further costs, fees or enforcement proceedings as described in this section. New

§15.9(d) was created to outline the notice of violation and hearing requirements, using updated language partially relocated from §§15.9(b)(3), 15.9(b)(6)(B), and 15.9(c)(6)(B).

§15.10 General Provisions

The GLO deleted §15.10(j) regarding grandfathered plans since it applied to the initial beach dune rules and is no longer relevant. Minor editorial changes and changes for clarification were also made in this subchapter.

§15.11 Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach

Minor editorial changes to clarify language and be consistent with the rest of this chapter are proposed. Modifications to §15.11(e) were also made to clarify that a local government shall coordinate with property owners to remove personal property and beach debris related to a structure from the public beach and dune complex. Language was added to authorize local governments to require debris removal from the public beach when the debris is a public health and safety hazard as a condition of the issuance of a new certificate or permit under this section.

§15.12 Temporary Orders Issued by the Land Commissioner

Minor editorial changes to clarify language and for consistency with the rest of this chapter and with TNRC Chapter 61 are adopted. Specifically, the GLO amended §15.12(d)(2) to clarify that the GLO is responsible for clearing debris from the public beach in accordance with TNRC §61.067, and that while an order issued under this section is in effect, a local government with the duty to clean and maintain the beach must coordinate with the GLO and, where appropriate, littoral property owners, to remove beach debris from the public beach. Previously, this section stated that the local government must coordinate with the littoral property owners to remove beach debris from the public beach and did not include reference to the GLO or the GLO's responsibility for clearing debris from the public beach after declared disaster.

§15.13 Disaster Recovery Orders

The GLO made minor editorial changes to clarify language and for consistency with the rest of this chapter and TNRC Chapter 61. GLO also relocated language, from §15.13(b) to §15.13(c), stating that temporary standards authorized by this section are 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. GLO changed §15.13(h)(2) to require the removal of a clay core dune if it is not covered with a minimum of 24 inches of sand. The requirement for local governments to require the use of indigenous dune vegetation when restoring dunes is being relocated from §15.13(e)(10) to new §15.13(h)(4) and modified to clarify that indigenous dune vegetation is only required when vegetation is used to restore dunes.

RESPONSE TO PUBLIC COMMENTS

The GLO received public comments on the proposed amendments to 31 Texas Administrative Code §§15.1 - 15.13 during the comment period.

The GLO received three comments on the changes to walkover regulations in §15.6(i)(1)(A) and §15.6(i)(1)(B). The City of South Padre Island supported the amendments to place restrictions on the width and height of dune walkovers. The City of Port Aransas and a member of the public provided comments with concerns about various aspects of the proposed limits on dune walkover width limitations since wider dune walkovers can serve many homes and allow emergency vehicles to enter and exit the beach expeditiously. In response to the comments, the GLO modified the language in §15.6(i)(1)(A) to eliminate an eight-foot width limitation for dune walkovers and to allow dune walkovers with a width of more than four feet to be permitted for public access walkovers, shared walkovers for three or more residences, or for wheelchair or golf-cart use with approval of the local government and a demonstration of need during the permitting process. The GLO also modified the requirements regarding the minimum height of dune walkovers in §15.6(i)(1)(B) to no longer require dune walkovers with a width of greater than four feet to be at a minimum height equal to the width of the walkover above the highest point of the tallest dune crest. Section 15.6(i)(1)(B) now requires dune walkovers with a width of greater than four feet to be constructed at an adequate height that will allow for the growth of dune vegetation and migration of the dunes under the walkover. An allowance was also added for exceptions to the height requirement for walkovers to descend to the beach over the foredune ridge. Local governments can adopt more specific requirements regarding dune walkovers in their local Dune Protection and Beach Access Plan.

The City of South Padre Island and the City of Port Aransas also commented that it is difficult to keep a stable, slip-resistant surface to the water line, as required by §15.7(h)(5)(A), accessible for use at all times due to various local environmental and funding factors. The GLO agrees and points to the allowance in §15.7(h)(5)(A)(i) for local governments to provide alternate means of access for persons with disabilities, such as beach wheelchairs, in cases where maintaining a stable, slip-resistant surface to the approximate high tide line is not practicable. There are currently beach wheelchairs available in each jurisdiction where the requirements in §15.7(h)(5)(A) will be applicable. No changes were made based on these comments.

Comments on the requirement in §15.6(i)(1)(C) for the deck boards of a dune walkover to be spaced at least ½ inch apart were also received, stating that deck board spacing provides no meaningful impact to the establishment of vegetation. However, the intent for the requirement in §15.6(i)(1)(C) for the deck boards of a dune walkover to be spaced at least ½ inch apart is not only to allow rainfall to reach the vegetation below but also so that sunlight can penetrate to the vegetation and to help prevent sand accumulation on the deck. No changes were made based on this comment.

Other comments received by the City of Port Aransas were based on misunderstandings of the proposed text of the rulemaking. After meeting with the commenters, the concerns were resolved.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The rulemaking is subject to the Coastal Management Program (CMP) as provided for in the Texas Natural Resources Code §33.2053, and 31 TAC §29.11(a)(1)(J) and §29.11(c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations and has determined that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §26.12 (relating to Goals) and §26.26 (relating to Policies for Construction in the Beach/Dune System).

The amendments are consistent with the CMP goals outlined in 31 TAC §26.12(5). These goals seek to balance the benefits of economic development and multiple human uses, the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The amendments are consistent with 31 TAC §26.12(5) as they provide local governments with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone. The rules are also consistent with CMP policies in 31 TAC §26.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §61.011, which provides authority for the Commissioner to promulgate rules for the protection of the public easement from erosion or reduction and §63.121, which provides for the commissioner's authority to adopt rules for the protection of critical dune areas.

§15.1. Policy.

The General Land Office has identified the following goals as a basis for managing and regulating human impacts on the beach/dune system:

(1) to assist coastal citizens and local governments in protecting public health and safety and in protecting, preserving, restoring, and enhancing coastal natural resources including barrier islands and peninsulas, mainland areas bordering the Gulf of Mexico, and the floodplains, beaches, and dunes located there;

(2) to aid coastal landowners and local governments in using beachfront property in a manner compatible with preserving public and private property, protecting the public's right to benefit from the protective and recreational functions of a healthy beach/dune system, conserving the environment, conserving flora and fauna and their habitat, ensuring public safety, and minimizing loss of life and property due to inappropriate coastal development and the destruction of protective coastal natural features;

(3) to foster mutual respect between public and private property owners and to assist local governments in managing the Texas coast so that the interests of both the public and private landowners are protected;

(4) to promote dune protection and ensure that adverse effects on dunes and dune vegetation are avoided whenever practicable. If such adverse effects cannot be avoided and have been minimized, every effort must be made to repair, restore, and rehabilitate existing dunes and dune vegetation;

(5) to prevent the destruction and erosion of public beaches and other coastal public resources, to encourage the use of environmentally sound erosion response methods, and to discourage those methods such as rigid shorefront structures which can have a harmful impact on the environment and public and private property;

(6) to aid communities located on barrier islands, peninsulas, and mainland areas bordering the Gulf of Mexico which are extremely vulnerable to flooding and property damage due to violent storms by working to reduce flood losses, by minimizing any waste of public funds in the National Flood Insurance Program, and by ensuring that the insurance remains available and affordable;

(7) to protect the public's right of access to, use of, and enjoyment of the public beach and associated facilities and services as established by state common law and statutes. The public has vested property rights in Texas' public beaches, and free use of and access to and from the beaches are guaranteed. The Open Beaches Act requires local governments to preserve and enhance use of public beaches and access between the beaches and public roads. If an access point must be closed, then existing law requires it to be replaced with equal or better access consistent with the appropriate local dune protection and beach access plan. Whenever practicable, local governments should enhance public beach use and access;

(8) to provide coordinated, consistent, responsive, timely, and predictable governmental decision making and permitting processes;

(9) to recognize that the beach/dune system contains resources of statewide value and concern, which local governments are in the best position to manage on a daily basis. This subchapter is designed to provide local governments with the necessary tools for effective coastal management and are regarded as a minimum standard; local governments are encouraged to develop procedures that provide greater protection for the beach/dune system;

(10) to educate the public about coastal issues such as dune protection, beach access, erosion, and flood protection, and to provide for public participation in the protection of the beach/dune system and in the development and implementation of the Texas Coastal Management Program; and

(11) to minimize public expenditure on damages caused on public and private property, including the public beach, by erosion, storms, and meteorological events.

§15.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affect--As used in this subchapter regarding dunes, dune vegetation, and the public beach, "affect" means to produce an effect upon dunes, dune vegetation, or public beach use and access.

(2) Amenities--Any non habitable major structure including, but not limited to, swimming pools, decks, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, artificial runoff channels and other water retention structures, sidewalks, roads, streets, highways, parking areas and other paved areas (exceeding 144 square feet in area), underground storage tanks, and similar structures.

(3) Applicant--Any person applying to a local government for a permit and/or certificate for any construction or development plan.

(4) Backdunes--The dunes located landward of the foredune ridge which are usually well vegetated but may also be unvegetated and migratory. These dunes supply sediment to the beach after the foredunes and the foredune ridge have been destroyed by natural or human activities.

(5) Beach access--The right to use and enjoy the public beach, including the right of free and unrestricted ingress and egress to and from the public beach.

(6) Beach/Dune Rules--31 TAC §§15.1 - 15.36, 31 TAC Ch. 25, 31 TAC §26.26 and 31 TAC §29.60.

(7) Beach/dune system--The land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

(8) Beach maintenance--The cleaning or removal of debris from the beach or redistribution of seaweed on the beachfront by handpicking, raking, or mechanical means.

(9) Beach profile--The shape and elevation of the beach as determined by surveying a cross section of the beach.

(10) Beach-related services--Reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.

(11) Beach user fee--A fee collected by a local government in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public.

(12) Beachfront construction certificate or certificate--The document issued by a local government that certifies that the proposed construction either is consistent with the local government's dune protection and beach access plan.

(13) Blowout--A breach in the dunes caused by wind erosion.

(14) Breach--A break or gap in the continuity of a dune caused by wind or water.

(15) Bulkhead--A structure or partition built to retain or prevent the sliding of land. A secondary purpose is to protect the upland against damage from wave action.

(16) Coastal and shore protection project--A project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach nourishment, sediment bypassing, construction of man-made vegetated mounds, and dune revegetation.

(17) Coastal public land--Has the meaning assigned by Texas Natural Resource Code, §33.004.

(18) Commercial facility--Any structure used for providing, distributing, and selling goods or services in commerce including, but not limited to, hotels, restaurants, bars, rental operations, and rental properties.

(19) Construction--Causing or carrying out any building, bulkheading, filling, clearing, excavation, or substantial improvement to or alteration of land or the size of any structure, or removal or demolition of a structure. "Building" includes, but is not limited to, all related site work and placement of construction materials on the site. "Filling" includes, but is not limited to, disposal of dredged materials. "Excavation" includes, but is not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. "Substantial improvements to or alteration of land or the size of any structure" include, but are not limited to, creation of vehicular or pedestrian trails, landscape work and fencing (that may adversely affect public access, dunes or dune vegetation), and increasing the size of any structure.

(20) Coppice mounds--The initial stages of dune growth formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach seaward of the foredunes. Coppice mounds may be unvegetated.

(21) Critical dune areas--Those portions of the beach/dune system as designated by the General Land Office that are located within 1,000 feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas include, but are not limited to, the dunes that store sand in the beach/dune system to replenish eroding public beaches.

(22) Cumulative impact--The effect on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(23) Dedication--Includes, but is not limited to, a restrictive covenant, permanent easement, and fee simple donation.

(24) Dune--An emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be created via man-made vegetated mounds. Natural dunes are usually found adjacent to the uppermost limit of wave action and are usually marked by an abrupt change in slope landward of the dry beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, backdunes, and man-made vegetated mounds.

(25) Dune complex or dune area--Any emergent area adjacent to the waters of the Gulf of Mexico in which several types of dunes are found or in which dunes have been established by proper management of the area. In some portions of the Texas coast, dune complexes contain depressions known as swales.

(26) Dune Protection Act--Texas Natural Resources Code, §§63.001, et seq.

(27) Dune protection and beach access plan or plan--A local government's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and for preserving and enhancing use of and access to and from public beaches, and for reducing public expenditures for erosion and storm damage losses, as required by Texas Natural Resources Code Chapters 61 and 63 and Texas Natural Resources Code §33.607.

(28) Dune protection line--A line established by a county commissioners court or the governing body of a municipality for the purpose of preserving, at a minimum, all critical dune areas identified by the General Land Office pursuant to the Dune Protection Act, §63.011, and §15.3(f) of this title (relating to Administration). A municipality is not authorized to establish a dune protection line unless the authority to do so has been delegated to the municipality by the county in which the municipality is located. Such lines will be located no farther than 1,000 feet landward of the mean high tide of the Gulf of Mexico.

(29) Dune protection permit or permit--The document issued by a local government to authorize construction or other regulated activities in a specified location seaward of a dune protection line or within a critical dune area, as provided in the Texas Natural Resources Code, §63.051.

(30) Dune vegetation--Flora indigenous to natural dune complexes, and growing on naturally-formed dunes or man-made vegetated mounds on the Texas coast and can include coastal grasses and herbaceous and woody plants.

(31) Effect or effects--"Effects" include: direct effects--those impacts on public beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and occur at the same time and place; and indirect effects--those impacts on beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and are later in time or farther removed in distance than a direct effect, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems. "Effects" and "impacts" as used in this subchapter are synonymous. "Effects" may be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

(32) Eroding area--A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on published data of the University of Texas at Austin, Bureau of Economic Geology. Local governments may establish an "eroding area boundary" in beach/dune plans; this boundary shall be whichever distance landward of the line of vegetation is greater: 200 feet, or the distance determined by multiplying 50 years by the annual historical erosion rate (based on the most recent data published by the University of Texas at Austin, Bureau of Economic Geology).

(33) Erosion--The wearing away of land or the removal of beach and/or dune sediments by wave action, tidal currents, wave currents, drainage, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

(34) Erosion response structure--A hard or rigid structure built for shoreline stabilization which includes, but is not limited to, a jetty, groin, breakwater, bulkhead, seawall, riprap, rubble mound, revetment, or the foundation of a structure which is the functional equivalent of these specified structures.

(35) FEMA--The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program and publishes the official flood insurance rate maps.

(36) 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.

(37) Foredune ridge--The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

(38) Foredunes--The first clearly distinguishable, usually vegetated, stabilized large dunes encountered landward of the Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be large and continuous, foredunes are typically hummocky and discontinuous and may be interrupted by breaches and washover areas. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

(39) Habitable structure footprint--The area of a lot covered by a structure used or usable for habitation. The habitable structure footprint does not include uncovered stairs and decks, incidental projecting eaves, balconies, ground-level paving, landscaping, open recreational facilities (for example, pools and tennis courts), or other similar features.

(40) Habitable structures--Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and commercial facilities. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches or gazebos, and other attached improvements.

(41) Industrial facilities--Include, but are not limited to, those establishments listed in Part 1, Division D, Major Groups 20 - 39 and Part 1, Division E, Major Group 49 of the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.). However, for the purposes of this subchapter, the establishments listed in Part 1, Division D, Major Group 20, Industry Group Number 209, Industry Numbers 2091 and 2092 are not considered "industrial facilities." These establishments are listed in "Appendix I" attached to this section.

(42) Large-scale construction--Construction activity greater than 5,000 square feet or habitable structures greater than two stories in height. Both the area beneath the lowest habitable level of an elevated structure and a cupola (i.e. "widow's walk") with an area of 400 square feet or less on the top of the second habitable story are not considered stories for the purpose of this section. Multiple-family habitable structures are typical of this type of construction.

(43) Line of vegetation--The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach.

(44) Local government--A municipality, county, any special purpose district, any unit of government, or any other political subdivision of the state.

(45) Man-made vegetated mound--A mound, hill, or ridge of sand created by the deliberate placement of sand or sand trapping devices including sand fences, trees, or brush and planted with dune vegetation.

(46) Master plan--A plan developed by the applicant in consultation with the General Land Office, the applicant or applicants, and the local government, for the development of an area subject to the beach/dune rules, as identified in §15.3 of this title (relating to Administration). The master plan shall fully describe in narrative form the proposed development and all proposed land and water uses, and shall include maps, drawings, and tables, and other information, as needed. The master plan must, at a minimum, fully describe the general geology and geography of the site, land and water use intensities, size and location of all buildings, structures, and improvements, all vehicular and pedestrian access ways, and parking or storage facilities, location and design of utility systems, location and design of any erosion response structures, retaining walls, or stormwater treatment management systems, and the schedule for all construction activities described in the master plan. The master plan shall comply with the Open Beaches Act and the Dune Protection Act. The master plan shall provide for overall compliance with the beach/dune rules, but may vary from the specific standards, means and methods provided in the beach/dune rules if the degree of dune protection and the public's right to safe and healthy use of and access to and from the public beach are preserved. If all impacts to dunes, dune vegetation and public beach use and access are accurately identified, local governments shall not

require permits or certificates for construction on the individual lots within the master plan area. Master plans are intended to provide a comprehensive option for planning along the Texas coast.

(47) Material changes--Changes in project design, construction materials, or construction methods or in the condition of the construction site which occur after an application is submitted to a local government or after the local government issues a permit or certificate. Material changes are those additional or unanticipated changes which may have caused or may cause adverse effects on dunes, dune vegetation, or beach access and use, or exacerbation of erosion on or adjacent to the construction site.

(48) Meteorological Event--Atmospheric conditions or phenomena resulting in avulsion, erosion, accretion, or other impacts to the shoreline that alter the location of the line of vegetation.

(49) Mitigation sequence--The series of steps which must be taken if dunes and dune vegetation will be adversely affected. First, such adverse effects shall be avoided. Second, adverse effects shall be minimized. Third, the dunes and dune vegetation adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

(50) National Flood Insurance Act--42 United States Code, §§4001, et seq.

(51) Natural resources--Land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

(52) Off-highway vehicle--Has the meaning assigned by §551A.001, Transportation Code.

(53) Open Beaches Act--Texas Natural Resources Code, §§61.001, et seq.

(54) Owner or operator--Any person owning, operating, or responsible for operating commercial or industrial facilities.

(55) Permit or certificate condition--A requirement or restriction in a permit or certificate necessary to assure protection of life, natural resources, property, and adequate beach use and access rights which a permittee must satisfy in order to be in compliance with the permit or certificate.

(56) Permittee--Any person authorized to act under a permit or a certificate issued by a local government.

(57) Person--An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

(58) Pipeline--A tube or system of tubes used for the transportation of oil, gas, chemicals, fuels, water, sewerage, or other liquid, semi-liquid, or gaseous substances.

(59) Practicable--In determining what is practicable, local governments shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Local governments shall also consider the cost of the technology or technique.

(60) Production and gathering facilities--The equipment used to recover and move oil or gas from a well to a main pipeline, or other point of delivery such as a tank battery, and to place such oil or gas into marketable condition. Included are pipelines used as gathering lines, pumps, tanks, separators, compressors, and associated equipment and roads.

(61) Project area--The portion of a site or sites which will be affected by proposed construction.

(62) Public beach--As used in this subchapter, "public beach" is defined in the Texas Natural Resources Code, §61.013(c).

(63) Recreational activity--Includes, but is not limited to, hiking, sunbathing, and camping. As used in §15.3(s)(2)(C) of this title (relating to Administration), recreational activities are limited to the private activities of the person owning the land and the social guests of the owner. Operation of recreational vehicles is not considered a recreational activity, whether private or public.

(64) Recreational vehicle--A dune buggy, marsh buggy, minibike, trail bike, jeep, off-highway vehicle as defined by §551A.001, Transportation Code, or any other mechanized vehicle used for recreational purposes, but does not include a vehicle that is not being used for recreational purposes.

(65) Restoration--Repair or replacement of dunes or dune vegetation, or restoring a site to compliance with applicable requirements, including removal or abatement of unauthorized construction or structures, as those terms defined in this section.

(66) Retaining wall--A structure designed to contain or which primarily contains material or prevents the sliding of land. Retaining walls may collapse under the forces of normal wave activity.

(67) Sand budget--The amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

(68) Seawall--An erosion response structure specifically designed to or which will withstand wave forces.

(69) Seaward of a dune protection line--The area between a dune protection line and the line of mean high tide.

(70) Small-scale construction--Construction activity less than or equal to 5,000 square feet or habitable structures less than or equal to two stories in height. Both the area beneath the lowest habitable level of an elevated structure and a cupola (i.e. "widow's walk") with an area of 400 square feet or less on the top of the second habitable story are not considered stories for the purpose of this section. Single-family habitable structures are typical of this type of construction.

(71) Structure--Includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

(72) Swales--Low areas within a dune complex located in some portions of the Texas coast which function as natural rainwater collection areas and are an integral part of the dune complex.

(73) Unique flora and fauna--Endangered or threatened plant or animal species listed pursuant to 16 United States Code Annotated, §1531 et seq., the Endangered Species Act of 1973, and/or the Parks and Wildlife Code, Chapter 68, or any plant or animal species that a local government has determined in their local beach/dune plan are rare or uncommon.

(74) Washover areas--Low areas that are adjacent to beaches and are inundated by waves and storm tides from the Gulf of Mexico. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or breached by storm tides and wind erosion.

§15.3. Administration.

(a) Integration of dune protection and beach access programs. The Dune Protection Act and the Open Beaches Act require certain local governments to adopt and implement programs for the preservation of dunes and the preservation and enhancement of use of and access to and from public beaches. These Acts provide for regulation of generally the same activities and the same geographic areas, and their requirements are scientifically and legally related. Local governments required to adopt dune protection and beach access programs shall integrate them into a single plan consisting of procedural and substantive requirements for management of the beach/dune system within their jurisdiction. The authority to integrate such plans is provided pursuant to the Dune Protection Act, the Open Beaches Act, and this subchapter. The local government plans shall be consistent with the requirements of the Open Beaches Act, the Dune Protection Act, and this subchapter, and each shall, whenever possible, incorporate the local government's ordinary land use planning procedures.

(b) Boundary of the public beach. The public beach is defined in the Open Beaches Act, §61.013(c), and §15.2 of this title (relating to Definitions). The line of vegetation is defined in the Open Beaches Act, §61.001(5), and §15.2 of this title. The line of vegetation is typically used to determine the landward extent of the public beach. However, there are portions of the Texas coast where there is no marked vegetation line or the line is discontinuous or modified. In those portions of the coast, the line of vegetation shall be determined consistent with §15.10(b) of this title (relating to General Provisions) and the Open Beaches Act, §61.016 and §61.017.

(1) If there is no clearly marked line of vegetation, the "line of vegetation" delineating the public beach shall be the line of constant elevation connecting two clearly marked lines of vegetation of equal elevation on each side, but if there are no clearly marked lines of vegetation on each side, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

(2) If there is no clearly marked line of vegetation, the "line of vegetation" delineating the public beach shall be the line of average elevation connecting two clearly marked lines of vegetation of unequal elevation on each side, but if there are no clearly marked lines of vegetation on each side, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

(3) If the vegetation line has been obliterated or is created artificially and there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to the public easement.

(4) If the commissioner has issued an order under §15.12 of this title (relating to Temporary Orders Issued by the Land Commissioner) or §15.13 of this title (relating to Disaster Recovery Orders) the line of vegetation shall be delineated in accordance with the order(s).

(5) When a Beachfront Construction Certificate/Dune Protection Permit application is submitted to the General Land Office for review and comment, the line of vegetation depicted on any map, aerial photograph, or other documentation shall be subject to verification by the General Land Office.

(6) The determination of the location of the line of vegetation by the commissioner of the General Land Office as provided by the Open Beaches Act, §§61.016 - 61.017 and 61.0171, constitutes prima facie evidence of the landward boundary of the area subject to the public easement until a court adjudication establishes the line in another place.

(c) Beachfront construction certification areas. The General Land Office has the responsibility of protecting the public's right to use and have access to and from the public beach and of providing standards to the local governments certifying construction on land adjacent to the Gulf of Mexico consistent with such public rights. The Open Beaches Act, §61.011(d)(6), limits the geographic scope of the beachfront construction certification area to the land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or the area up to 1,000 feet of mean high tide, whichever distance is greater. For this area, local governments shall prepare a beach access and use program, pursuant to the Open Beaches Act, §61.015, for inclusion in their dune protection and beach access plans to control any adverse effects of beachfront construction on public beach use and access. Applications for beachfront construction certificates shall be reviewed by local governments for consistency with their dune protection and beach access plans.

(d) Critical dune areas and dune protection lines. The commissioner of the General Land Office, as trustee of the public lands of Texas, has the responsibility to identify and protect Texas' critical dune areas that are essential to the protection of coastal public land, public roads, public beaches, and other public resources. Local governments have the responsibility to establish dune protection lines for the purpose of preserving sand dunes within their jurisdiction. The Dune Protection Act, §63.121 and §63.012, respectively, limits the geographic scope of critical dune areas and the location of the dune protection line to that portion of the beach within 1,000 feet of mean high tide of the Gulf of Mexico.

(e) Identification of critical dune areas. Pursuant to the authority provided in the Dune Protection Act, §63.121, the General Land Office has identified critical dune areas as all dunes and dune complexes located within 1,000 feet of mean high tide of the Gulf of Mexico. This identification is based on the determination that all of the various protective functions served by the dunes and dune complexes located within that 1,000 feet are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas are related to dune protection lines in that local governments are required to establish such lines for the purpose of preserving dunes in a location landward of all critical dune areas. Criteria for establishing dune protection lines shall, at a minimum, include the criteria for establishing critical dune areas in this subsection.

(f) Establishment of dune protection lines. Pursuant to the authority provided in the Dune Protection Act, §63.011, local governments shall establish and maintain dune protection lines which preserve, at a minimum, the dunes within the critical dune areas as defined in this subchapter. The establishment of the line should include the protection of critical dune areas from erosion caused by natural forces and development on adjacent land. Accordingly, the Dune Protection Line should be established in a location that will allow local governments to implement Texas Natural Resources Code, §33.607. A local government must conduct a field inspection to determine the approximate location of the line unless it proposes to establish or relocate its line at a distance of 1,000 feet of mean high tide of the Gulf of Mexico, as that 1,000 feet is the maximum extent of the local government's jurisdiction for establishing dune protection lines.

(g) Deadline for establishment of dune protection lines. Local governments shall establish dune protection lines as part of the dune protection component of their local plans. The local plans shall be submitted to the state no later than 180 days after the effective date of this subchapter. Therefore, local governments shall establish dune protection lines no later than 180 days after this subchapter goes into effect.

(h) Information required regarding dune protection lines. Local governments are required to submit the following information to the General Land Office to allow state evaluation of the adequacy of the dune protection line location: a map or drawing of the line; a written description of the line; or a written description and a map or drawing. This information shall be included in the local government's dune protection and beach access plan and must clearly designate for the public and the state the location of the line and the location of dunes seaward of the line. All maps, drawings, or descriptions shall incorporate sufficient elements of the Texas State Plane Coordinate System to enable such description to be located on the ground and shall be tied to and/or include the Texas State Plane Coordinates for two or more monumented points along any described boundary. Each local government shall file a map or drawing or description of its dune protection line with the clerk of the county or municipality establishing the line.

(i) State assistance in the establishment of local government dune protection lines. The General Land Office may assist and advise local governments in establishing or modifying a dune protection line. Pursuant to the Dune Protection Act, §63.013, local governments shall notify the General Land Office of the establishment of dune protection lines and any subsequent change in a line. Upon such notification, the General Land Office shall review the location of the line by examining the map or description of the line submitted to the state and by conducting field inspections, as necessary. The General Land Office will review the location of the line to determine whether the line meets the geographic standard of being located landward of all critical dune areas. If the General Land Office is satisfied that the line meets that geographic standard, the General Land Office will notify the local government of this finding in writing. If the line does not meet that geographic standard, the General Land Office will assist and advise the local government in adjusting the line.

(j) State review of dune protection line location. Each local government shall submit the information regarding the location of the dune protection line, as required in subsection (h) of this section, to the General Land Office as part of its dune protection and beach access plan. In determining whether to approve the local plan, the General Land Office will review the various components of the plan, including the adequacy of the location of a local government's dune protection line (with respect to the protection of critical dune areas), based on the geographic standards provided in subsection (i) of this section.

(k) Local government review of dune protection line location. Each local government shall review its dune protection line every five years to determine whether the line is adequately located to achieve the purpose of preserving critical dune areas. In addition to the five-year review, each local government shall review the adequacy of the location of the line within 90 days after a tropical storm or hurricane affects the portion of the coast in its jurisdiction.

(l) Provisions for public hearings on dune protection lines. Local governments shall provide notice of a public hearing to consider establishing or modifying a dune protection line by publishing such notice at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing. Notice shall be given to the General Land Office not less than one week nor more than three weeks before the hearing. In the notice to the General Land Office, local governments shall also include the information described in subsection (h) of this section.

(m) Local government authority. Local governments shall include in the plans submitted to the General Land Office citations of all statutes, policies, and ordinances which demonstrate the authority of the local government to implement and enforce the plan in a manner consistent with the requirements of this subchapter. Local government plans shall also demonstrate the coordination, on the local level, of the dune protection, beach access, erosion response, and flood protection programs (if participating in the National Flood Insurance Program under the National Flood Insurance Act). Each local government shall integrate these programs into one plan for the management of the beach/dune system within its jurisdiction.

(n) Content of local government dune protection and beach access plans. Local government plans shall contain procedural mechanisms and substantive requirements necessary for compliance with this subchapter, the Dune Protection Act, the Open Beaches Act and Texas Natural Resources Code §33.607. Local governments shall attach copies of this subchapter, the Dune Protection Act, and the Open Beaches Act to their plans, and their plans shall state that these state laws are incorporated into the plans. A local government shall also state in its plan that any person in violation of the incorporated state laws is in violation of its local plan.

(o) Consultation on and submission of local government plans to the General Land Office. Local governments shall submit dune protection plans, beach access plans, erosion response plans under Texas Natural Resources Code Chapter 33, and 31 TAC §15.17, and any amendments to those plans to the General Land Office for review, comment, and certification as to compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act.

(1) A local government's governing body must formally approve the plan or amendments to the plan prior to submission to the General Land Office for certification. Prior to formally approving its plan, a local government may consult with or request legal and technical advice from the General Land Office on meeting the requirements for state agency approval. The General Land Office will provide written guidance on the form and content of the plan or amendment prior to formal approval upon request by a local government.

(2) Review of plan and amendments. The General Land Office shall either grant or deny certification of a local government's formally approved dune protection and beach access plan or any amendments within 90 days of receipt of the plan.

(A) Depending upon the degree or complexity of modifications contained in the plan amendment, the local government may request a review period shorter than 90 days based on the following guidelines:

(i) An expedited review period of 30 days may be requested for review of a plan amendment that is administrative in nature and does not contain variances nor substantially alter beach access or dune protection.

(ii) A standard review period of 60 days may be requested for review of a plan amendment that does not contain any changes to beach user fees, beach access points, changes to vehicular access, nor substantially alter beach access or dune protection.

(iii) The local government shall provide a reasoned justification with any request for a review period of less than 90 days. It must include a detailed description of the proposed changes that will result from the amendment.

(iv) The General Land Office will make a determination on the eligibility of an amendment for a shortened review period and notify the local government of the determination within 10 working days (to run concurrently with the applicable review period) from the date the request and complete package of information regarding the proposed amendment is received. Review of plan amendments that do not qualify for a shortened review period will be completed by the General Land Office within the allowed 90 day period.

(B) In the event of denial, the General Land Office shall send the plan back to the local government with a statement of specific objections and the reasons for denial of certification, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan for review.

(3) The General Land Office's certification of local government plans shall be by adoption into the rules authorized under the Texas Natural Resources Code, §61.011. The rules adopted by the General Land Office to certify plans will consist of state approval of the plans, but the text of plans will not be adopted by the General Land Office.

(4) A local government may adopt a new or amend their dune protection and beach access plan by submitting the plans or proposed changes to the General Land Office for review, comment, and certification. A request for approval of a plan or any amendments to a plan must include the governing body's formal approval, a description of all major proposed changes, and a version of the plan identifying all proposed changes.

(5) A local government may request General Land Office certification of a plan or a plan amendment that includes a variance regarding any requirement or prohibition of this chapter; however, the local government must include in writing a reasoned justification and clearly demonstrate to the General Land Office and public how the variance is equal to or more protective of the goals and policies contained in §15.1 of this title (relating to Policy).

(p) Submission deadline for dune protection and beach access plans. Local governments shall submit dune protection and beach access plans to the General Land Office no later than 180 days from the effective date of this subchapter. If the General Land Office does not approve a plan, the local government shall submit revisions of the plan until the plan is approved. However, any local government that submits a revised plan that has not been modified to address the state comments regarding the statutory requirements and the minimum standards identified in this subchapter is presumed to be in violation of this subchapter, the Open Beaches Act, and the Dune Protection Act. Local governments that fail to submit plans within 180 days of the effective date of this subchapter will be liable for penalties as provided in §15.9 of this title (relating to Enforcement, Penalties and Remedial Orders). Further, local governments that fail to submit plans by that deadline will not be authorized to permit construction within the geographic scope of this subchapter.

(q) Compliance with the Open Beaches Act and exemptions from local government plan requirements.

(1) Local government dune protection and beach access plans shall not include the following areas, which are exempt from regulation by local governments:

(A) national park areas, national wildlife refuges, or other designated national natural areas;

(B) state park areas, state wildlife refuges, or other designated state natural areas; and

(C) beaches on islands and peninsulas not accessible by public road or ferry facility for as long as that condition exists.

(2) The Open Beaches Act applies to state and national park and wildlife management areas located on islands or peninsulas, regardless of whether the park is accessible by public road or ferry, as provided for in Texas Natural Resources Code, §61.0211.

(r) State-owned or public land not exempt from local government plans. Local government plans shall apply to all state-owned or public land other than parks and refuges, as provided for in Texas Natural Resources Code, §61.022 and §63.015, subject to the provisions of the Texas Natural Resources Code, §§31.161 and 31.167.

(s) Acts prohibited without a dune protection permit or beachfront construction certificate. An activity requiring a dune protection permit may typically also require a beachfront construction certificate and vice versa. Local governments shall, whenever possible, issue permits and certificates concurrently when an activity requires both. In their dune protection and beach access plans, local governments may combine the dune protection permit and the beachfront construction certificate into a single permit or a two-part permit; however, they are not required to do so.

(1) Acts prohibited without a dune protection permit. Unless a dune protection permit is properly issued by a local government authorizing the conduct, no person shall:

(A) damage, destroy, or remove a sand dune or a portion of a sand dune seaward of a dune protection line or within a critical dune area; or

(B) kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

(2) Activities exempt from dune protection permit requirements. Pursuant to the Dune Protection Act, §63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act. Where local governments have separate authority to regulate the following activities, persons shall comply with the local laws as well. The activities exempt from the dune protection permit requirements are:

(A) exploration for and production of oil and gas and reasonable and necessary activities directly related to such exploration and production, including construction and maintenance of production and gathering facilities located in a critical dune area which serve wells located outside of a critical dune area, provided that such facilities are located no farther than two miles from the well being served;

(B) grazing livestock and reasonable and necessary activities directly related to grazing; and

(C) recreational activities as defined in §15.2 of this title other than operation of a recreational vehicle.

(3) Acts prohibited without a beachfront construction certificate. No person shall cause, engage in, or allow construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public use of and access to and from public beaches unless the construction is properly certified by the appropriate local government as consistent with its local plan, this subchapter, and the Open Beaches Act.

(4) No person shall violate Texas Natural Resources Code Chapter 61 and 63, these rules, the requirements of a local government plan, or the terms of a certificate or permit issued pursuant to this chapter.

(5) Dune protection permit and beachfront construction certificate application requirements. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate. Local governments may require more information, but they shall require that applicants for dune protection permits and beachfront construction certificates provide, at a minimum, the following items and information.

(A) Dune protection permit application requirements for large- and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) a description of the proposed structures, the number of structures, and whether the structures are amenities or habitable structures;

(iv) the number of parking spaces;

(v) the approximate percentage of existing and finished open spaces (those areas completely free of structures);

(vi) the floor plan and elevation view of the structure proposed to be constructed or expanded;

(vii) the approximate duration of the construction;

(viii) a description (including location) of any existing dune walkovers and walkways, and design plans and elevation views for any proposed walkways or dune walkovers on the tract;

(ix) a grading and layout plan identifying all existing and proposed elevations (in reference to the National Oceanic and Atmospheric Administration data), existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade;

(x) current color photographs of the site which clearly show the current location of the vegetation line and the existing dunes on and immediately adjacent to the tract;

(xi) a description of the effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology;

(xii) a comprehensive mitigation plan which conforms with the requirements in §15.4 of this title (relating to Dune Protection Standards) and §15.7 of this title (relating to Local Government Management of the Public Beach) which, at a minimum, includes a detailed description of the methods which will be used to avoid, minimize, mitigate, and/or compensate for any adverse effects on dunes or dune vegetation;

(xiii) where a mitigation plan is required, the contact information for all landowners immediately adjacent to the tract and affirmation by the applicant that the adjacent landowners will be provided with notice of the hearing at least 10 days prior to the hearing on the application;

(xiv) proof of the applicant's financial capability acceptable to the local government to mitigate or compensate for adverse effects on dunes and dune vegetation;

(xv) an accurate map, site plan, survey, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the dune protection line, the line of vegetation, proposed and existing structures, and the project area of the proposed construction on the tract;

(IV) proposed roadways and driveways and proposed landscaping activities on the tract;

(V) the location of any retaining walls, seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line; and

(VI) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(B) Certificate application requirements for large- and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) a description of the proposed structures, the number of structures, and whether the structures are amenities or habitable structures;

(iv) a statement written by the 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;

(v) the approximate duration of the construction;

(vi) a description (including location) of any existing dune walkovers and walkways, and design plans and elevation views for any proposed walkways or dune walkovers on the tract;

(vii) current color photographs of the site which clearly show the current location of the vegetation line and any dunes on the tract which are seaward of the dune protection line;

(viii) an accurate map, site plan, survey, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the proposed construction and the distance between the proposed construction and mean high tide, the line of vegetation, the dune protection line, and the landward limit of the beachfront construction area;

(IV) the location of proposed and existing structures, and the size (in acres or square feet) of the proposed project area;

(V) proposed roadways and driveways;

(VI) proposed landscaping activities within 200 feet of the line of vegetation, including the installation of fencing; and

(VII) the location of any retaining walls, seawalls, or erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line.

(C) Permit and certificate applications for large-scale construction. For all proposed large-scale construction, local governments shall require applicants to submit the following additional items and information:

(i) if the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, a certified copy of the recorded plat of the subdivision, or, if not a recorded subdivision, a plat of the subdivision certified by a licensed surveyor, (if the area is located within an unplatted tract, a survey will suffice) and a statement of the total area of the subdivision in acres or square feet;

(ii) in the case of multiple-unit dwellings, the number of units proposed;

(iii) alternatives to the proposed location of construction on the tract or to the proposed methods of construction which would cause fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access; and

(iv) the proposed activity's impact on the natural drainage pattern of the site and the adjacent lots.

(D) Submission of readily available information with permit and certificate applications. For all proposed construction (large- and small-scale), if applicants already have the following items and information, local governments shall require them to be submitted in addition to the other information required:

(i) the most recent local historical erosion rate data (as determined by the University of Texas at Austin, Bureau of Economic Geology) and the activity's potential impact on coastal erosion; and

(ii) a copy of the FEMA "Elevation Certificate."

(E) Submission of information by local governments. For all proposed construction (large- and small-scale), local governments shall provide to the General Land Office the following information:

(i) a copy of the community's most recent flood insurance rate map identifying the site of the proposed construction;

(ii) a preliminary determination as to whether the proposed construction complies with all aspects of the local government's dune protection and beach access plan;

(iii) the activity's potential impact on the community's natural flood protection and protection from storm surge;

(iv) a description as to how the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly, the dune protection and beach access plan's provisions relating to public beach ingress/egress, off-beach parking, and avoidance of reduction in the size of the public beach due to erosion; and

(v) copies of aerial photographs of the proposed construction site with a delineation of the footprint of the proposed construction.

(F) Dissemination of erosion data and other technical information. For all proposed construction (large- and small-scale), the General Land Office shall be the state contact for erosion rate data questions and supply available technical information to a local government, upon request.

(6) Master plan. Local governments may adopt separate ordinances or county commissioners court orders authorizing master plans located within the geographic scope of this subchapter. These ordinances and orders shall be consistent with and address the dune protection and beach access requirements of this subchapter, the Dune Protection Act and Open Beaches Act. The ordinances and orders shall be submitted to the General Land Office for review and approval to ensure consistency with this subchapter. When considering approval of a master planned development or construction plans and setting conditions for operations under such plans, local governments shall consider:

(A) the plan's potential effects on dunes, dune vegetation, public beach use and access, and the applicant's proposal to mitigate for such effects throughout the construction;

(B) the contents of the master planned development; and

(C) whether any component of the master plan, such as installation of roads or utilities, or construction of structures in critical dune areas or seaward of a dune protection line, will subsequently require a dune protection permit or a beachfront construction certificate. If a dune protection permit or beachfront construction certificate will be necessary, the local government shall require the developer to apply for the permit and/or certificate as part of the master plan approval process. This requirement only applies if the local government is authorizing activities impacting critical dune areas and public beach use and access under its dune protection and beach access plan.

(7) General Land Office comments.

(A) A person proposing to conduct an activity for which a permit or certificate is required shall submit a complete application to the appropriate local government. The local government shall forward the complete application, any associated material, and, where applicable, notice of public hearing to the General Land Office. The application, hearing notice, any documents associated with the application, and information as to when the decision will be made must be received by the General Land Office no later than 10 working days for small-scale construction and 30 working days for large-scale construction before the date of the local government's public hearing on the application or when the local government is first scheduled to act on the permit or certificate. A local government may act on such applications following the public hearing or a decision by the commissioner's court or municipal governing body if the General Land Office received the application within the proper time frame and the General Land Office provides comments or does not submit comments on the application to the local government.

(B) The General Land Office may submit comments on the proposed activity to the local government. The review period for comments of 10 working days for small-scale construction and 30 working days for large-scale construction is initiated only after the receipt by the General Land Office of all information required by this section.

(8) Local government review. When determining whether to approve a proposed activity, a local government shall review and consider:

(A) the permit or certificate application;

(B) the proposed activity's consistency with this subchapter and the local government's dune protection and beach access plan, including the dune protection and beachfront construction standards contained in both;

(C) any other law relevant to dune protection and public beach use and access which affects the activity under review;

(D) the comments of the General Land Office; and

(E) any other information the local government may consider useful to determine consistency with the local government's

dune protection and beach access plan, including resource information made available to them by federal and state natural resource entities and landowners immediately adjacent to the tract. A local government shall not issue a dune protection permit or beachfront construction certificate that is inconsistent with its plan, this subchapter, and other state, local, and federal laws related to the requirements of the Dune Protection Act and Open Beaches Act.

(t) Term, amendment, and renewal of permits and certificates.

(1) A local government's dune protection permits or beachfront construction certificates shall be valid for no more than three years from the date of original issuance, unless additional time has been provided by a renewal.

(2) Prior to the expiration of a certificate or permit, a local government may renew a dune protection permit or beachfront construction certificate allowing proposed construction to continue if there are no material changes to the site or proposed activities and the activity in the application for renewal meets the applicable state and local standards.

(A) As part of a renewal request, the permittee shall supplement the information provided in the original permit or certificate application materials with a statement describing the absence of or any changes to the site, project plans, or any other original information provided by the permittee.

(B) For the purpose of maintaining administrative records, local governments shall keep all original application and renewal materials submitted by any applicant as provided in subsection (u) of this section.

(C) Each renewal of a permit and certificate allowing construction shall be valid for no more than 90 days.

(D) A local government shall issue only two renewals for each permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate.

(3) Local governments that choose to authorize master plans may adopt a different term limit for permits and certificates only if the master plans are authorized under a separate, General Land Office-approved ordinance or county commissioner's court order. Each master plan will be deemed to be a new local ordinance or county commissioners court order subject to state approval regarding effects on dunes, dune vegetation, and public beach use and access.

(4) Any dune protection permit or beachfront construction certificate allowing beachfront construction issued by a local government pursuant to its dune protection and beach access plan shall be voidable by the local government under the following circumstances.

(A) The permit or certificate is inconsistent with this subchapter or the local government's plan at the time the permit or certificate was issued.

(B) A material change occurs after the permit or certificate is issued.

(C) A permittee fails to disclose any material fact in the application.

(5) In the event of a material change to the site conditions or the proposed construction since approval of the original application, a local government shall require that an applicant or permittee amend an application for a permit or certificate, or obtain a new permit or certificate. All information relevant to the material changes, such as site conditions, project plans, and required changes to mitigation or compensation, must be disclosed by the applicant or permittee to the local government. The local government will submit the amended application for a permit or certificate or new application to the General Land Office for review and comment.

(6) A permit or certificate automatically terminates in the event the certified construction comes to lie within the boundaries of the public beach by artificial means or by action of storm, wind, water, or other naturally influenced causes. Nothing in the certificate shall be construed to authorize the construction, repair, or maintenance of any construction within the boundaries of the public beach at any time.

(u) Administrative record.

(1) Local governments shall compile and maintain an administrative record which demonstrates the basis for each final decision made regarding the issuance of a dune protection permit or beachfront construction certificate. The administrative record shall include copies of the following:

(A) the permit, certificate, and any other relevant authorization that was issued in response to the application or in connection with the permit or certificate issued;

(B) all materials the local government received from the applicant as part of or regarding the permit or certificate application or any association renewal or amendment;

(C) the transcripts, if any, or the minutes and recordings of the local government's meeting during which a final decision regarding the permit or certificate was made; and

(D) all comments and other correspondence sent or received by the local government regarding the permit or certificate.

(2) Local governments shall keep the administrative record for a minimum of four years from the expiration date of a permit or certificate.

(A) Local governments shall send to the General Land Office upon request a copy of those portions of the administrative record that were not originally sent to the General Land Office for permit or certificate application review and comment. The record must be received by the General Land Office no later than 10 working days after the local government receives the request.

(B) The General Land Office shall notify the appropriate permittee of the request for a copy of the administrative record from the local government. Upon request of the permittee, a local government shall provide to the permittee copies of any materials in the administrative record regarding the permit or certificate which were not submitted to the local government by the permittee (i.e., the permit application) or given to the permittee by the local government (i.e., the permit).

§15.4. Dune Protection Standards.

(a) Dune protection required. This section provides the standards and procedures local governments shall follow in issuing, denying, or conditioning dune protection permits. A local government shall protect dunes and dune vegetation from adverse effects resulting directly or indirectly from construction in a critical dune area or seaward of its dune protection line, as cumulatively required by the Dune Protection Act, this subchapter, and that local government's dune protection and beach access plan. No person shall initiate or perform construction in violation of TNRC §§63.051, 63.091, or this chapter.

(b) Procedures for local government permit determinations and permit issuance. Before issuing a dune protection permit, a local government shall make the following determinations.

(1) The proposed activity is not a prohibited activity as defined in subsection (c) of this section, §15.5 of this title (relating to

Beachfront Construction Standards), or §15.6 of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(2) The proposed activity will not materially weaken dunes or materially damage dune vegetation based on the application of technical standards resulting in substantive findings under subsection (d) of this section.

(3) There are no practicable alternatives to the proposed activity and the impacts cannot be avoided as provided in subsection (f)(1) of this section.

(4) The applicant's mitigation plan will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects, as provided in subsection (f)(2) - (5) of this section and the applicant has affirmatively demonstrated the ability to mitigate adverse effects on dunes and dune vegetation.

(5) Where mitigation is required, that the applicant has provided landowners immediately adjacent to the tract with notice of the hearing at least 10 days prior to the hearing on the application.

(c) Prohibited activities. A local government shall not issue a permit or certificate authorizing the following actions within critical dune areas or seaward of that local government's dune protection line:

(1) activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:

(A) moving sand to a location landward of the critical dune area or dune protection line; and

(B) temporarily or permanently moving sand off the site, except for purposes of permitted mitigation, compensation, or an approved dune restoration or beach nourishment project and then only from areas where the historical accretion rate is greater than two feet per year, and the project does not cause any adverse effects on the sediment budget;

(2) depositing sand, soil, sediment, or dredged spoil which contains the hazardous substances listed in Volume 40 of the Code of Federal Regulations, Part 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;

(3) depositing sand, soil, sediment, or dredged spoil which is of an unacceptable mineralogy or grain size when compared to the sediments found on the site (this prohibition does not apply to materials related to the installation or maintenance of public beach access roads running generally perpendicular to the public beach);

(4) creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits;

(5) constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of this subchapter;

(6) operating recreational vehicles on a sand dune;

(7) mining dunes;

(8) constructing concrete slabs or other impervious surfaces within 200 feet landward of the line of vegetation. Local governments may authorize construction of a concrete slab or other impervious surface beneath a habitable structure elevated on pilings provided the slab will not extend beyond the footprint of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the footprint of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. The use of permeable materials such as brick pavers, limestone, or gravel is recommended for drives or parking areas;

(9) depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction;

(10) constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields; and

(11) detonating bombs or explosives.

(d) Technical standards for local government determination as to material weakening of dunes and material damage of dune vegetation within a critical dune area or seaward of a dune protection line. A local government may approve a permit application only if it finds as a fact, after a full investigation, that the particular conduct proposed will not materially weaken any dune or materially damage dune vegetation or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water. In making the finding as to whether such material weakening or material damage will occur, a local government shall use the following technical standards. Failure to meet any one of these standards will result in a finding of material weakening or material damage and the local government shall not approve the application for the construction as proposed.

(1) The activity shall not result in the potential for increased flood damage to the proposed construction site or adjacent property.

(2) The activity shall not result in runoff or drainage patterns that aggravate erosion on or off the site.

(3) The activity shall not result in significant changes to dune hydrology.

(4) The activity shall not disturb unique flora or fauna or result in adverse effects on dune complexes or dune vegetation.

(5) The activity shall not significantly increase the potential for washovers or blowouts to occur.

(e) Local government considerations when determining whether to issue a dune protection permit. Local governments shall consider the following items and information when determining whether to grant a permit:

(1) all comments submitted to the local government by the General Land Office;

(2) cumulative impacts and indirect effects of the proposed construction on all dunes and dune vegetation within critical dune areas or seaward of a dune protection line;

(3) cumulative impacts and indirect effects of other activities on dunes and dune vegetation located on the proposed construction site;

(4) the pre-construction type, height, width, slope, volume, and continuity of the dunes, the pre-construction condition of the dunes, the type of dune vegetation, and percent of vegetative cover on the site;

(5) the most recent historical erosion rate as determined by the University of Texas at Austin, Bureau of Economic Geology, and whether the proposed construction may alter dunes and dune vegetation in a manner that may aggravate erosion;

(6) the applicant's mitigation plan for any unavoidable adverse effects on dunes and dune vegetation and the effectiveness, feasi-

bility, and desirability of any proposed dune reconstruction and revegetation;

(7) the impacts on the natural drainage patterns of the site and adjacent property;

(8) any significant environmental features of the potentially affected dunes and dune vegetation such as their value and function as floral or faunal habitat or any other benefits the dunes and dune vegetation provide to other natural resources;

(9) wind and storm patterns including a history of washover patterns;

(10) location of the site on the flood insurance rate map; and

(11) success rates of dune stabilization projects in the area.

(f) Mitigation. The mitigation sequence shall be used by local governments in determining whether to issue a permit, after the determination that no material weakening of dunes or material damage to dunes or dune vegetation will occur within critical dune areas or seaward of the dune protection line. The mitigation sequence consists of the following steps: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; and compensating for the impact by replacing resources lost or damaged. If, for any reason, an applicant cannot demonstrate the ability to mitigate adverse effects on dunes and dune vegetation, the local government is not authorized to issue the permit. A local government shall require a permittee to use the mitigation sequence, as provided in this subsection, as a permit condition if that local government finds that an activity will result in any adverse effects on dunes or dune vegetation seaward of a dune protection line or on critical dune areas and add a permit condition that the applicant will mitigate for the adverse effects in accordance with the mitigation plan. When a mitigation plan is required, the applicant must provide landowners immediately adjacent to the tract with notice of the hearing on the permit at least 10 days prior to the hearing. Such notice to adjacent landowners may be made by sending a copy of the hearing notice by certified mail to the adjacent property owner's address listed in the county central appraisal district records.

(1) Avoidance. Avoidance means avoiding the effect on dunes and dune vegetation altogether by not taking a certain action or parts of an action. Local governments shall require permittees to avoid adverse effects on dunes and dune vegetation. Local governments shall not issue a permit allowing any adverse effects on dunes and dune vegetation located in critical dune areas or seaward of the dune protection line unless the applicant proves there is no practicable alternative to the proposed activity, proposed site or proposed methods for conducting the activity, and the activity will not materially weaken the dunes or dune vegetation. Local governments shall require applicants to include information as to practicable alternatives in the permit application. Local governments shall review the permit application to determine whether the applicant has considered all practicable alternatives and whether one of the practicable alternatives would cause no adverse effects on dunes and dune vegetation than the proposed activity. Local governments shall require applicants to employ construction methods which will have no adverse effects, unless the applicant can demonstrate that the use of such methods is not practicable. Local governments shall require that permittees undertaking construction in critical dune areas or seaward of a dune protection line use the following avoidance techniques.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those subject to the exemption in §15.3(s)(2)(A) of this title (relating to Administration). Local governments shall not allow permittees to construct nonexempt pipelines within critical dune areas or seaward of a dune protection line unless there is no practicable alternative.

(B) Location of construction and beach access. Local governments shall require permittees proposing construction seaward of dune protection lines and within critical dune areas to locate all such construction as far landward of dunes as practicable. Local governments shall not restrict construction which provides access to and from the public beach pursuant to this provision.

(C) Location of roads. Local governments shall require permittees constructing roads parallel to beaches to locate the roads as far landward of critical dune areas as practicable and shall not allow permittees to locate such roads within 200 feet landward of the line of vegetation.

(D) Artificial runoff channels. Local governments shall not permit construction of new artificial channels, including stormwater runoff channels, unless there is no practicable alternative.

(2) Minimization. Minimization means minimizing effects on dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. Local governments shall require that applicants minimize adverse impacts to dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If an applicant for a dune protection permit demonstrates to the local government that adverse effects on dunes or dune vegetation cannot be avoided and the activity will not materially weaken dunes and dune vegetation, the local government may issue a permit allowing the proposed alteration, provided that the permit contains a condition requiring the permittees to minimize adverse effects on dunes or dune vegetation to the greatest extent practicable.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those subject to the exemption in §15.3(s)(2)(A) of this title (relating to Administration). If a permittee demonstrates that there is no practicable alternative to crossing critical dune areas, the local government may allow a permittee to construct a pipeline across previously disturbed areas, such as blowout areas. Where use of previously disturbed areas is not practicable, the local government shall require the permittees to avoid adverse effects on or disturbance of dune surfaces and shall require the mitigation sequence if the adverse effects are unavoidable.

(B) Location of construction and beach access.

(i) Local governments shall require permittees to minimize construction and pedestrian traffic on or across dune areas to the greatest extent practicable, taking into account trends of dune movement and beach erosion in that area.

(ii) Local governments may allow permittees to route private and public pedestrian beach access to and from the public beach through washover areas or over elevated walkways in their approved dune protection and beach access plans. All pedestrian access routes and walkways shall be clearly and conspicuously marked with permanent signs by the local government if the beach access is public.

(iii) When approving proposed plats for subdivision, multiple dwelling, or commercial facilities, or other new developments, local governments should use their authority to limit private access points to the public beach to the minimum amount needed to service the development.

(iv) Local governments shall minimize proliferation of excessive private access by permitting only the minimum necessary private beach access points to the public beach from any proposed subdivision, multiple dwelling, or commercial facility. In some cases, the minimum beach access points may be only one access point. In determining the appropriate grouping of access points, the local government shall consider the size and scope of the development.

(v) Local governments and the owners and operators of commercial facilities, subdivisions, and multiple dwellings shall post signs in areas where pedestrian traffic is high, explaining the functions of dunes and the importance of vegetation in preserving dunes.

(vi) Local governments shall not allow a permittee to construct or maintain a structure on previously mitigated or compensated dunes that are seaward of a dune protection line, where practicable, except for specifically permitted dune walkovers or similar access ways.

(C) Location of roads.

(i) Wherever practicable, local governments may require permittees to locate beach access roads in washover areas, blowout areas, or other areas where dune vegetation has already been disturbed; local governments shall require permittees to build such roads along the natural land contours, to minimize the width of such roads, and where possible, to improve existing access roads with elevated berms near the beach that prevent channelization of floodwaters. Where practicable, local governments shall require permittees to locate roads at an oblique angle to the prevailing wind direction.

(ii) Wherever practicable, local governments shall provide vehicular access to and from beaches by using existing roads or from roads constructed in accordance with paragraph (1)(C) of this subsection and clause (i) of this subparagraph. Local governments shall not apply this provision in a manner which restricts public beach access.

(iii) Local governments shall include in any permit authorizing the construction of roads a permit condition prohibiting persons from using or parking any motor vehicle on, through, or across dunes in critical dune areas except for the use of vehicles on designated access ways.

(D) Artificial runoff channels. Local governments shall only authorize construction of artificial runoff channels (that direct stormwater flow) if the channels are located in a manner which avoids erosion and unnecessary construction of additional channels. Local governments shall require that permittees make maximum use of natural or existing drainage patterns, whenever practicable, when locating new channels and stormwater retention basins. However, if new channels are necessary, local governments shall require that permittees direct all runoff inland and not to the Gulf of Mexico through critical dune areas, where practicable.

(3) Mitigation. Mitigation means repairing, rehabilitating, or restoring affected dunes and dune vegetation. Local governments shall require permittees, as a condition of the permit, to mitigate all adverse effects to dunes and dune vegetation which will occur after a permittee has avoided and minimized such adverse effects to the greatest extent practicable. Local governments shall require the permittee to mitigate damage to dunes and dune vegetation so as to provide, when compared to the pre-existing dunes and dune vegetation, an equal or greater area of vegetative cover and dune volume, an equal or greater degree of protection against damage to natural resources, and an equal or greater degree of protection against flood and erosion damage and other nuisance conditions to adjacent properties. When determining the appropriate mitigation method, local governments shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts.

(A) Mitigation standards for dunes. Local governments may allow a permittee to mitigate adverse effects on dunes using vegetative or mechanical means. Local governments shall require that a permittee proposing to restore dunes and dune vegetation as provided in §15.7(e) of this title (relating to Local Government Management of the Public Beach) use the following techniques:

(i) restore dunes to approximate the naturally formed dune position or location, contour, volume, elevation, vegetative cover, and sediment content in the area;

(ii) allow for the natural dynamics and migration of dunes;

(iii) use discontinuous temporary sand fences or an approved method of dune restoration, where appropriate, considering the characteristics of the site; and

(iv) restore or repair dunes using indigenous vegetation that will achieve the same protective capability or greater capability as the surrounding natural dunes.

(B) Stabilization of critical dune areas. Local governments shall give priority for stabilization to blowouts and breaches when permitting restoration of dunes. Before permitting stabilization of washover areas, local governments shall:

(i) assess the overall impact of the project on the beach/dune system;

(ii) consider any adverse effects on hydrology and drainage which will result from the project; and

(iii) require that equal or better public beach access be provided to compensate for impairment of any public beach access previously provided by the washover area.

(4) Compensation. Compensation means compensating for effects on dunes and dune vegetation by replacing or providing substitute dunes and dune vegetation. Local governments shall require the permit holder to compensate for the adverse effects to dunes and dune vegetation at a 1:1 ratio. Compensation may be undertaken both on-site and off-site; however, off-site compensation may only be allowed as provided in subparagraph (B) of this paragraph.

(A) On-site compensation. On-site compensation consists of replacement of the affected dunes or dune vegetation on the property where the damage to dunes and dune vegetation occurred and seaward of the local dune protection line. A local government shall require permittees to undertake compensation on the construction site, where practicable. A local government shall require a permittee to follow the requirements provided in paragraph (3)(A) of this subsection and paragraph (4)(C)(iii) - (iv) of this subsection when replacing dunes or dune vegetation.

(B) Off-site compensation. Off-site compensation consists of replacement of the affected dunes or dune vegetation in a location outside the boundary of the property where the damage to dunes and dune vegetation occurred. The landward limit of allowable off-site mitigation is the local dune protection line. Local governments shall require that a permittee's compensation efforts take place on the construction site unless the permittee demonstrates the following facts to the local government:

(i) on-site compensation is not practicable;

(ii) the off-site compensation will be located as close to the construction site as practicable;

(iii) the proffered off-site compensation has achieved a 1:1 ratio of proposed adverse effects on successful, completed, and stabilized restoration prior to beginning construction;

(iv) the permittee has notified FEMA, Region 6, Risk Analysis Branch, of the proposed off-site compensation.

(C) Information required for off-site compensation. Local governments shall require permittees to provide the following information when proposing off-site compensation:

(i) the name, address, phone number, and electronic mail address, if applicable, of the owner of the property where the off-site compensation will be located;

(ii) a legal description of property intended to be used for the proposed off-site compensation;

(iii) the source of sand and the dune vegetation;

(iv) all information regarding permits and certificates issued for the restoration of dunes on the compensation site;

(v) all relevant information regarding the success, current status, and stabilization of the dune restoration efforts on the compensation site;

(vi) any increase in potential flood damage to the site where the adverse effects on dunes and dune vegetation will occur and to the public and private property adjacent to that site; and

(vii) the proposed date of initiation of the compensation. Local governments shall include a condition in each permit authorizing off-site compensation which requires permittees to notify local governments in writing of the actual date of initiation within 10 working days after compensation is initiated. If the permittee fails to begin compensation on the date proposed in the application, the permittee shall provide the local government with the reason for the delay. Local governments shall take this reason into account when determining whether a permittee has violated the compensation deadline.

(5) Compensation for adverse effects on dune vegetation. Local governments shall require that permittees compensate for adverse effects on dune vegetation by planting indigenous vegetation on the affected dunes and shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts. Local governments may allow a permittees to use temporary sand fencing or another approved method of dune restoration. Local governments shall prohibit a permittee from compensating for adverse effects on dune vegetation by removing existing vegetation from private or state-owned property unless the permittee has received prior written permission from the property owner or the state. In addition to the requirement that permission be obtained from the property owner, all persons are prohibited from removing vegetation from a critical dune area or seaward of a dune protection line unless specifically authorized to do so in a dune protection permit. Local governments shall include conditions in such permits requiring the permittee to provide a copy of the written permission for vegetation removal and to identify the source of any sand and vegetation which will be used to compensate for adverse effects on dunes and dune vegetation in the mitigation plan contained in the permit application.

(g) Mitigation or compensation deadline.

(1) Initiation of mitigation or compensation. Local governments shall require permittees to begin mitigation or compensation for any adverse effect(s) to dunes and dune vegetation prior to or concurrent with the commencement of construction. If mitigation or compensation is not completed in accordance with the mitigation or compensation plan prior to commencement of construction of any structure, the local government shall require that the permittee provide the local government with proof of financial responsibility in an amount equal to that necessary to complete the mitigation or compensation. This can be done in the form of an irrevocable letter of credit, performance bond, or any other instrument acceptable to the local government.

(2) Completion of mitigation or compensation. Local governments shall require permittees to conduct compensation efforts continuously until the repaired, rehabilitated, and restored dunes and dune vegetation are equal or superior to the pre-existing dunes and dune vegetation. These efforts shall include preservation and maintenance pending completion of mitigation or compensation.

(3) Local government determination of completion of mitigation or compensation. Local governments shall determine a mitigation or compensation project is complete when the dune restoration project's position, contour, volume, elevation, and vegetative cover matches or exceeds the surrounding naturally formed dunes.

(4) General Land Office notification of mitigation or compensation certification. Local governments shall provide written notification to the General Land Office after determining that the mitigation or compensation is complete as defined in paragraph (3) of this subsection. The General Land Office may conduct a field inspection to verify compliance with this subchapter. If the local government does not receive an objection from the General Land Office regarding the completion of mitigation or compensation within 30 working days after the General Land Office is notified in writing, the local government may certify that the mitigation or compensation is complete.

(5) Violation of mitigation or compensation deadline. The General Land Office (GLO) recognizes that the time necessary to restore dunes and dune vegetation varies with factors such as climate, time of year, soil moisture, plant stability, and storm activity. The permittee must complete the sand placement, and, if applicable, the dune vegetation relocation or planting portions of the mitigation or compensation plan within one year of initiation of construction. The permittee shall be deemed to have failed to achieve mitigation or compensation if a 1:1 ratio has not been achieved within three years after initiation of construction, and the GLO may initiate enforcement as provided in Section 15.9 of this title (relating to Enforcement, Penalties and Remedial Orders).

§15.5. Beachfront Construction Standards.

(a) Local government certification of beachfront construction. This section provides the standards local governments shall follow when preparing that portion of the dune protection and beach access plan specifically related to issuing or conditioning beachfront construction certificates.

(1) In general, within its jurisdiction, a local government shall not allow diminution of the size of public beaches and shall preserve and enhance public access between public beaches and public roads lying landward. A local government certification shall consist of one of two affirmative findings: an affirmative finding by a local government that the proposed construction is consistent with the beach access portion of a local government's dune protection and beach access plan and does not encroach upon the public beach, nor does it interfere with, or otherwise restrict, the public's right to use and have access to and from the public beach; or an affirmative finding that the proposed construction is inconsistent with the beach access portion of a local government's dune protection and beach access plan. The beach access portion of the local government's dune protection and beach access plan shall provide that beachfront construction will not adversely affect or allow encroachments upon the public beach or interfere with or otherwise impair the public's right to use and have access to and from the public beach.

(2) No person shall initiate or perform construction in violation of Texas Natural Resources Code, §61.013 or this Chapter.

(b) Prohibition of certification. Local governments shall not issue a certificate authorizing beachfront construction if the local government determines that the construction:

(1) reduces the size of the public beach in any manner;

(2) closes or otherwise impairs any existing public beach access point unless the local government simultaneously provides or requires the permittee to provide equivalent or better public access; or

(3) includes a proposal to construct a concrete slab or other impervious surfaces within 200 feet of the line of vegetation or within the eroding area boundary (if such a boundary is established in the local beach/dune plan), whichever distance is greater. Local governments may authorize construction of a concrete slab or other impervious surfaces beneath the footprint of a habitable structure elevated on pilings provided the concrete slab or impervious surface will not extend beyond the footprint of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the footprint of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. Permeable materials such as brick pavers, limestone, or gravel may be used to construct driveways or parking areas.

(c) Encroachments on public beaches.

(1) Prohibition of construction on the public beach. Except as provided in §15.11 (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach), a local government is prohibited from issuing a certificate authorizing any person to undertake any construction on the public beach or any construction that encroaches in whole or in part on the public beach. This prohibition does not prevent the approval of man-made vegetated mounds and dune walkovers under a properly issued dune protection permit and beachfront construction certificate. Any issuance or approval of a permit, certificate, or any other instrument contrary to this subsection is void.

(2) Construction landward of the public beach. Except as provided in §15.11, local governments shall not issue any beachfront construction certificate authorizing construction landward of the public beach that functionally supports or depends on, or is otherwise related to, proposed or existing structures that encroach on the public beach, regardless of whether the encroaching structure is on land that was previously landward of the public beach.

(d) Dedication of new beach access points.

(1) Pursuant to the authority provided in the Open Beaches Act, §61.015(g), and as a condition of beachfront construction certification as to consistency with a local government's plan, a local government shall require a permittee to dedicate to the public new public beach access or parking area(s), where necessary, for consistency with the beach access and use, vehicular control, or beach user fee provisions of the pertinent state-approved dune protection and beach access plan. Such provisions shall incorporate the standards for pedestrian and vehicular access established in §15.7 of this title (relating to Local Government Management of the Public Beach).

(2) A local government shall require a permittee to dedicate an access area if it issues a certificate allowing a permittee to conduct activities which will impair access to and from the beach in any manner. Such a dedicated access area shall provide access equivalent to or better than the access impaired by the permittee's activity and shall be consistent with the pertinent provisions regarding beach access and use, vehicular controls.

§15.6. Concurrent Dune Protection and Beachfront Construction Standards.

(a) Local government application of standards. This section provides the standards local governments shall follow when issuing, denying, or conditioning dune protection permits and beachfront construction certificates. This section applies to all construction within the geographic scope of this subchapter and to either permits or certificates or both. The requirements of this section are in addition to the requirements in §15.4 of this title (relating to Dune Protection Standards), and §15.5 of this title (relating to Beachfront Construction Standards).

(b) Location of construction. Local governments shall require permittees to locate all construction as far landward as is practicable and shall not allow any construction which may aggravate erosion.

(c) Prohibition of erosion response structures. Local governments shall not issue a permit or certificate allowing construction of an erosion response structure. Notwithstanding the general prohibition on constructing erosion response structures, a local government may authorize the construction of a structural shore protection project that conforms with the policies of the General Land Office promulgated in 31 TAC §26.26(b) of this title (relating to Policies for Construction in the Beach/Dune System). However, a local government may issue a permit or certificate authorizing construction of a retaining wall, as defined in §15.2 of this title (relating to Definitions), under the following conditions. These conditions only apply to the construction of a retaining wall; all other erosion response structures are prohibited.

(1) A local government shall not issue a permit authorizing the construction of a retaining wall within the area 200 feet landward of the line of vegetation.

(2) A local government may issue a permit authorizing construction of a retaining wall in the area more than 200 feet landward of the line of vegetation.

(d) Existing erosion response structures. In no event shall local governments issue permits or certificates authorizing maintenance or repair of an existing erosion response structure seaward of the line of vegetation or the enlargement or improvement of the structure within 200 feet landward of the line of vegetation. Notwithstanding the general prohibition on maintaining or repairing erosion response structures, a local government may authorize the maintenance or repair of a structural shore protection project that conforms with the policies of the General Land Office promulgated in 31 TAC §26.26(b). Also within 200 feet landward of the line of vegetation, local governments shall not issue a permit or certificate allowing any person to maintain or repair an existing erosion response structure if the structure is more than 50% damaged, except under the following circumstances.

(1) When failure to repair the structure will cause unreasonable hazard to a public building, public road, public water supply, public sewer system, or other public facility immediately landward of the structure.

(2) When failure to repair the structure will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure.

(e) Construction in flood hazard areas.

(1) A local government shall not issue a permit or certificate that does not comply with FEMA's regulations governing construction in flood hazard areas. FEMA prohibits man-made alteration of sand dunes and mangrove stands within Zones V1-30, V, and VE on the community's flood insurance rate maps which would increase the potential for flood damage.

(2) A local government shall inform the General Land Office and the FEMA regional representative in Texas before it issues any variance from FEMA regulations or allows any activity done in variance of FEMA's regulations found in Volume 44 of the Code of Federal Regulations, Parts 59-77. Variances may adversely affect a local government's participation in the National Flood Insurance Program.

(3) A local government shall not issue a permit or certificate that does not comply with FEMA minimum requirements or with the FEMA-approved local ordinance or county commissioners court order.

(f) Construction in eroding areas. Local governments with jurisdiction over eroding areas shall follow the standards provided in §15.4 of this title and §15.5 of this title. If there is any conflict between this subsection, §15.4 of this title, and §15.5 of this title, this subsection applies. The General Land Office shall supply information for or assist a local government in determining eroding areas and the landward boundary of eroding areas. In addition, because of the higher risk of damage from flooding or erosion in such areas, local governments shall:

(1) require that structures built in eroding areas be elevated on pilings in accordance with FEMA minimum standards or above the natural elevation (whichever is greater);

(2) require that structures located on property adjacent to the public beach be designed for feasible relocation;

(3) allow a permittee to alter or pave only the ground within the footprint of the habitable structure, not including amenities (however, permeable materials such as brick pavers, gravel or crushed limestone may be used to construct driveways) only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet from the line of vegetation or landward of an eroding area boundary established in the local beach/dune plan, whichever distance is greater; and

(4) Unless otherwise restricted by the local plan, and if consistent with the requirements of National Flood Insurance Program, local governments may permit the construction of a storage area or areas with breakaway or louvered walls or for enclosures required by local building or safety codes.

(5) Notwithstanding the provisions of paragraph (3) of this subsection, a local government may allow a permittee to place unreinforced fibercrete in 4 foot by 4 foot sections, 4 inches thick separated by expansion joints beneath the footprint of the habitable structure, as defined in Section 15.2 of this title, only if the fibercrete is not structurally attached to the pilings. The placement of unreinforced fibercrete will be entirely undertaken, constructed, and located at least 25 feet from the landward toe of the foredunes. If no dunes exist, placement of unreinforced fibercrete will only be undertaken, constructed, and located at least 100 feet landward of the line of vegetation, or landward of an eroding area boundary established in the local dune protection and beach access plan, whichever distance is greater. Gravel or crushed limestone may be used to construct driveways and parking areas in the area 50 feet landward of the line of vegetation to the Dune Protection Line.

(g) Construction of certain parking areas or walkways. Notwithstanding the standards provided in §15.4(c)(8) of this title, §15.5(b)(3) of this title, and subsection (f) of this section, if parking areas or walkways for commercial facilities or public beach access facilities are required to be accessible for persons with disabilities and the use of permeable materials is not practicable, a local government may allow a concrete slab or other impervious surface whose area does not exceed 5.0% of the square footage of the property, upon demonstration of necessity by the applicant. If there is any conflict between this subsection, §15.4(c)(8) of this title, §15.5(b)(3) of this title, and subsection (f) of this section, this subsection applies.

(h) Construction affecting natural drainage patterns. Local governments shall not issue a certificate or permit authorizing construction unless the construction activities will minimize impacts on natural hydrology. Such projects shall not cause erosion of adjacent properties, critical dune areas, or the public beach.

(i) Construction of dune walkovers or similar structures. Proliferation of dune walkovers shall be minimized as provided for in 15.4(f)(2)(B) of this title. Local governments shall require permittees to construct dune walkovers in the following manner:

(1) Dune walkovers shall be constructed to allow for the growth of dune vegetation and the migration of dunes under the walkovers.

(A) The width of a dune walkover or similar structure is limited to 4 feet wide, where practicable. An increased width may be permitted for public access walkovers, shared walkovers for three or more residences, or for wheelchair or golf-cart use with approval of the local government. The need for a dune walkover or similar structure wider than 4 feet must be demonstrated during the permit application process.

(B) The lowest level of the walkover must be of sufficient elevation to accommodate expected increases in dune height. At a minimum, the lowest level of the dune walkover with a width of 4 feet or less must be constructed at a height of at least 3 feet above the highest point of the tallest dune crest beneath and immediately adjacent to the dune walkover. A dune walkover with a width of greater than 4 feet must be constructed at an adequate height that will allow for the growth of dune vegetation and migration of dunes under the walkover. Exceptions to the height requirement may be made for walkovers to descend to the beach over the foredune ridge.

(C) Slats forming the deck of the dune walkover shall be spaced at least 1/2 inches apart so that sunlight and rainfall can penetrate to vegetation below and so that sand will not accumulate on the deck.

(2) Use of concrete to stabilize dune walkover pilings is prohibited.

(3) For all new construction of public dune walkovers in areas where vehicles are prohibited from driving on and along the public beach, local governments are required to construct walkovers accessible for persons with disabilities, where practicable.

(4) The requirements in paragraphs (1) - (3) of this subsection apply to all new construction of dune walkovers and similar structures and any major repairs to existing dune walkovers and similar structures.

(j) Emergency response to oil or hazardous substance spills. Any person responding to spills shall comply with the following regulations when cleaning up or disposing of oil or hazardous substances in the beach/dune system.

(1) The state on-scene coordinator is responsible for contacting the GLO Beach/Dune Team regarding proposed cleanup and disposal methods.

(2) The state on-scene coordinator shall, in consultation with the state natural resource trustees and the GLO Beach/Dune Team and through the Incident Command System, determine the appropriate depth for excavation and the appropriate quantity of sand to be removed, if any, from the beach/dune system.

(A) Spill cleanup. Cleanup methods shall avoid and otherwise minimize adverse impacts to the beach/dune system by ensuring that:

(i) Removal of sand from the beach is limited to the absolute minimum and will not exacerbate shoreline erosion.

(ii) Manual cleanup methods are used, if practicable.

(iii) Grading or scraping of the beach is minimized, and grading of non-oiled or non-hazardous areas is prohibited.

(B) Disposal of contaminated sand. Disposal methods shall avoid adverse impacts to the beach/dune system by ensuring that:

(i) Before any scraped sand is relocated within the beach/dune system, the material shall be tested for toxicity and percent of oiling. Only material that does not pose a threat to human health and the environment may remain in the beach/dune system. New dunes (man-made mounds) may be built with non-hazardous material provided that they are built in accordance with §15.7(e) of this title (relating to Local Government Management of the Public Beach) and placed in areas preapproved by the state natural resource trustees. A dune protection permit is not required for such new dune creation. The disposal shall be in accordance with applicable, relevant, and appropriate requirements established by local state and federal laws.

(ii) Hazardous materials shall be removed and disposed of as required by local, state, and federal laws.

(iii) Disposal of waste must be in compliance with applicable state and federal laws and regulations of the Texas Commission on Environmental Quality and the United States Environmental Protection Agency. Disposal of oiled, non-hazardous sand shall be in accordance with applicable state and federal law, except that such sand shall not be disposed of in a location on or adjacent to dune vegetation, as defined in §15.2 of this title.

§15.7. Local Government Management of the Public Beach.

(a) Standards applicable to local governments. This section provides standards applicable to local government issuance, denial, or conditioning of permits or certificates, as well as all other local government activities relating to management of public beaches.

(b) Construction of coastal and shore protection projects. Local governments shall encourage carefully planned beach nourishment and sediment bypassing for erosion response management and prohibit erosion response structures within the public beach and 200 feet landward of the line of vegetation.

(c) Monitoring. A local government or the state may require a permittee to conduct or pay for a monitoring program to study the effects of a coastal and shore protection project on the public beach. Further, permittees are required to notify the state and the appropriate local government of any discernible change in the erosion rate on their property.

(d) Requirements for beach nourishment projects. A local government shall not allow a beach nourishment project unless it finds and the project sponsor demonstrates that the following requirements are met.

(1) The project is consistent with the local government's dune protection and beach access plan.

(2) The sediment to be used is of effective grain size, mineralogy, and quality or the same as the existing beach material.

(3) The proposed nourishment material does not contain any of the hazardous substances listed in the Code of Federal Regulations, Volume 40, Part 300, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(4) There will be no adverse environmental effects on the property surrounding the area from which the sediment will be taken or to the site of the proposed nourishment.

(5) The removal of sediment will not have any adverse impacts on flora and fauna.

(6) There will be no adverse effects caused from transporting the nourishment material.

(e) Restoration of dunes on public beaches. Sand dunes, either naturally created or restored, may aid in the preservation of the coastal environment by providing a protective barrier against beach erosion processes. Except as otherwise provided, local governments shall allow restoration of dunes on the public beach no more than 20 feet seaward of the landward boundary of the public beach. Restored dunes may be located farther seaward than the 20-foot restoration area only upon an affirmative demonstration by the permit applicant that substantial dunes would likely form farther seaward naturally and would not restrict or interfere with public access to the beach at normal high tide. Such seaward extension past the 20-foot area must first receive prior written approval of the General Land Office. In the absence of such an affirmative demonstration by the applicant, a local government shall require the applicant to meet the requirements provided in §15.4(f)(3) of this title (relating to Dune Protection Standards) and the following standards relating to the location of restored dunes.

(1) Local governments shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the landward boundary of the public beach. Local governments shall ensure that the 20-foot restoration area follows the natural migration of the vegetation line.

(2) Local governments shall not allow any person to restore dunes, even within the 20-foot corridor, if such dunes would restrict or interfere with the public use of the beach at normal high tide.

(3) Local governments shall require persons to restore dunes to be continuous with any surrounding naturally formed dunes and shall approximate the natural position, contour, volume, elevation, vegetative cover, and sediment content of any naturally formed dunes in the proposed dune restoration area.

(4) Local governments shall require persons restoring dunes to use indigenous vegetation that will achieve the same protective capability as the surrounding natural dunes.

(5) Local governments shall not allow any person to restore dunes using any of the following methods or materials:

(A) hard or engineered structures;

(B) materials such as bulkheads, riprap, concrete, asphalt rubble, building construction materials, and any non-biodegradable items;

(C) fine, clayey, or silty sediments;

(D) sediments containing the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; and

(E) sand obtained by scraping or grading dunes or the beach.

(6) Local governments may allow persons to use the following dune restoration methods or materials:

(A) piles of sand having similar grain size and mineralogy as the surrounding beach;

(B) temporary, discontinuous sand fences conforming to the most recent edition of the General Land Office Dune Protection and Improvement Manual for the Texas Gulf Coast guidelines;

(C) organic brushy materials such as used Christmas trees and seaweed; and

(D) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any changes that may increase erosion of the public beach.

(7) Local governments shall protect restored dunes under the same restrictions and requirements as natural dunes under the local government's jurisdiction.

(8) Local governments shall not allow a permittee to construct or maintain a structure on the restored dunes that are seaward of a dune protection line, except for specifically permitted dune walkovers or similar access ways.

(9) All applications submitted to a local government for the restoration of dunes on the public beach shall be forwarded to the General Land Office at least 10 working days prior to the local government's consideration of the permit. Failure of the General Land Office to submit comments on an application shall not waive, diminish, or otherwise modify the beach access and use rights of the public.

(f) Scientific research projects. Local governments may exempt a scientific research project from the requirements of §15.4(c) of this title or subsection (e) of this section provided the research is conducted by an academic institution or state, federal, or local government. Prior to conducting the research, the project manager shall submit a detailed work plan and monitoring plan for approval by the General Land Office. The research activities shall not materially weaken existing dunes or dune vegetation or increase erosion of adjacent properties.

(g) Dune walkovers. Local governments shall only allow dune walkovers, including other similar beach access mechanisms, which extend onto the public beach under the following circumstances.

(1) Local governments shall require that permittees restrict the walkovers, to the greatest extent possible, to the most landward point of the public beach.

(2) Local governments shall require that permittees construct and locate the walkovers in a manner that will not interfere with or otherwise restrict public use of the beach at normal high tides.

(3) Local governments shall require permittees to construct dune walkovers in a manner that complies with §15.6(i) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(4) Local governments shall require that permittees relocate walkovers to follow any landward migration of the public beach or seaward migration of dunes using the following procedures and standards.

(A) After significant landward migration of the landward boundary of the public beach, local governments shall require permittees to shorten any dune walkovers encroaching on the public beach to the appropriate length for removal of the encroachment. This requirement shall be contained as a condition in any permit and certificate issued authorizing construction of walkovers.

(B) In cases where a dune walkover needs to be lengthened because of the seaward migration of dunes, the permittee shall apply for a permit or certificate authorizing the modification of the structure.

(h) Preservation and enhancement of public beach use and access. A local government shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach. A local government shall not impair or close an existing access point, close a public beach to pedestrian or vehicular traffic, or modify public beach parking without prior approval from the General Land Office. The General Land Office may approve and certify a local government's modification to their beach access and use plan based upon the General Land Office's affirmative finding that such modifications preserve or enhance the public's right to use and access the public beach.

(1) For the purposes of this subchapter, beach access and use is presumed to be preserved if the following criteria are met.

(A) Parking on or adjacent to the beach is adequate to accommodate one car for each 15 linear feet of beach.

(B) Where vehicles are prohibited from driving on and along the beach, ingress/egress access ways are no farther apart than 1/2 mile.

(C) Signs are conspicuously posted which explain the nature and extent of vehicular controls, parking areas, and access points, including access for persons with disabilities.

(2) A local government shall have an adopted, enforceable, written policy prohibiting the local government's abandonment, relinquishment, or conveyance of any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access, unless an alternative equivalent or better beach access is first provided by the local government consistent with its dune protection and beach access plan and this subchapter.

(3) This provision does not apply to any existing local government traffic regulations enacted before the effective date of this subchapter, and the former law is continued in effect until the regulations are amended or changed in whole or in part. New or amended vehicular traffic regulations enacted for public safety, such as establishing speed limits and pedestrian rights-of-way, are exempt from the certification procedure but must nevertheless be consistent with the Open Beaches Act and this subchapter.

(4) This subchapter does not prevent a local government from using its existing authority to close individual beach access points for emergencies related to public safety. However, the standards and procedures for such emergency closures shall be included in its state-approved dune protection and beach access plan. The GLO must be notified by the local government as soon as practicable of any emergency closures.

(5) A local government may not restrict vehicular traffic from a public beach unless it preserves or enhances beach access for persons with disabilities. For the purposes of vehicular restrictions only, beach access for persons is preserved if the following criteria are met:

(A) Where vehicles are prohibited from driving to mean high tide, at least one access way with a stable, slip-resistant surface to the approximate high tide line is provided in each jurisdiction and signs identifying the accessible beach access route are conspicuously posted at the landward terminus of the access route.

(i) Where a local government can demonstrate that providing and maintaining a stable, slip-resistant surface to the approximate high tide line is not practicable, local governments shall provide an alternate means of access for persons with disabilities, such as beach wheelchairs.

(ii) In areas where vehicular access is prohibited, local governments have until December 31, 2023 to come into compliance with the above provisions.

(B) In areas where vehicles are prohibited from driving on and along the beach, golf carts must also be prohibited. However, the local government must allow the use on the beach of a golf cart, as defined by §551.401, Texas Transportation Code, if:

(i) the golf cart is being operated by or for the transportation of a veteran with disabilities or a person with a physical disability; and

(ii) a disabled parking placard issued under §681.004, Texas Transportation Code, is displayed in a conspicuous manner on the golf cart.

(C) The local government must provide at least one ingress/egress access way accessible to golf carts for each area of the beach where vehicles are prohibited.

(D) A local government may limit the use of golf carts for the transportation of a person with a physical disability to electric powered golf carts.

(E) In this section, "golf cart" has the meaning assigned by §331.401, Texas Transportation Code and "public highway" has the meaning assigned by §502.001, Texas Transportation Code.

(i) Request for General Land Office approval of beach access plans. When requesting approval of or an amendment to a beach access plan, a local government shall submit a new or amended plan to the General Land Office providing the information and following procedures outlined in §15.3(o) of this title (relating to Administration) and the following information:

(1) a current description and map of the entire beach access system within its jurisdiction;

(2) a detailed status of beach access demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(3) a detailed description of the proposed beach access plan replacing the existing beach access system. Such description shall demonstrate the method of providing equivalent or better access to and from the public beaches, including access for persons with disabilities; and

(4) a vehicular control plan, if the local government proposes either new or amended vehicular controls for the public beach. The vehicular control plan must include, at a minimum, the following information:

(A) an inventory and description of all existing vehicular access ways to and from the beach and existing vehicular use of the beach;

(B) all legal authority, including local government ordinances that impose existing vehicular controls;

(C) a detailed description of any proposed changes to vehicular access;

(D) a statement of short-term or long-range goals for restricting or regulating vehicular access and use;

(E) an analysis and statement of how the proposed vehicular controls are consistent or inconsistent with the state standards for preserving and enhancing public beach access set forth in this subchapter; and

(F) a description of how vehicular management relates to beach construction management, beach user fees, and dune protection within the jurisdiction of the local government.

(j) Integration of vehicular control plan and other plans. The vehicular control plan may be a part of a local government's beach access and use plan required under the Texas Natural Resources Code, §61.015, any beach user fee plan required under the Texas Natural Resources Code, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office encourages local governments to combine and integrate these various plans and programs.

(k) General Land Office approval of vehicular control plan adopted or amended after the effective date of this subchapter. A local government shall submit the vehicular control plan to the General Land Office no later than 90 working days prior to taking any action on the plan. This provision does not prevent a local government from exercising its existing authority over vehicular controls in emergencies. The standards and procedures for such emergency vehicular controls shall be submitted to the state in the vehicular control portion of a local government's dune protection and beach access plan. A plan may be approved if the vehicular controls are found to be consistent with the Open Beaches Act and with this subchapter. Prior to final adoption or implementation of a new or amended vehicular control ordinance, the local government shall obtain state certification of the plan for vehicular control pursuant to the Open Beaches Act, Texas Natural Resources Code, §61.022.

(l) If the General Land Office determines that existing beach access or proposed changes to vehicular controls are not consistent with state standards, the local government shall prepare a plan for achieving consistency within a period of time to be determined by the General Land Office. This plan shall include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements.

(m) Maintaining the public beach. Local governments shall prohibit beach maintenance activities unless maintenance activities will not materially weaken dunes or dune vegetation or reduce the protective functions of dunes. Local governments shall prohibit beach maintenance activities which will result in the significant redistribution of sand or which will significantly alter the beach profile or the line of vegetation. All sand moved or redistributed due to beach maintenance activities shall be returned to the area between the line of vegetation and mean high tide. The General Land Office encourages the removal of litter and other debris by handpicking or raking and strongly discourages the use of machines (except during peak visitation periods which disturb the natural balance of gains and losses in the sand budget and the natural cycle of nutrients.

(n) Request for temporary approval of seaweed relocation. During an extraordinary seaweed landfall event, a local government may submit a written request to the General Land Office for approval to relocate seaweed.

(1) Approval to relocate seaweed may be requested in areas where:

(A) the beach is restricted by an erosion response structure;

(B) the erosion response structure prevents the reasonable employment of GLO approved routine seaweed maintenance practices, and

(C) the use of routine seaweed maintenance practices in such areas would significantly restrict or impair public beach access and use.

(2) The General Land Office will review each request to determine whether a seaweed landfall event is extraordinary and if it impairs or restricts public beach access and use. The General Land Office will evaluate any proposed seaweed management activities for consistency with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune rules. The General Land Office's approval will be valid for up to 120 days. The request must include a comprehensive seaweed management plan that, at a minimum, provides the following items:

(A) a description of how the seaweed event is extraordinary, including supporting documentation, such as color photographs;

(B) information justifying how routine maintenance practices cannot be reasonably employed without restricting or impairing public beach access and use during the seaweed landfall event;

(C) a complete description of the geographic scope of proposed seaweed management activities, including a map or site plan which identifies the line of vegetation in relation to the seaweed placement area;

(D) a complete description of the proposed seaweed management activities, expected schedule of activities, and why other alternatives are not practicable;

(E) a detailed description of how the proposed seaweed management activities will not materially affect the beach profile, public beach access and use, dunes and dune vegetation, dune hydrology, or beach erosion;

(F) a detailed description of how the seaweed management activities will not result in significant or permanent removal of sand from the beach and dune system;

(G) a description of the equipment to be used;

(H) a comprehensive dune mitigation plan, if dunes or dune vegetation will be adversely affected;

(I) information describing how wildlife will be avoided and a copy of the wildlife monitor's certificate or a certification that a monitor is not required; and

(J) a description of any coordination with applicable local, state, and federal agencies that will be required.

(3) Within 60 days after the expiration of the approved seaweed management plan, the local government must assess the impacts of the seaweed management activities, and provide the General Land Office with a detailed assessment report describing any benefits or challenges with implementing the activities employed and any affects those activities had on the beach profile, public beach access and use, dunes and dune vegetation, dune hydrology, beach erosion, and any mitigation activities conducted.

(o) Prohibitions on signs. A local government shall not cause any person to display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or allow to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to and from the public beach or the right to use the public beach as guaranteed by this subchapter, the Open Beaches Act, and the common law right of the public.

§15.8. Beach User Fees.

(a) Eligibility. Local governments shall not initiate or amend a beach user fee unless the governing body of the local government with jurisdiction over the area subject to the fee has a state approved dune protection and beach access plan.

(b) Reciprocity of fees. Within each county, local governments are required to establish a state-approved system for reciprocity of fees and fee privileges among the county and the different local governments authorized to charge beach user fees. The establishment of a system of beach user fee reciprocity shall be a condition of state approval of local dune protection and beach access plans.

(c) Approval of beach user fees.

(1) A local government shall not impose a fee or charge for the exercise of the public right of access to and from public beaches. A local government may charge beach users a fee in exchange for providing beach-related services to beach users in general.

(2) The General Land Office will only approve a beach user fee if the fee is reasonable taking into account the cost to the local government of providing public services and facilities directly related to the public beach. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services. In addition, any fee collected for off-beach parking to provide access to and from the public beach is considered a beach user fee.

(3) Local governments shall not impose a beach user fee which:

(A) exceeds the necessary and actual cost of providing reasonable beach-related public facilities and services;

(B) unfairly limits public use of and access to and from public beaches in any manner;

(C) is inconsistent with this subsection or the Open Beaches Act; or

(D) discriminates on the basis of residence.

(d) Beach user fee plan. A local government that proposes a new or amended beach user fee shall first prepare and submit to the General Land Office for review and approval a plan that includes, at a minimum, the following information:

(1) a description of the current beach access system within its jurisdiction demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(2) a listing and description of all existing beach user fees charged by the local government and by all other local governments in the same county;

(3) all legal authority for charging a beach user fee, including local ordinances that authorize the collection of existing beach user fees, and the proposed ordinances for a new or amended beach user fee;

(4) an analysis and statement of how the proposed user fee is or is not consistent with state standards set forth in this subchapter for preserving and enhancing public beach access, including how the fee is non-discriminatory and how and where adequate free access will be maintained;

(5) a detailed description of how the beach user fee is reasonable and how it relates to beach-related services such as beachfront amenities, vehicular controls and parking, and dune protection within the jurisdiction of the local government;

(6) a report detailing the previous five years of beach user fee revenue and expenditures on beach-related services, if applicable;

(7) an estimate of the projected beach user fee revenues and the expected budget for expenditures on beach-related services, including a description of how the projections and budget were determined, for the next five years;

(8) a description of short-term and long-range goals relating to the collection and use of beach user fees and beach related services that will be provided;

(9) a description of how access for persons with disabilities will be provided or enhanced;

(10) a description of how the beach user fee will be collected and managed by the local government and an explanation of how the method of collection and management is consistent with the requirements of this chapter;

(11) where appropriate, evidence of the cost to the local government of providing existing beach-related services and how the proposed beach user fee will maintain or enhance those or additional beach-related services; and

(12) any other information required for the General Land Office to determine if the fee is reasonable.

(e) General Land Office approval and certification of beach user fees. A local government shall not impose a beach user fee or amend an existing beach user fee that is inconsistent with the beach user fee portion of its dune protection and beach access plan. To receive General Land Office approval for initiating its beach user fee plan or amending a beach user fee, a local government shall submit its beach user fee plan to the General Land Office no later than 90 days prior to any local government action on the beach user fee. The General Land Office shall certify whether the initiation or amendment of a beach user fee is consistent with this subchapter and the Open Beaches Act, as provided in §15.3(o) of this title (relating to Administration).

(f) Beach user fee revenues. Revenues from beach user fees may be used only for beach-related services, as defined in §15.2 of this title (relating to Definitions). For each fiscal year, a local government shall not spend more than 10% of beach user fee revenues on reasonable administrative costs. Administrative costs must be directly related to providing support for beach-related services, such as accounting, record keeping, some personnel services, insurance, and office costs such as rent, utilities and supplies.

(g) Recordkeeping and Reporting. Each local government shall send quarterly reports to the General Land Office on the collection and expenditures of its beach user fees.

(1) The quarterly report must state the amount of beach user fee revenues collected and itemize itemizing how beach user fee revenues are expended. The General Land Office, at its own discretion, may prescribe reporting forms or methods. Reports are due no later than 60 days after the end of each quarter of the State fiscal year. The General Land Office may request additional information, as appropriate, to evaluate a local government's compliance with these rules and the local government's beach user fee plan.

(2) Documentation sufficient to substantiate the proper collection and expenditure of beach user fees must be maintained by the local government. Such documents may include, but are not limited to, records of equipment use, payroll records, invoices, contracts, and proof of payment. Substantiating documentation must be kept by the local government for four years following the date the fees are spent. Documentation substantiating the collection or expenditures of beach user fees must be provided to the GLO within 10 working days of the local government's receipt of the request.

(h) Beach user fee accounts. Local governments shall use the following methods for administering beach user fee accounts.

(1) Beach user fee revenues shall be maintained and accounted for so that fee collections can be directly traced to expenditures on beach-related services. Beach user fee revenues shall not be commingled with any other funds. Each beach user fee revenue shall be maintained in separate revenue accounts, or be separately tracked in the local governments accounting system.

(2) Beach user fee revenues shall be maintained in a separate revenue account and documented in a separate financial statement for each beach user fee or shall have a unique revenue code and be documented.

(3) Beach user fee revenue account balances and expenditures shall be documented according to generally accepted accounting principles.

(i) The General Land Office shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent section of a dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related services.

(j) Free beach access. Local governments that collect a beach user fee for on-beach parking or for off-beach parking for beach access shall maintain free public beach access by providing areas where no fee is charged for reasonably accessible parking on or off the beach and for pedestrian access in proximity to each area where a beach user fee is charged.

(k) Access for persons with disabilities. Local governments shall establish, preserve, and enhance access for persons with disabilities as provided by law, including §15.7(h)(5) of this title (relating to Local Government Management of the Public Beach). The General Land Office may provide guidance recommending additional measures to preserve and enhance access for persons with disabilities. Provisions for access for persons with disabilities shall be included in local government dune protection and beach access plans.

(l) Identification of fee and non-fee areas. For any local government collecting a beach user fee for on-beach parking, both fee and non-fee beach areas shall be conspicuously marked with signs that clearly indicate, at a minimum, the location of both the fee and non-fee areas and the identity of the local government collecting the fee. In addition, maps identifying fee and non-fee areas shall be provided to the public by any local government collecting a beach user fee.

(m) Coordination with other beach-related plans. The beach user fee plan shall be a part of a local government's beach access and use plan required under the Open Beaches Act, §61.015, any vehicular control plan required under the Open Beaches Act, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office requires local governments to combine and integrate these various plans.

§15.9. Enforcement, Penalties and Remedial Orders.

(a) Penalties.

(1) Civil Penalties.

(A) In addition to any penalties assessed by a local government, any person who violates either the Dune Protection Act, the Open Beaches Act, this subchapter, a removal order issued pursuant to subsection (b) of this section, a restoration order issued pursuant to subsection (c) of this section, or a permit or certificate condition is liable for a civil penalty of not less than $50 nor more than $2000 per violation per day as provided in the Dune Protection Act, §63.181(b) and the Open Beaches Act, §61.018(c). Each day the violation occurs

or continues constitutes a separate violation. Violations of the Dune Protection Act, the Open Beaches Act, and the rules adopted pursuant to those statutes are separate violations, and the General Land Office may assess separate penalties. The assessment of penalties under one Act does not preclude another assessment of penalties under the other Act for the same act or omission. Conversely, compliance with one statute and the rules adopted thereunder does not preclude the General Land Office from assessing penalties under the other statute and the rules adopted pursuant to that statute.

(B) A local government may recover civil penalties in a suit by a county attorney, district attorney, or criminal district attorney as authorized in the Dune Protection Act, §63.181(a), and the Open Beaches Act, §61.018(b).

(2) Administrative Penalties.

(A) Any person who violates the Dune Protection Act, the Open Beaches Act, this subchapter, or a permit or certificate condition is also liable to the General Land Office for an administrative penalty of not less than $50 nor more than $2000 per violation per day as provided in the Dune Protection Act, §63.1811, and the Open Beaches Act, §61.0181. Provided, however, if a structure that is the subject of an administrative penalty assessed pursuant to the Open Beaches Act, §61.0181, has been used as a permanent, temporary, or occasional residential dwelling by at least one person during the year before the date on which the penalty is assessed, the amount of the administrative penalty may not exceed $1000 per day the violation occurs or continues.

(B) Administrative penalties assessed by the Commissioner of the General Land Office (commissioner) as part of an order pursuant to the Dune Protection Act or the Open Beaches Act are subject to the notice, orders, and hearing requirements outlined in subsections (b) - (d) of this section, respectively. In determining the amount of the administrative penalty for violations of the Dune Protection Act and the Open Beaches Act, the General Land Office will consider the following:

(i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(ii) the degree of cooperation and quality of response;

(iii) the degree of culpability and history of previous violations by the person subject to the penalty;

(iv) the amount of penalty necessary to deter future violations; and

(v) any other matter justice requires.

(3) Local governments are included in the definition of "person" in §15.2 of this title (relating to Definitions), and as such, they are liable for penalties for any violations of this subchapter, the Dune Protection Act, and the Open Beaches Act. A local government will be liable for penalties for such violations, including, but not limited to, failure to submit a dune protection and beach access plan to the General Land Office; failure to maintain and enforce its plan; and failure to implement the plan. These violations are in addition to any other violations of this subchapter for which a local government may be liable for penalties.

(4) The provisions of this section are cumulative of all other civil and administrative penalties, remedies, and enforcement and liability provisions.

(5) In determining whether the assessment of penalties is appropriate, the General Land Office will consider the following mitigating circumstances: acts of God, war, public riot, or strike; unforeseeable, sudden, and natural occurrences of a violent nature; and willful misconduct by a third party not related to the permittee or person responsible for the violation by employment or contract.

(b) Administrative Penalties and Restoration for Damage, Destruction, or Removal of Dunes or Dune Vegetation.

(1) Pursuant to the Dune Protection Act, §63.1813, the commissioner may order restoration or contract for restoration for damage, destruction, or removal of a sand dune or a portion of a sand dune or the killing, destruction, or removal of any vegetation growing on a sand dune seaward of the dune protection line or within a critical dune area in violation of the Dune Protection Act, this subchapter, or any rule, permit, or order issued under the Dune Protection Act.

(2) A person is considered to be engaging in or to have engaged in conduct that violates the Dune Protection Act or any rule, permit, or order issued under this Act if the person is the person who most recently owned, maintained, controlled, or possessed the real property on which the conduct occurred.

(3) A person damages a dune or dune vegetation when the conduct results in the destruction or removal of a dune or dune vegetation or weakens a dune or dune vegetation by increasing the potential for flood damage, washovers or blowouts; changing runoff or drainage patterns that aggravate erosion on or off the site; or may result in adverse effects to dune hydrology and dune complexes or dune vegetation.

(4) After issuance of a notice of violation under Texas Natural Resources Code, §63.1814, a person must request a hearing to contest the commissioner's findings or initiate restoration by filing an application for a dune protection permit with the local government with jurisdiction in the area in which the violation occurred within 60 days after service of the notice of violation. The permit application must address any technical specifications and monitoring requirements described in the commissioner's notice of violation.

(5) If the person fails to apply for a permit and complete restoration as required by this section or make a timely written request for a hearing, the commissioner may order restoration, assess restoration costs, fees and expenses, impose an administrative penalty, or use any combination of these remedies. The order may specify the technical specifications for restoration and monitoring requirements.

(6) Notice, Orders, and Hearings.

(A) When the commissioner has determined that damage, destruction, or removal of dunes or dune vegetation is a violation of the Dune Protection Act, §63.091 or any rule, permit, or order issued under the Dune Protection Act, the commissioner must give written notice to the person that is taking or has taken actions that violate the Dune Protection Act, 63.091 or any rule, permit, or order issued under the Dune Protection Act. The notice must state:

(i) the specific conduct that violates the Dune Protection Act, this subchapter, or any permit or order issued under the Dune Protection Act;

(ii) that the person who has engaged in or has been engaged in the conduct that violates the Dune Protection Act, this subchapter, or any permit or order issued under the Dune Protection Act must perform restoration for the damage caused by the violation not later than the 60th day after the day the notice is served;

(iii) that failure to perform restoration for the damage caused by the violation may result in a liability for a civil penalty

under the Dune Protection Act, §63.0181(b) in an amount specified, restoration contracted or undertaken by the commissioner, and liability for the costs of restoration, or any combination of those remedies; and

(iv) that the person who is engaging in or has engaged in conduct that violates the Dune Protection Act or any rule, permit, or order under the Dune Protection Act may submit, not later than the 60th day after the date on which the notice is served, a written request for a hearing to contest the commissioner's findings.

(B) The notice required by this subsection must be given in accordance with subsection (d) of this section.

(7) If the person who is engaged in or has been engaged in conduct that violated the Dune Protection Act, §63.091 or any rule, permit, or order issued under the Dune Protection Act does not pay assessed administrative penalties, mitigation costs, other assessed fees and expenses, or file an application for a dune protection permit on or before the 60th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(A) contract for restoration;

(B) request that the attorney general institute civil proceedings to collect the penalties, costs of restoration, and other fees and expenses remaining unpaid; or

(C) use any combination of the remedies prescribed by this section, or other remedies authorized by law, to collect the unpaid penalties, costs of restoration, and other fees and expenses assessed because of unauthorized conduct and its mitigation by the commissioner.

(c) Administrative Penalties and Removal of Certain Structures, Improvements, Obstructions, Barriers, and Hazards on the Public Beach.

(1) The commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach or assess an administrative penalty in accordance with the Open Beaches Act, §§61.0181 - 61.0184 and this subsection. The term "structure" as used in this subsection has the meaning assigned in §15.2(67) of this title (relating to Definitions) and includes any improvement, obstruction, barrier or hazard on the public beach.

(2) For the purposes of this subsection, a person is considered to be the person who owns, maintains, controls, or possesses a structure or other encroachment on the public beach for the purposes of this subsection if the person is the person who most recently owned, maintained, controlled, or possessed the structure or other encroachment on the public beach.

(3) The commissioner may conduct an evaluation to determine if grounds for removal of a structure exist pursuant to the Open Beaches Act, §61.0183. The evaluation will include:

(A) a determination of whether the structure is located wholly or partially on the public beach in accordance with §15.3(b) of this title (relating to Administration).

(B) if the structure is determined to be located on the public beach, the evaluation will also include:

(i) a determination as to whether the structure constitutes an imminent hazard to safety, health, or public welfare as provided in §15.15 of this title (relating to Criteria for Determining Health and Safety Hazards Associated with Structures on the Public Beach), or

(ii) a determination as to whether the structure was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan.

(4) Before the commissioner orders the removal of a structure or imposes an administrative penalty, the commissioner must give written notice and an opportunity for hearing to the person who is constructing, maintaining, controlling, owning, or possessing the structure on the public beach in accordance with the Open Beaches Act, §61.0184 and the procedures outlined in paragraph (6) of this subsection. The person must forward a copy of the notice to any entity or individual holding a lien, mortgage or any other property interest in the structure and provide evidence of compliance with this requirement to the General Land Office within 10days of receiving the notice.

(5) If the person fails to remove the structure or make a timely written request for a hearing, the commissioner may order the removal of the structure, assess removal costs, fees and expenses, impose an administrative penalty, or use any combination of these remedies.

(6) Notice, Orders and Hearings.

(A) Before the commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard under the Open Beaches Act, §61.0183, or impose an administrative penalty under the Open Beaches Act, §61.0181, the commissioner must provide written notice to the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard on the public beach. The notice must:

(i) describe the specific structure that violates the Open Beaches Act or this subchapter;

(ii) state that the person who is constructing, maintains, controls, owns, or possess the structure is required to remove the structure:

(I) within a reasonable time specified by the commissioner if the structure is an imminent threat to public health, safety or welfare as provided in §15.15 of this title; or

(II) not later than the 30th day after the date on which the notice is served if the structure was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan; or

(III) not later than the 90th day after the date on which the notice is served if the structure has been used as a permanent, temporary, or occasional residential dwelling by at least one individual at any time during the year preceding the date of the notice.

(iii) state that the failure to remove the structure may result in liability for a civil penalty under the Open Beaches Act, §61.018(c) in an amount specified, removal of the structure by the commissioner, and liability for the costs of removal, or any combination of these remedies;

(iv) state that the person may submit, not later than the 30th day after the date on which the notice is served, a written request for a hearing to contest the commissioner's findings. Provided, however, if the structure has been used as a permanent, temporary, or occasional residential dwelling by at least one individual at any time during the year before the date on which the notice is served, the person may submit, not later than the 90th day after the date on which the notice is served, a written request for a hearing. If the person does not make a timely request for a hearing, the person waives all rights to judicial review of the commissioner's findings or orders.

(B) The notice given by this subsection must be given in accordance with subsection (d) of this section.

(7) If the person does not comply with a removal order of the commissioner or pay assessed penalties, removal costs, or other

assessed fees and expenses on or before the 30th day after the date of entry of the final order, the commissioner may:

(A) contract for removal and disposal of the structure;

(B) sell salvageable parts of the structure to offset costs of removal;

(C) request that the attorney general institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses assessed because of the structure's placement on the public beach and the removal order by the commissioner; or

(D) use any combination of remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed because of the structure's placement on the public beach and the removal order by the commissioner.

(d) Notice of Violation and Hearing Requirements.

(1) Before the commissioner may order restoration or removal of a structure or assess administrative penalties under this section, the commissioner must give written notice and an opportunity to request a hearing to the person charged with the violation.

(2) The notice required by this subsection must be given:

(A) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(B) if personal service cannot be obtained or the address of the person is unknown, by:

(i) electronic mail if the electronic mail address is verifiable; or

(ii) posting a copy of the written notice at the site where the conduct was engaged in and by publishing notice in a newspaper with general circulation in the county in which the site is located at least two times within 10 consecutive days.

(3) If the person requests a hearing, the commissioner must grant the hearing before an administrative law judge employed by the State Office of Administrative Hearings as provided in the Dune Protection Act, §63.1814 and the Open Beaches Act, §61.0184(g).

(4) The right to appeal an order is subject to Dune Protection Act, §63.151, and the Open Beaches Act, §61.0184(h).

§15.10. General Provisions.

(a) A local government's ordinances, orders, resolutions, or other enactments covered by this subchapter shall be read in harmony with this subchapter. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this subchapter controls. Certification of a local government's beach access and use plan by the General Land Office may not be construed to expand or detract from the statutory or constitutional authority of that local government or any other governmental entity, nor may any person construe such certification to authorize a local government or any other governmental entity to alienate public property rights in public beaches.

(b) Boundary of the public beach. The commissioner shall make determinations on issues related to the location of the boundary of the public beach and encroachments on the public beach pursuant to the requirements of the Open Beaches Act, §§61.016 - 61.017 and §15.3(b) of this title (relating to Administration) and §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner). The General Land Office and the local governments may refer enforcement cases to the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

(c) Public beach presumption. Except for beaches on islands or peninsulas not accessible by public road or ferry facility, in administering its plan a local government shall presume that any beach fronting the Gulf of Mexico within its jurisdiction is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, §61.019. That section provides that any person owning property fronting the Gulf of Mexico whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(d) Violations. A violation of any provision of this subchapter, a local government dune protection and beach access plan, or any permit or certificate or the conditions contained therein will subject a person to the potential assessment of administrative or civil penalties.

(e) Reporting violations. Any local government with knowledge of a violation or a threatened violation of a permit, a certificate, its dune protection and beach access plan, the Dune Protection Act, the Open Beaches Act, or this subchapter shall inform the General Land Office of the violation(s) within 24 hours.

(f) Withdrawal of plan certification. The General Land Office may withdraw certification of all or any part of a local government's dune protection and beach access plan if the local government does not comply with its plan, this subchapter, the Dune Protection Act, or the Open Beaches Act. Without further action by the General Land Office, a local government loses, by operation of law, the authority to issue permits or certificates authorizing construction within the geographic scope of this subchapter and the privilege to collect beach user fees if state agency certification of its dune protection and beach access plan is withdrawn.

(g) Notice of withdrawal of plan certification. The General Land Office will notify the local government 60 days prior to withdrawing certification of the local government's plan. The local government may submit to the General Land Office any evidence demonstrating full compliance with its plan, this subchapter, the Dune Protection Act, and the Open Beaches Act. The General Land Office will consider the good faith efforts of any local government to immediately and fully comply with those laws during the 60-day period after the notification of intent to withdraw certification.

(h) The provisions contained in this subchapter do not limit the authority of the General Land Office and the attorney general's office to enforce this subchapter, the Dune Protection Act, and the Open Beaches Act pursuant to the Texas Natural Resources Code, §63.181 and §61.018.

(i) Appeals. The Dune Protection Act, §63.151, and the Open Beaches Act, §61.019, contain the provisions for appeals related to this subchapter.

§15.11. Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach.

(a) Purpose. The purpose of this section is to provide authority for local governments to issue permits or certificates for repairs to certain houses if any portion of the house is located seaward of the boundary of the public beach.

(b) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms 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) or an order issued under §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner). For purposes of this section, the location of the natural line of vegetation shall be determined by the General Land Office on a case-by-case basis.

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

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

(c) Eligible houses. To find a house eligible for a permit or certificate to make repairs under this section, the Land Office must determine that:

(1) The line of vegetation establishing the boundary of the public beach has moved as a result of erosion or a meteorological event;

(2) The house was located landward of the line of vegetation before the erosion or meteorological event occurred;

(3) No portion of the house is located seaward of the boundary of coastal public land;

(4) The house was not damaged more than 50 percent or destroyed as the result of a meteorological event; and

(5) The house does not present an imminent threat to public health and safety.

(d) For a house eligible under this section, a local government may issue a certificate or permit authorizing repair of an eligible house if the local government determines that the repair:

(1) is solely to make the house habitable 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 boundary of the public beach;

(4) does not include the construction of an enclosed space below the base flood elevation and seaward of the boundary of the public beach;

(5) does not include the repair, construction, or maintenance of an erosion response structure seaward of the boundary of the public beach;

(6) does not occur seaward of the boundary of coastal public land; and

(7) does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create an additional obstruction to public use of and access to the beach.

(e) Debris removal. Debris on the public beach creates a hazard to public health and safety and can threaten Gulf-facing properties. A local government shall coordinate with owners of eligible houses to remove personal property and beach debris related to the structure from the public beach and dune complex as soon as possible. The local government may require debris removal as a condition of the issuance of a certificate or permit under this section. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(f) Sand placement. Only beach-quality sand may be placed underneath the footprint of an eligible house and in an area up to five feet seaward of the house, provided that the sand may not be placed seaward of mean high tide except as part of an approved beach nourishment project. The beach-quality sand must remain loose and unconsolidated and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(g) Land Office review. A local government shall submit the certificate or permit application for repair of an eligible house under this section to the commissioner for review and determination of eligibility as provided in subsections (b)(2) and (c) of this section. If the commissioner does not object to or otherwise comment on the application within 10 working days of receipt of the application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make an affirmative determination regarding a permit or certificate for repairs. Local governments may require more information, but they shall submit to the Land Office the following information:

(1) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(2) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(3) the floor plan, footprint or elevation view of the house identifying the proposed repairs;

(4) photographs of the site which clearly show the current conditions of the site; and

(5) an accurate map, site plan, plat, or survey of the site identifying:

(A) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(B) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways and landscaping that currently exist on the tract;

(C) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(D) the location of the house and the distance between the house and mean high tide, mean low tide, and the line of vegetation; and,

(E) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(h) Monitoring. A local government is responsible for monitoring the repair of an eligible house under this section. A local government may conduct a monitoring program to study the effects of permitting repairs to an eligible house on the public's access to and use of the public beach. Expenses related to the monitoring program are considered beach-related services for the purpose of this subchapter.

(i) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. Except as provided in an unexpired temporary order issued by

the commissioner under §61.085 of the Texas Natural Resources Code, the commissioner, the attorney general, a county attorney, district attorney, or criminal district attorney may file suit under Texas Natural Resources Code §61.018(a) to obtain a temporary or permanent injunction, either prohibitory or mandatory, to remove a house from the public beach without regard to whether the house is eligible for repairs under this section.

§15.12. Temporary Orders Issued by the Land Commissioner.

(a) Purpose. The purpose of this section is to provide standards and procedures after a meteorological event for the temporary suspension under §61.0185 of the Texas Natural Resources Code of enforcement of the prohibition against encroachments on and interferences with the public beach easement and suspension under §61.0171 of the Texas Natural Resources Code of line of vegetation determinations where the natural line of vegetation has been obliterated. This rule is promulgated under the authority of §61.011(d) of the Texas Natural Resources Code.

(b) 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, as described in §15.11(b) of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach).

(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) or this section, or an order issued under this section or §15.13 of this title (relating to Disaster Recovery Orders).

(3) Habitable--The condition of the premises, as described in §15.11(b) of this title.

(4) House--A single or multi-family structure, as described in §15.11(b) of this title.

(c) Any order issued by the commissioner under subsection (d) or (e) of this section shall be:

(1) posted on the General Land Office's Internet Web Site, www.glo.texas.gov;

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

(3) filed by the General Land Office in the real property records of the county in which the structure is located if the order is for suspension of enforcement under subsection (d) of this section.

(d) Orders suspending enforcement of the prohibition against encroachments on and interferences with the public beach easement.

(1) An order for temporary suspension of enforcement under §61.0185 may be issued for a period of three years. While an order issued under this section is in effect, a local government may issue a certificate or permit authorizing repair of a house subject to the order if the local government determines that the repair:

(A) is solely to make the house habitable including reconnecting the house to utilities;

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

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

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

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

(F) does not occur seaward of the boundary of coastal public lands; and

(G) does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create and additional obstruction to public use of and access to the beach.

(2) Debris on the public beach creates a hazard to public health and safety and can threaten Gulf-facing properties. The GLO is responsible for clearing debris from the public beach in accordance with Texas Natural Resources Code, §61.067. While an order issued under this section is in effect, a local government with the duty to clean and maintain the public beach shall coordinate with the GLO and, where appropriate, littoral property owners to remove beach debris from the public beach as soon as possible. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(3) While an order issued under this section is in effect, only beach-quality sand may be placed underneath the footprint of the house and in an area up to five feet seaward of the house. The beach-quality sand must remain loose and unconsolidated, and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(4) While an order issued under this section is in effect, a local government shall submit the certificate or permit application for repair of a house under this section to the commissioner for review. If the commissioner does not object to or otherwise comment on the application within 10 working days of receipt of the application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make an affirmative determination regarding a permit or certificate for repairs. Local governments may require more information, but they shall submit to the Land Office the following information:

(A) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(B) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(C) the floor plan, footprint, or elevation view of the house identifying the proposed repairs;

(D) photographs of the site that clearly show the current conditions of the site; and

(E) an accurate map, site plan, plat, or survey of the site identifying:

(i) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(ii) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways, and landscaping that currently exist on the tract;

(iii) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(iv) the location of the house and the distance between the house and mean high tide, mean low tide, and the line of vegetation; and

(v) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(5) While an order issued under this section is in effect, a local government is responsible for monitoring the repair of the house under this section. Any permit or certificate issued by a local government under this order expires automatically on the date the order expires. Except as provided in §15.11 of the title, local governments may not issue permits or certificates for repairs to houses located on the public beach easement that are not subject to an order issued under this section.

(e) Orders suspending line of vegetation determinations where the line of vegetation has been obliterated as a result of a meteorological event.

(1) The commissioner may, by order, suspend action on conducting a line of vegetation determination for a period of up to three years from the date the order is issued if the commissioner determines that the line of vegetation was obliterated as a result of a meteorological event.

(2) For the duration of the order, the public beach shall not extend inland further than 200 feet from the seaward line of mean low tide as established by a licensed state land surveyor.

(3) While an order issued under this section is in effect, a local government may issue a certificate or permit based upon the boundary of the public beach.

(4) Following the expiration of an order issued under this section, the commissioner shall make a determination regarding the line of vegetation in accordance with Texas Natural Resources Code, §61.016 and §61.017, taking into consideration the effect of the meteorological event on the location of the public beach easement. The commissioner may consult with the Bureau of Economic Geology of The University of Texas at Austin or a licensed state land surveyor and consider other relevant factors when making a determination under this subsection regarding the annual erosion rate for the area of beach subject to the order issued under this section.

§15.13. Disaster Recovery Orders.

(a) Purpose. This section provides procedures for the commissioner to adopt a disaster recovery order with temporary standards for stabilization and repair of structures and dune restoration during a period of recovery following a 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 §418.014, Texas Government Code or in which a natural disaster has occurred, as determined by the commissioner.

(c) Disaster recovery orders. 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 effects to the public beach, public access points, and dune areas caused by a damaging declared or natural disaster. 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.

(1) The disaster recovery order shall identify the nature of the disaster, the name of the disaster and the 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. The order is effective upon issuance by the commissioner.

(2) Notice of the order issued under this section shall be:

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

(B) published by the GLO as a miscellaneous document in the *Texas Register;* and

(C) 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 (§§15.1 - 15.12 of this title). 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, as described in §15.11(b) of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach).

(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 the standards set forth in Texas Natural Resources Code Ch. 61 when issuing beachfront construction certificates and dune protection permits in locations where the line of vegetation has been severely damaged by the disaster that precipitated the recovery order.

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

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

(5) Habitable--The condition of a premises, as described in §15.11(b) of this title.

(6) House--A single or multi-family structure, as described in §15.11(b) of this title.

(7) 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.

(8) 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, structures and littoral property.

(9) 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.

(10) 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.

(11) 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.

(12) Restoration Area--With respect to a dune restoration project on the public beach, an area extending to the line of vegetation as delineated by the commissioner in an order under this subsection or an order issued under §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner).

(13) Shoreline protection project repairs--Those response measures that must be undertaken during a period of recovery from a disaster to repair 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 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, the referral of a matter for enforcement to the attorney general or other public prosecutor, the initiation of an enforcement action by the commissioner, 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);

(2) Clay core dunes; provided, that clay or sandy clay used for this purpose must be covered with beach-quality sand, to a depth of at least 24 inches, and such sand cover must be maintained; provided, if clay is exposed, it must be recovered with sand to maintain the minimum 24-inch cover or removed; and

(3) Recovery dunes constructed under this section must not:

(A) result in increased flooding to the site or adjacent property;

(B) aggravate erosion;

(C) result in adverse effects to dune hydrology;

(D) increase the vulnerability to washouts or blowouts; or

(E) interfere with the public's access to the beach at normal high tide.

(4) A local government shall require persons using vegetation to restore dunes to use indigenous dune vegetation.

(i) Review of dune protection line. A local government having the authority to set the dune protection line shall review the dune protection line within one year from the date of the disaster recovery order issued under this section rather than 90 days required under §15.3(k) of this title. All other requirements of §15.3(k) of this title shall apply.

(j) Authorized beach access and dune protection measures.

(1) In areas within 200 feet of the line of vegetation in an eroding area, the local government may:

(A) use the landward toe of a restored dune for determining the area in which the use of fibercrete is allowed unless natural dunes form further landward. In eroding areas where there is no dune or the dune has been obliterated by the disaster that precipitated the order, the provisions of §15.6(f)(5) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) apply until a restored dune has been established in the area as determined by a local government.

(B) allow 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 that is the subject of an order under this section. This provision also applies to a house that has become located on the beach or where there is no dune.

(2) A local government may provide temporary access to beaches from off-beach parking areas by directing the public to the nearest existing pathways to minimize the effects on dunes and dune vegetation until dunes and walkovers are re-established or rebuilt. Temporary pathways shall be conspicuously marked as beach access paths.

(3) A local government may, without a plan amendment, temporarily close beach access points damaged beyond repair or temporarily blocked by emergency shore protection projects to prevent damage to infrastructure. In order to comply with this rule a local government must notify the commissioner in writing of the temporary closure of such damaged beach access point within 10 calendar days and specify the duration of the closure. 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 issued under this section.

(k) Shoreline protection project repairs. Except for the general prohibition on maintaining or repairing erosion response structures in §15.6(d) of this title, a local government may authorize repairs to an existing shoreline protection project, subject to the following limitations:

(1) Repairs to existing shoreline protection projects may be permitted to minimize further damage to coastal residences and littoral property, provided the existing shoreline protection project does not substantially restrict or interfere with the public use and access of the beach at normal high tide;

(2) A local government shall not authorize any person to repair a shoreline protection project that is located below the boundary of coastal public land; and

(3) The existing shoreline protection project must conform to the policies of the General Land Office promulgated in §26.26(b) of this title (relating to Policies for Construction in the Beach/Dune System).

(l) Prohibition on certain materials. A local government shall not allow any person to undertake dune restoration projects or temporary shoreline protection projects using any of the following methods or materials:

(1) Materials such as bulkheads, riprap, concrete (including sprayed concrete), or asphalt rubble, building construction materials, and any non-biodegradable items;

(2) Sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; or

(3) Sand obtained by scraping or grading dunes, or from beaches in eroding areas.

(m) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of State Health Services, 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 (e)(1) of this title.

(n) Authorized beach maintenance practices. If a material change in conditions occurs, such as significant beach erosion caused by a declared or natural disaster, the commissioner may require a local government affected by an order issued under this section to suspend the authority of a permittee to scrape a beach under a previously issued beach maintenance permit. The local government may require a permittee to obtain a new permit incorporating beach maintenance practices consistent with the changed conditions. The commissioner shall be given an opportunity to comment on any such new permit application.

(o) Removal of beach debris. The GLO is responsible for clearing debris from the public beach in accordance with Texas Natural Resources Code, §61.067. While an order issued under this section is in effect, a local government with the duty to clean and maintain the public beach shall coordinate with the GLO and, where appropriate, littoral property owners to remove beach debris from the public beach as soon as possible. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(p) GLO review. A local government shall submit the certificate or permit applications for recovery repair, recovery dune restoration, or any other activity authorized under this section to the commissioner for review. If the commissioner does not object to or otherwise comment on the application within 10 working days of receipt of an application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate for repairs. Local governments may require more information, but the following information shall be submitted to the GLO:

(1) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(2) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(3) the floor plan, footprint or elevation view of the house identifying the proposed repairs;

(4) color photographs of the site which clearly show the current conditions of the site; and

(5) an accurate map, site plan, plat, or survey of the site identifying:

(A) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(B) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways and landscaping that currently exist on the tract;

(C) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(D) the location of the house and the distance between the house and mean high tide, mean low tide, and the line of vegetation;

(E) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract; and

(F) if the proposed action includes a recovery dune restoration project, grading and layout plan identifying existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade.

(6) the source of any sand and vegetation used for a recovery dune restoration project; and;

(7) any other information requested by the local government or the GLO that is necessary to determine whether the application is consistent with this section.

(q) Monitoring. A local government is responsible for monitoring a recovery stabilization, recovery repair, recovery dune restoration project, or shoreline protection project repair under this section. A local government may conduct a monitoring program to study the effects of such projects on the public's access to and use of the public beach. Expenses related to the monitoring program are considered beach-related services for the purpose of this subchapter.

(r) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. Except as provided in an unexpired temporary order issued by the commissioner under §61.0185 of the Texas Natural Resources Code, the commissioner, the attorney general, a county attorney, district attorney, or criminal district attorney may file suit under Texas Natural Resources Code §61.018(a) to obtain a temporary or permanent injunction, either prohibitory or mandatory, to remove a house from the public beach without regard to whether the house is eligible for repairs under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2023.

TRD-202301405
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: May 8, 2023
Proposal publication date: December 30, 2022
For further information, please call: (512) 475-1859

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PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS
SUBCHAPTER A. ELECTION PROCEDURES

31 TAC §§520.2, 520.3, 520.5

The Texas State Soil and Water Conservation Board (State Board) adopts an amendment to §520.2 (1-4) Definitions, §520.2(5) the change to the physical address of the Texas State Soil and Water Conservation Board state office, and the agency further adopts the amendment to §520.3(4)(b) regarding rules for district elections and §520.5(b) regarding the submittal of electronic forms without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8245). The text of the rules will not be republished.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2023.

TRD-202301398
Heather Bounds
Government Relations Specialist
Texas State Soil and Water Conservation Board
Effective date: May 8, 2023
Proposal publication date: December 16, 2022
For further information, please call: (254) 778-8741

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CHAPTER 529. FLOOD CONTROL
SUBCHAPTER B. STRUCTURAL REPAIR GRANT PROGRAM

31 TAC §§529.51, 529.52, 529.55 - 529.57, 529.62

The Texas State Soil and Water Conservation Board (Board) has completed the review of Title 31, Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Structural Repair Grant Program as required by the Texas Government Code §2001.039, Agency Review of Existing Rules. These rules were published for comment in the December 16, 2022, issue of the *Texas Reg-*

ister (47 TexReg 8247). As a result, the Board adopts amendments to §529.51, Definitions, §529.52, Submitting an application, §529.56, Review and Selection of Applications, §529.57, Contracts Between the State Board and Sponsors, and §529.62, Structural Repair Grants Used as Match for Federal Projects without changes. The rules will not be republished. Section 529.55, Administration of Funds, is adopted with changes and will be republished.

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency under Texas Government Code, chapter 2001, subchapter B, Rulemaking. As required by §2001.039(e), this review assesses whether the reasons for adopting or re-adopting the Board's flood control dam Structural Repair Grant Program rules continue. Therefore, the Board requested specific comments from interested persons on whether the reasons for adopting Title 31, Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Structural Repair Grant Program continue to exist. In addition, the Board welcomed comments on any amendments that would improve the rules.

The Board received no comments in response to its request for comment published in the December 16,2022, issue of the *Texas Register* (47 TexReg 8247). However, the Sunset Advisory Commission reviewed the agency from September 2021 through March 2022. In their final adopted report titled Sunset Advisory Commission Staff Report with Commission Decisions on the Texas State Soil and Water Conservation Board and Texas Invasive Species Coordinating Committee, the Commission required the agency "to ensure the local match requirement for state-funded dam upgrades and state-funded dam repairs equitably accounts for the financial capacity of local sponsors, especially taking into account high-hazard dams." This requirement, detailed in Recommendation 1.1 of the Staff Report, resulted in an internal review of the benefits the program and the State receive by requiring various percentages of matching funds to receive the state grant funds.

After careful analysis and consultation with stakeholders and interested members of the Legislature, the Board considered several options for addressing the non-state matching funds requirement of the program. After considering all the options, the Board believes the financial burden any matching requirement imposes on a local government negatively affects their participation as much as it generates accountability and buy-in on their part. As a result, the Board approved the amending of numerous sections of Subchapter B that would eliminate the non-state match requirement for structural repairs, including rehabilitation and upgrades. The proposed amendments would not change the 10% non-state matching funds requirement for operation and maintenance grants awarded under the O&M Program in 31TAC529, Subchapter A.

STATUTORY AUTHORITY. These amendments are adopted pursuant to Texas Agriculture Code, §201.020, which authorizes the Board to adopt rules for this purpose.

§529.55. Submitting an Application.

(a) Applications must be submitted on forms provided by the State Board.

(b) All applications must have certification signatures by authorized individuals from all sponsors identified in the applicable watershed agreement with O&M responsibility for the flood control dam(s) on which repairs are proposed acknowledging and approving the application prior to it being submitted to the State Board for consideration. Certification by signature means the sponsor agrees to cooperate on the project with the other sponsors and may consider entering into a contract with the State Board relating to the project's completion. Where one or more of the sponsors listed on the watershed agreement is no longer formally in existence, the remaining sponsors should contact the State Board prior to submitting an application for additional guidance.

(c) Each application must identify one individual as the person that will represent all sponsors identified on the application. The authorized representative shall be the single point of contact for all communications regarding an application.

(d) Each application must include cost estimates for the entire project. Cost estimates must be categorized by construction, easement purchasing, and legal fees.

(e) Each application must specify the length of time in which the project is anticipated to be completed.

(f) Submittal of an application does not constitute a contractual agreement or a promise of a contractual agreement between the State Board and any entity.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2023.

TRD-202301393
Heather Bounds
Government Relations Specialist
Texas State Soil and Water Conservation Board
Effective date: May 7, 2023
Proposal publication date: December 16, 2022
For further information, please call: (254) 778-8741

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 27. CRIME RECORDS
SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety (the department) adopts amendments to §27.1, concerning Right of Review. This rule is adopted without changes to the proposed text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1269) and will not be republished.

These amendments update and clarify language related to current procedures for the personal review of criminal history record information and the required fees.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.083(b)(3), which requires the department to

grant access to criminal history record information to the person who is the subject of the information; and §411.086, which requires the department to adopt rules that provide for a uniform method of requesting criminal history record information from the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2023.

TRD-202301438
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: May 11, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 424-5848

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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
SUBCHAPTER C. PROGRAM SERVICES
DIVISION 4. HEALTH CARE SERVICES

37 TAC §§380.9187 - 380.9189

The Texas Juvenile Justice Department (TJJD) adopts amendments to Texas Administrative Code Chapter 380, Subchapter C, §§380.9187 - 380.9189 with changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7240). The amended sections will be republished.

SUMMARY OF CHANGES

The amendments to §380.9187, concerning Suicide Alert Definitions, include adding that suicide risk screenings and assessments must be done either in person *or via remote computer service that allows both parties to see and hear one another*; modifying several definitions to remove the requirement for a suicide risk screening or assessment to be face-to-face, to list self-harming behavior separately from suicidal behavior, and to require *staggered intervals* for room checks and for documenting certain status checks (rather than a *not-to-exceed* time frame); increasing how often staff must document the status of youth on constant observation during waking hours and youth on one-to-one observation during all hours; and removing the prohibition on using close observation for youth in a crisis stabilization unit or security unit. (Such youth will be on maximum 5-minute checks rather than the standard maximum 10-minute checks for close observation.)

Other changes to §380.9187 include removing the requirement for staff to conduct an additional type of room check referred to as a constant motion check; removing the listing of specific staff positions that must be trained to conduct a suicide risk screening; replace the term *Self-Injurious Behavior* with *Self-Harming Behavior;* revising the definitions of *Designated Mental Health Professional, Rescue Kit, Suicidal Behavior, Suicidal Ideation, Suicide Alert, Suicide Observation Folder, One-to-One Observation, Constant Observation, and Suicide Risk Screening;* adding definitions for *Completed Suicide, Staggered Intervals,* and *Suicide-Resistant Clothing;* and making non-substantive revisions to the definitions of *Suicide Observation Level* and *Suicide-Resistant Room.*

The new amendment to §380.9187 clarifies the definition of *Life-Threatening Suicide Attempt.*

The amendments to §380.9188, concerning Suicide Alert for High Restriction Facilities, include changes in a number of areas.

General changes to §380.9188 include removing several references to which TJJD staff members are responsible for certain actions, such as family notifications, internal facility notifications, and transferring records; removing the requirement for suicide risk assessments to be conducted face-to-face; replacing the phrases *self-injurious behavior* and *self-injury* with either *self-harming behavior* or *suicidal and/or self-harming behavior,* as appropriate; specifying that certain screenings and assessments must be *initiated* (rather than conducted) within an identified time frame; and replacing references to *on-duty supervisor* and *duty officer* with *campus shift supervisor.*

The amendments to §380.9188 related to initial intake and youth arrival at a facility after initial intake include adding that the designated mental health professional *reviews* (rather than signs) the suicide risk assessments conducted by other mental health professionals upon a youth's admission to TJJD; adding that, when a youth transfers from one high-restriction facility to another, a suicide risk screening is conducted by trained staff within one hour after arrival, which is separate from the suicide screening completed by nursing staff as part of the intrasystem health screening; adding that a suicide risk screening is conducted upon a youth's return after spending any amount of time out of TJJD's physical custody due to a significant life event, regardless of whether the absence was at least 48 hours; clarifying that the requirement for conducting a screening or assessment within one hour after an intrasystem transfer or return from an absence does not apply to youth who are already on suicide alert at the time of arrival; and adding that, following a suicide risk screening performed due to intrasystem transfer or return from an absence, the level of observation is determined by a mental health professional (rather than specifying that all youth identified as at risk for suicide are placed on at least constant observation), and the suicide risk assessment is conducted *within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result* (rather than specifying within four hours for youth who are actively suicidal or engaged in a suicide attempt, 24 hours for youth who engaged in some other type of suicidal behavior or ideation, or seven days for youth not identified as being at risk).

The amendments to §380.9188 related to responding to youth actions include clarifying that staff must take the same immediate actions for a youth who has demonstrated self-harming behavior as for a youth who has demonstrated suicidal behavior; removing a reference to which form is used to document that a staff member has notified the shift supervisor of a youth's behavior or ideation; adding that any type of suicidal behavior or ideation or self-harming behavior must be referred for a suicide screening by staff who observe the behavior; removing a requirement to document suicidal behavior on an incident report; adding that the screening or assessment initiated within one hour after notification of a youth's suicidal or self-harming behavior or sui-

cidal ideation is not required when deemed inappropriate due to a medical emergency; adding that, when a screening is conducted after a youth's suicidal or self-harming behavior or suicidal ideation, the suicide risk assessment is conducted *within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result* (rather than specifying within four hours for youth who are actively suicidal or engaged in a suicide attempt or 24 hours for youth who engaged in some other type of suicidal behavior); and adding that youth who return to the facility after being taken to the emergency room are placed on *one-to-one observation* (rather than either constant or one-to-one observation) until assessed by a mental health professional.

The amendments to §380.9188 related to the time after a suicide risk assessment include specifying that, the *designated mental health professional* (rather than the mental health professional who assessed a youth) ensures the updated suicide alert list is distributed to staff; and clarifying that the campus shift supervisor *ensures a staff member is assigned* (rather than assigns a staff member) to monitor a youth placed on suicide alert.

The amendments to §380.9188 related to supervising youth on suicide alert include adding that, in addition to maintaining visual observation and documenting status, the staff member assigned to monitor a youth must follow any precautions set by the mental health professional; clarifying that, for youth on the constant observation level, the requirement to not let the youth out of the monitoring staff member's sight applies only during waking hours (such youth are on maximum five-minute checks during sleeping hours); adding breasts and buttocks to the list of body parts that staff are prohibited from observing when a youth is in the bathroom or shower and is also on one-to-one or constant observation; and adding that a decision to use force to remove clothing after issuing suicide-resistant clothing requires a recommendation from a mental health professional and approval from the directors over treatment and facility operations or the directors' designees.

The amendments to §380.9188 related to treatment and assessment include clarifying that the mental health professional consults with the youth's case manager, *as needed,* to recommend modifications to the youth's individual case plan; clarifying that mental health professionals review suicide risk assessments from other mental health professionals when assessing a youth currently placed on suicide alert; clarifying that the mental health professional's assessment does not need to be documented as a progress note; adding that, when changes are made to a youth's observation level or other safety precautions, *updated information regarding the youth* (rather than an updated suicide alert list) is distributed to *designated* facility staff; and specifying that, when information about youth on suicide alert is discussed during meetings between the psychology department and the psychiatric provider, *only youth who are on the psychiatric caseload are discussed.*

The amendments to §380.9188 related to other placement options include removing information regarding criteria and referral for placement in the protective custody program, which is addressed in a separate rule; and clarifying that emergency psychiatric placement may be pursued when it is determined a youth cannot be safely or appropriately managed *within TJJD custody* (rather than in protective custody).

The amendments to §380.9188 related to transferring youth on suicide alert to the next placement include adding that, when a youth on suicide alert is moved to a less restrictive placement, the mental health professional communicates observation level and precautions to facility staff, if applicable. In addition, amendments specifically related to situations in which a youth on suicide alert will be transferred to another high-restriction facility will include adding that *self-harming behavior* (not just suicidal behavior) is also included in the summary that is sent to the receiving facility; removing requirements for a mental health professional at the sending facility to call the designated mental health professional at the receiving facility and to notify the health services administrator at the receiving facility; clarifying that a mental health professional at the receiving facility *initiates a suicide risk assessment* (rather than *meets with the youth*) within four hours of arrival; and adding that a mental health professional at the receiving facility consults with the designated mental health professional *or a designee* regarding the plan for treatment and assessment.

The amendments to §380.9188 related to reducing the observation level/removing youth from suicide alert, training, and other issues include specifying that, when a youth's observation level is lowered or a youth is removed from suicide alert, the psychiatric provider is notified *only for youth who are on the psychiatric caseload;* specifying that staff who have *regular, direct* contact (rather than just *direct* contact) with youth receive initial and annual suicide prevention training; adding self-harming behavior to several components of the new-hire suicide prevention training; adding that using force to remove clothing shall be avoided whenever possible and used only as a last resort when a youth is physically engaging in suicidal and/or self-harming behavior; and removing a reference to notifying parents/guardians after a completed suicide, which is addressed in a separate TJJD rule.

The new amendments to §380.9188 include adding that, if force is used to remove a youth's regular clothing, a mental health professional must evaluate the youth's need for trauma symptom care and ensure the care is provided if appropriate; clarifying that staff designated to conduct suicide screenings receive *annual* training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening; and adding that all training described shall be accompanied by a test or demonstration to establish competency in the subject matter.

The amendments to §380.9189, concerning Suicide Alert for Medium Restriction Facilities, include changes in a number of areas.

General changes to §380.9189 include removing several references to which TJJD staff members are responsible for certain actions, such as family notifications and internal facility notifications; and removing the requirement for suicide risk assessments to be face-to-face. General changes also include adding the following provisions for medium-restriction facilities that do not have a TJJD-employed mental health professional on staff and during times when a TJJD-employed mental health professional is not on call or on duty: 1) TJJD uses community resources such as local mental health authorities and psychiatric hospitals for clinical services; 2) TJJD will attempt to obtain guidance from the mental health professional regarding frequency of follow-up assessments and any enhanced precautions or supervision requirements, consistent with TJJD's observation levels when possible; 3) TJJD staff follow the guidance of the community mental health professional regarding precautions and supervision even when such differ from requirements of this rule; and 4) TJJD staff are authorized to seek additional direction from mental health professionals within TJJD or in the community at

any time if there are concerns about the appropriateness of precautions or supervision level.

The amendments to §380.9189 related to intake screening include adding that youth are placed on *one-to-one observation* (rather than an observation level assigned by the facility administrator or designee) until assessed by a mental health professional if the intake screening identifies the youth as at risk for suicide; and clarifying that the 72-hour time frame for conducting a suicide risk assessment after a youth is identified as at risk during an intake screening applies only when a TJJD-employed mental health professional is contacted to do the assessment.

The amendments to §380.9189 related to responding to youth actions include clarifying that staff must take the same immediate actions for a youth who has demonstrated self-harming behavior as for a youth who has demonstrated suicidal behavior; adding that staff must begin providing *one-to-one* observation (rather than constant observation unless the facility administrator/designee directs a higher level) when responding to suicidal or self-harming behavior or suicidal ideation; adding that the staff member who observes the youth's behavior or ideation is responsible for beginning the observation log (rather than the facility administrator or designee being responsible); removing a reference to which form is used to document that a staff member has notified the facility administrator or designee of a youth's behavior or ideation; clarifying that the staff who observes the behavior or ideation refers the youth for a suicide screening. Removed a requirement to document suicidal behavior on an incident report; adding that a suicide risk screening is not required if a mental health professional initiates a suicide risk assessment within one hour after being notified of a youth's behavior or ideation; adding that it is the responsibility of the facility administrator or designee to ensure the youth is assessed by a mental health professional; adding that the screening or assessment within one hour after a youth's behavior or ideation is not required when deemed inappropriate due to a medical emergency; removing the provision that directed the facility administrator or designee to assign the observation level following a screening; adding that, *in cases where a TJJD-employed mental health professional has been contacted,* the *mental health professional* assigns the observation level following a screening; adding that *one-to-one* observation (rather than *at least constant* observation) is required for a youth who is allowed to leave the facility while waiting for a suicide risk assessment; adding that youth who had been to the emergency room must be on one-to-one observation upon return to the facility until assessed by a mental health professional; removing time frames for when a mental health professional must complete a suicide risk assessment; adding that, in facilities with a TJJD-employed mental health professional who is on call or on duty, the assessment must be conducted within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result; removing the provision that required, in cases where the time frame to conduct a suicide risk assessment has been exceeded, at least constant observation for the youth until assessed; and removing a reference to the ability of the facility administrator or designee to secure emergency psychiatric care to obtain an evaluation of the youth.

The amendments to §380.9189 related to the time after a suicide risk assessment include clarifying that the documentation requirements following a suicide risk assessment apply to TJJD-employed mental health professionals; adding that the facility administrator or designee ensures appropriate facility staff are notified of the results of an assessment; removing a requirement for the mental health professional to communicate the results to the facility administrator or designee; and adding that the youth's case manager is also notified if the youth was assessed but not placed on suicide alert.

The amendments to §380.9189 related to supervising youth on suicide alert include adding that, in addition to maintaining visual observation and documenting status, the staff member assigned to monitor a youth must follow any precautions set by the mental health professional; clarifying that, for youth on the constant observation level, the requirement to not let the youth out of the monitoring staff member's sight applies only during waking hours (such youth are on maximum five-minute checks during sleeping hours); adding breasts and buttocks to the list of body parts that staff are prohibited from observing when a youth is in the bathroom or shower and is also on one-to-one or constant observation; removing the provision stating who may approve a youth on suicide alert to have access to off-site activities and added that such decisions must be approved on a case-by-case basis; and adding that youth must be supervised on *one-to-one* observation (rather than at least constant observation) during any such off-site activities.

The amendments to §380.9189 related to treatment and reassessment include specifying that the responsibilities concerning a treatment plan, modifications to the case plan, schedule for reassessment, and required components of each assessment apply only to TJJD-employed mental health professionals; and specifying that the requirement to notify a youth's psychiatric provider of the youth's placement on suicide alert and other related information applies only when the youth is receiving *routine* psychiatric services.

The amendments to §380.9189 related to other placement options include adding that emergency psychiatric placement may be obtained at a TJJD crisis stabilization unit or in a private psychiatric hospital; removed the provision stating that obtaining such placement must be in accordance with §380.8771; adding the facility administrator *or designee* (rather than just the administrator) may seek temporary admission to the protective custody program in a high-restriction TJJD facility in certain circumstances; and removing the requirement for the facility administrator to initiate alternate placement in a more secure facility if the emergency psychiatric placement exceeds five days.

The amendments to §380.9189 related to reducing observation levels and removing youth from suicide alert include adding that the suicide observation level may be lowered by no more than one level every 24 hours; adding that only youth on the lowest observation level may be removed from suicide alert; removing the requirement for the facility staff to notify the psychiatric provider when a youth's observation level is lowered or when a youth is removed from suicide alert; and adding that TJJD-employed mental health professionals must identify in the treatment plan any needed follow-up mental health services when a youth is removed from suicide alert.

The amendments to §380.9189 related to release or discharge of youth while on suicide alert include removing a listing of which specific steps are taken by the mental health professional when a youth on suicide alert will be released or discharged; and adding that the facility administrator or designee is responsible for ensuring a mental health professional has arranged for appropriate continuity of care in these situations, when possible.

The amendments to §380.9189 related to training and other changes include specifying that *staff who have regular, direct*

contact with youth (rather than direct care staff) receive initial and annual suicide prevention training; adding self-harming behavior to several components of the new-hire suicide prevention training; moving the reference to annual training to a separate item from the new-hire training, which clarifies that the listing of topics for new-hire training does not apply to the annual training; removing wording that allowed only mental health professionals to make decisions about exceptions to regular programming, community access, housing, or clothing for youth determined to be at risk for suicide; specifying that *at least one* rescue kit (rather than multiple rescue kits) must be present in the facility; and removing a reference to notifying parents/guardians after a completed suicide, which is addressed in a separate TJJD rule.

The new amendments to §380.9189 include clarifying that staff designated to conduct suicide screenings receive *annual* training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening; and adding that all training described shall be accompanied by a test or demonstration to establish competency in the subject matter.

PUBLIC COMMENTS

TJJD received public comments from two organizations, Disability Rights Texas and the Texas Council for Developmental Disabilities.

Comment 1, relating to §380.9187, Suicide Alert Definitions: Regarding the definition of *Trained Designated Staff Member*, language should be added to the rule to specify which entity provides the training and mandate the frequency of the training.

TJJD Response: The proposed rule text at §380.9188(n)(3) and §380.9189(m)(3) says, "Staff designated to conduct suicide screenings receive training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening." TJJD believes this language is sufficient. TJJD agrees that the rule should include a requirement regarding the frequency of the training. However, TJJD believes this requirement would better fit within §380.9188 and §380.9189. Language requiring annual training has been added to the adopted rule text.

Comment 2, relating to §380.9188, Suicide Alert for High-Restriction Facilities: The rule should include information about counseling or trauma care being provided to the youth when, as a last resort, force is used to remove clothing.

TJJD Response: Although the rule is not a comprehensive listing of all the assessments performed, each facility has the ability to deliver trauma reduction therapy and trauma assessments. While it is rare that force is used to remove clothing for youth who are physically engaging in suicidal and/or self-harming behavior and such actions will be allowed only upon the recommendation of a mental health professional and approval of the directors over treatment and facility operations or their designees, TJJD agrees that the rule should address the provision of trauma symptom care in such instances. Language regarding provision of trauma symptom care has been added to the adopted rule text.

Comment 3, relating to §380.9188, Suicide Alert for High-Restriction Facilities: Regarding subsection (e)(1)(B), the rule should include language to address the screening and documentation of individuals with intellectual or developmental disability, which professional is responsible for the screening, and that the risk of suicide or self-harm and referrals for follow-up treatment or further assessment be documented.

TJJD Response: The screening described in the rule is specific to the youth's arrival at the Orientation and Assessment Unit, which is administered by a mental health professional, as defined in §380.9187. While TJJD has rules on assessing all youth for specialized treatment needs, including intellectual disability, while at the Orientation and Assessment Unit (see §380.8751), the initial screening described by §380.9188 must be administered within the first hour after the youth's arrival for the purpose of identifying any youth at immediate risk for suicide and self-harm. TJJD believes this rule appropriately addresses the need to screen all youth, including those with intellectual or developmental disability, for immediate risk of suicide or self-harm.

Comment 4, relating to §380.9188, Suicide Alert for High-Restriction Facilities: The rule should mandate that all training relating to suicide prevention and response be competency-based.

TJJD Response: TJJD acknowledges the importance of suicide prevention and response training and evaluating whether participants have learned the material. Language requiring competency-based training has been added to the adopted rule text.

Comment 5, relating to §380.9188, Suicide Alert for High-Restriction Facilities: The rule should mandate that a debriefing also be conducted with the family or the legally authorized representative.

TJJD Response: Debriefing is for the purpose of identifying insufficiencies for internal institutional operation and safety. The purpose of this provision is specific to agency staff, what might have led to the given situation, and how to prevent such situations in the future. It is not intended to be a way of communicating with the family or legally authorized representative.

STATUTORY AUTHORITY

The amended sections are adopted under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this adoption.

§380.9187. Suicide Alert Definitions.

(a) Purpose. This rule establishes definitions of terms used in the Texas Juvenile Justice Department's (TJJD's) suicide prevention policies as set forth in §§380.9188, 380.9189, 380.9190, and 380.9745 of this chapter.

(b) Definitions.

(1) Completed Suicide--a death resulting from deliberate actions to harm oneself.

(2) Critical Incident Review--a review conducted by a multi-disciplinary team designed to critically review the circumstances surrounding a death or serious incident and to recommend corrective action where necessary. The critical incident review may consider information such as incident reports, training/personnel records, policies/procedures, other relevant documents, facility practices, any non-confidential information resulting from a morbidity and mortality review, and any other information the review team determines is necessary for a comprehensive review.

(3) Critical Incident Support Team--a team used to provide support to youth, employees, and families involved in or adversely affected by the death of a TJJD youth or staff member.

(4) Designated Mental Health Professional--a doctoral-level psychologist who has primary responsibility and accountability for the evaluation, monitoring, and treatment of youth referred

for suicide risk in high-restriction facilities. In the absence of a doctoral-level psychologist, a licensed mental health professional may be appointed to serve as the designated mental health professional with the approval of the Central Office director over treatment services.

(5) Life-Threatening Suicide Attempt--a suicide attempt that a health care professional determines would have likely resulted in death except for circumstances beyond the youth's control.

(6) Mental Health Professional--a doctoral-level psychologist, masters-level mental health specialist, licensed professional counselor, licensed psychological associate, or licensed clinical social worker.

(7) Morbidity and Mortality Review--an assessment of the overall clinical care provided and the circumstances leading up to a death or certain serious medical incidents. Its purpose is to identify program strengths and opportunities for improvement in clinical care.

(8) Protective Custody--a temporary program in high-restriction facilities designed for the placement of youth who cannot be safely managed in the current dorm or living unit due to risk of suicidal and/or self-harming behavior, as determined by a mental health professional.

(9) Psychiatric Provider--a:

(A) Texas-licensed psychiatrist; or

(B) Texas-licensed physician assistant or psychiatric nurse practitioner acting under the authorization of a psychiatrist.

(10) Rescue Kit--emergency medical items such as a CPR pocket mask, disposable gloves, and a tool capable of cutting ligatures.

(11) Self-Harming Behavior--behavior that causes harm, such as self-laceration, self-battering, taking overdoses, or exhibiting deliberate recklessness. Self-harming behavior is not considered a type of suicidal behavior, unless designated as such by a mental health professional.

(12) Staggered Intervals--periods of time that are irregular and unpredictable.

(13) Suicidal Behavior--includes suicide attempts or taking deliberate action toward carrying out a specific plan or strategy to injure oneself or to cause one's own death.

(14) Suicidal Ideation--thoughts of engaging in suicide-related behavior. This means a youth expresses thoughts or fantasies about committing suicide or expresses a desire to commit suicide.

(15) Suicide Alert--a status that begins following a suicide risk assessment by a mental health professional, indicating that a youth is at risk to attempt suicide or self-harming behavior and requires increased supervision and/or precautions designed to limit the risk.

(16) Suicide Attempt--an act apparently intended to end one's life. A suicide attempt is a type of suicidal behavior.

(17) Suicide Observation Folder--a folder containing completed and/or active suicide observation logs/check sheets and any other pertinent information as determined by a mental health professional.

(18) Suicide Observation Level--levels of observation determined by a mental health professional to provide enhanced supervision for youth who are awaiting a suicide risk assessment or who have been placed on suicide alert. General criteria for determining the appropriate level of observation are provided in subparagraphs (A) - (C) of this paragraph, however the mental health professional may assign any level of observation deemed appropriate under the circumstances based on the professional's clinical judgment.

(A) One-to-One Observation--generally considered appropriate for a youth who is actively suicidal, either by threatening or engaging in suicidal and/or self-harming behavior, and who may require emergency psychiatric placement. One-to-one observation includes the following:

(i) Assigned staff may not have any other concurrent duties.

(ii) Assigned staff remains within six feet of the youth and maintains continuous, direct visual observation of the youth at all times, including while the youth is in the youth's room or while the youth is sleeping.

(iii) Assigned staff documents the youth's status at least once every five minutes.

(iv) Assigned staff must be formally relieved by another staff or by the discontinuation of the one-to-one status.

(v) Doors to individual rooms remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior.

(B) Constant Observation--generally considered the appropriate level of observation for a youth who is actively suicidal, either by threatening or engaging in suicidal and/or self-harming behavior, but does not appear to require emergency psychiatric placement. Constant observation includes the following:

(i) During waking hours, the youth is within 12 feet and within sight of assigned staff at all times. Staff may have concurrent duties if the duties do not interfere with observation of the youth. The assigned staff documents the youth's status at staggered intervals not to exceed every five minutes.

(ii) During sleeping hours, assigned staff observes and documents the youth's status at staggered intervals not to exceed every five minutes.

(iii) For youth in a security unit or crisis stabilization unit, doors to individual rooms remain locked.

(C) Close Observation--generally considered the appropriate level of observation for a youth who is not actively suicidal and would be considered a lower risk for suicide but expresses suicidal ideation and/or has a recent history of suicidal and/or self-harming behavior. In addition, close observation would be appropriate for a youth who denies suicidal ideation or does not threaten suicide but demonstrates other concerning behavior (through actions, current circumstances, or recent history) indicating the potential for self-harm. With close observation, the assigned staff is generally involved in concurrent duties that do not interfere with required observation of the youth. The frequency of checks for youth on close observation is as follows:

(i) for youth in a security unit or crisis stabilization unit, assigned staff observes and documents the youth's status at staggered intervals not to exceed every five minutes; and

(ii) for all other youth, assigned staff observes and documents the youth's status at staggered intervals not to exceed 10 minutes.

(19) Suicide-Resistant Clothing--tear-resistant, single-piece attire designed to promote a youth's safety while still providing warmth and coverage.

(20) Suicide-Resistant Room--a room that provides a safe environment and has no obvious materials or possessions that can be used in suicidal and/or self-harming behavior or any item that can be used for hanging. The room is free of all obvious protrusions and any items that provide an easy anchoring device for hanging. Lighting is tamper-proof, and there are no switches or electrical outlets in the room. The door of the room has a heavy-gauge, clear panel that provides staff an unobstructed view of the room.

(21) Suicide Risk Assessment--a standardized assessment by a mental health professional that:

(A) is conducted in-person or via remote computer service that allows both parties to see and hear one another; and

(B) contains specific lines of inquiry regarding suicide risk, a mental status examination, and clinical observations and recommendations.

(22) Suicide Risk Screening--a standardized interview to determine the appropriate suicide observation level until a suicide risk assessment is conducted. The screening is conducted in-person or via remote computer service that allows both parties to see and hear one another.

(23) Trained Designated Staff Member--a staff member trained to conduct a suicide risk screening.

§380.9188. Suicide Alert for High-Restriction Facilities.

(a) Purpose. This rule establishes procedures for identification, assessment, treatment, and protection of youth in high-restriction facilities who may be at risk for suicide.

(b) Applicability. This rule applies to all youth currently placed in high-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. Definitions pertaining to this rule are under §380.9187 of this chapter.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible, as determined by a mental health professional. Only a mental health professional may make exceptions to the provision of regular programming, housing placement, or clothing.

(3) Using force to remove clothing shall be avoided whenever possible and used only as a last resort when the youth is physically engaging in suicidal and/or self-harming behavior.

(4) Designated staff carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits are also placed in designated buildings or areas of the campus that are not accessible to youth.

(5) As soon as possible, but not to exceed two hours, after a suicide attempt, the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) Intake Screening and Assessment.

(1) Upon Initial Admission to TJJD.

(A) Upon arrival to a TJJD orientation and assessment unit, designated intake staff keep youth within direct line-of-sight supervision until the youth is screened or assessed for suicide risk.

(B) Within one hour after the youth's arrival to a TJJD orientation and assessment unit, a mental health professional initiates an initial mental health screening and documents the results.

(C) If the mental health professional identifies the youth as potentially at risk for suicide, the mental health professional immediately conducts a suicide risk assessment.

(D) Within 14 days after arrival at the orientation and assessment unit, all youth receive a comprehensive mental health evaluation conducted by a mental health professional. The mental health evaluation will include a suicide risk assessment if one has not already been completed.

(E) The suicide risk assessment completed upon initial admission includes, at a minimum:

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by mental health professionals relating to prior suicide alerts during confinement;

(iii) a review of all other available screenings and assessments; and

(iv) referrals for follow-up treatment or further assessment, as indicated.

(F) The designated mental health professional reviews the suicide risk assessment.

(2) Upon Arrival at a TJJD Facility after Intake.

(A) Except for youth who are on suicide alert at the time of arrival, the following actions must occur within one hour after a youth's arrival at a high-restriction facility following an intrasystem transfer, any period of time spent out of TJJD's physical custody due to a significant life event, or a period of at least 48 hours spent out of TJJD's physical custody for any reason:

(i) a trained designated staff member initiates a suicide risk screening; or

(ii) a mental health professional initiates a suicide risk assessment.

(B) The youth is kept within direct line-of-sight supervision until the youth is screened or assessed.

(C) If a screening is conducted:

(i) the trained designated staff member immediately contacts a mental health professional to assign an observation level, if appropriate, based on results of the screening; and

(ii) the youth is immediately placed on the observation level directed by the mental health professional; and

(iii) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(D) The suicide risk assessment conducted upon a youth's arrival at a TJJD facility includes, at a minimum:

(i) a mental status exam;

(ii) a review of the youth's masterfile and medical record, as indicated;

(iii) referrals for follow-up treatment or further assessment, as indicated;

(iv) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and

(v) a review by the designated mental health professional of the assessment.

(3) Additional Screening by Infirmary for Intrasystem Transfers.

(A) Upon arrival of a youth from another high-restriction TJJD facility, a nurse completes an intrasystem health screening, including questions relating to suicidal ideation and suicidal behavior.

(B) If the youth is identified by the screening as potentially at risk for suicide, the nurse immediately contacts a mental health professional and communicates the results of the screening.

(f) Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior.

(1) A staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated self-harming or suicidal behavior must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) provide constant observation unless a mental health professional directs a higher observation level;

(D) begin a suicide observation log to document status checks of the youth;

(E) immediately notify the campus shift supervisor and document the notification; and

(F) refer the youth for a suicide screening.

(2) As soon as possible, but no later than one hour after notification, the campus shift supervisor ensures a trained designated staff member initiates a suicide risk screening or a mental health professional initiates a suicide risk assessment. This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(3) If a screening is conducted:

(A) the trained designated staff member immediately contacts a mental health professional to assign an observation level based on results of the screening; and

(B) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(4) If the youth is transported to the emergency room:

(A) upon return to the facility, the youth is placed on one-to-one observation until assessed by a mental health professional; and

(B) a mental health professional initiates a suicide risk assessment within four hours after the youth's return to the facility.

(5) The suicide risk assessment conducted in response to suicidal behavior or ideation includes:

(A) a mental status exam;

(B) a review of the youth's masterfile and medical record, as indicated;

(C) referrals for follow-up treatment or further assessment, as indicated;

(D) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and

(E) a review by the designated mental health professional of the assessment.

(6) Whenever possible, suicide risk screenings and assessments are conducted in a confidential setting.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements.

(A) Upon completion of a suicide risk assessment, the mental health professional documents the results of the assessment, including any changes in the youth's observation level.

(B) If the youth is placed on suicide alert, the mental health professional ensures the youth's name is placed on the facility's suicide alert list. The designated mental health professional ensures the updated list is distributed to facility staff.

(2) Notification of Assessment Results.

(A) If the youth is placed on suicide alert:

(i) as soon as possible, infirmary staff, the youth's case manager, staff responsible for supervising the youth, and the campus shift supervisor are notified of the youth's observation level, other safety precautions, and any additional instructions; and

(ii) the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(B) If the youth is not placed on suicide alert, the mental health professional notifies the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the campus shift supervisor ensures a specific staff member is assigned to monitor the youth and carry the suicide observation folder.

(h) Supervision of Youth on Suicide Alert.

(1) Unless the youth is already placed in a suicide-resistant room, the campus shift supervisor or trained designated staff member coordinates a search of the youth's room or personal area and removes any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the suicide observation level and other safety precautions assigned to the youth, the monitoring staff member must:

(A) maintain direct visual observation of the youth;

(B) document the youth's status at the required interval; and

(C) follow any precautions set by the mental health professional.

(4) The monitoring staff member must not leave a youth assigned to one-to-one observation unattended or let the youth out of the staff member's sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6) Any time a youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B) maintain verbal contact.

(7) When a youth on one-to-one or constant observation is engaged in regular programming (e.g., education, group sessions, recreation), the monitoring staff will accompany the youth to the activity and remain within the required distance (i.e., 6 or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, a mental health professional must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure the youth can be appropriately monitored.

(8) Issuing suicide-resistant clothing and removing a youth's clothing, as well as canceling programming and routine privileges, will be avoided whenever possible and used only as a last resort for periods during which the youth is physically engaging in suicidal and/or self-harming behavior.

(A) Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may be made only by a mental health professional.

(B) A decision to conduct a strip search if criteria in §380.9709 of this chapter are met may be made only in consultation with a mental health professional.

(C) A decision to use force in order to remove a youth's regular clothing after a youth has been issued suicide-resistant clothing may occur only upon the recommendation of a mental health professional and with the approval of the directors over treatment and facility operations or the directors' designees.

(D) If force is used to remove a youth's regular clothing as provided by subparagraph (C) of this paragraph, a mental health professional must evaluate the youth's need for trauma symptom care and ensure the care is provided if appropriate.

(9) Unless approved by the designated mental health professional in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments are made by medical staff.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) A mental health professional develops a written treatment plan (or revises an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, suicidal and/or self-harming behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan describes:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-harming behavior is likely to reoccur;

(B) how reoccurrence of suicidal and other self-harming behavior can be avoided; and

(C) actions the youth and staff can take if the suicidal and other self-harming behavior does occur.

(2) The mental health professional consults with the youth's case manager, as needed, to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The mental health professional consults with staff responsible for supervising the youth regarding the youth's progress.

(3) While the youth is on suicide alert, a mental health professional assesses the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the mental health professional assesses the youth at least once every 24 hours.

(4) For each assessment, the mental health professional:

(A) reviews the contents of the suicide observation folder, as well as suicide risk assessments and progress notes from other mental health professionals as applicable;

(B) determines whether any changes should be made to the youth's observation level or other safety precautions, in consultation with the designated mental health professional;

(C) documents any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) documents the assessment, including a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, staff responsible for supervising the youth are notified and updated information regarding the youth is distributed to designated facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the designated mental health professional or designee discusses information concerning youth on suicide alert who are on the psychiatric caseload.

(j) Protective Custody or Emergency Psychiatric Placement.

(1) Youth who cannot be safely managed in their assigned living units may be referred for placement in a suicide-resistant room in the protective custody program, in accordance with §380.9745 of this chapter. All treatment, reassessment, and observation requirements established in this rule will continue to apply while a youth is assigned to protective custody unless otherwise noted in §380.9745 of this chapter.

(2) If the designated mental health professional or psychiatric provider determines that a youth is in serious and imminent risk of suicidal and/or self-harming behavior and cannot be safely or appropriately managed within TJJD custody, the designated mental health professional or psychiatric provider may seek emergency psychiatric placement in accordance with §380.8771 of this chapter. The youth will be placed on one-to-one observation until received at the emergency placement.

(k) Intrasystem Transfer of Youth on Suicide Alert.

(1) Prior to transferring a youth on suicide alert to another high-restriction TJJD facility:

(A) within 24 hours prior to transfer, a mental health professional at the sending facility sends a summary of the youth's sui-

cidal and/or self-harming behavior, assessments, and treatment to the designated mental health professional and facility administrator or their designees at the receiving facility and any stopover facilities en route to the receiving facility; and

(B) staff assigned to monitor the youth at the sending facility provide the suicide observation folder to the transporting staff.

(2) A mental health professional at the receiving facility:

(A) as soon as possible, but no later than four hours after the youth's arrival, reviews the transfer summary and initiates a suicide risk assessment;

(B) places the youth on the facility's suicide alert list;

(C) ensures the suicide observation log is provided to the staff assigned to monitor the youth; and

(D) consults with the designated mental health professional or designee regarding the plan for treatment and assessment.

(3) Before the youth is moved to the assigned dorm or living unit at the receiving facility, staff responsible for supervising the youth and nursing staff are notified of the youth's suicide observation level.

(l) Moving a Youth on Suicide Alert to a Less Restrictive Placement.

(1) Prior to moving a youth on suicide alert to a less restrictive placement (i.e., medium-restriction facility or home placement), the mental health professional:

(A) provides the youth (or parent/guardian if the youth is under age 18) with a referral for follow-up care;

(B) coordinates with appropriate clinical staff to schedule a follow-up appointment;

(C) communicates observation level and precautions to facility staff, if applicable;

(D) identifies emergency resources, if needed; and

(E) notifies the youth's parole officer, if applicable.

(2) Mental health records are sent to the receiving mental health provider upon request.

(m) Reduction of Observation Level and Removal from Suicide Alert.

(1) The observation level for a youth on suicide alert may be lowered or discontinued only after a suicide risk assessment by a mental health professional, in consultation with the designated mental health professional.

(2) A mental health professional may lower a youth's suicide observation level by no more than one level every 24 hours unless otherwise approved by the designated mental health professional on a case-by-case basis.

(3) Only a mental health professional or the designated mental health professional may authorize removal of a youth's name from the suicide alert list. Only youth on the lowest available observation level may be removed from suicide alert.

(4) The mental health professional notifies appropriate staff when a youth's observation level is lowered and when a youth is removed from suicide alert. Infirmary staff notify the psychiatric provider of all such changes for youth on the psychiatric caseload.

(5) The youth's parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(6) Upon removal from suicide alert, the mental health professional identifies in the treatment plan any needed follow-up mental health services.

(n) Training.

(1) All staff who have regular, direct contact with youth (including, but not limited to, security, direct care, nursing, mental health, and education staff) receive initial training in suicide prevention and response during new-hire training. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;

(B) high-risk periods for suicidal and/or self-harming behavior;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;

(D) responding to suicidal youth and youth experiencing mental health symptoms;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal ideation.

(2) All staff who have regular, direct contact with youth receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive annual training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening.

(4) All training described by this subsection shall be accompanied by a test or demonstration to establish competency in the subject matter.

(o) Post-Incident Debriefing and Analysis.

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this chapter must be completed.

§380.9189. Suicide Alert for Medium-Restriction Facilities.

(a) Purpose. This rule establishes procedures for identification, assessment, treatment, and protection of youth in medium-restriction facilities who may be at risk for suicide.

(b) Applicability.

(1) This rule applies to all youth currently placed in medium-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(2) Responsibilities assigned to mental health professionals in this rule apply only to mental health professionals employed by TJJD.

(3) For facilities that do not have a mental health professional employed by TJJD and during periods when a TJJD-employed mental health professional is not on call or on duty:

(A) TJJD uses community resources such as local mental health authorities and psychiatric hospitals for all required clinical services;

(B) TJJD staff will attempt to obtain guidance from the mental health professional regarding any enhanced precautions or supervision requirements (consistent with §380.9187 of this chapter when possible) and frequency of follow-up assessments. TJJD staff follow the guidance and instructions provided by the community mental health professional regarding precautions and supervision for youth even when such differ from this rule; and

(C) TJJD staff are authorized to seek additional instruction, guidance, or assessments from mental health professionals within TJJD or in the community at any time if there are concerns about the appropriateness of precautions or required supervision level.

(c) Definitions. Definitions pertaining to this rule are under §380.9187 of this chapter.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible.

(3) A rescue kit for use in medical emergencies is placed in at least one designated location within the facility that is not accessible to youth.

(4) As soon as possible, but not to exceed two hours, after a suicide attempt, the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) Intake Screening.

(1) Upon a youth's admission to a medium-restriction facility, a trained designated staff member conducts a health screening, which includes a review of the youth's file and questions relating to suicidal ideation and behavior. The results of the health screening are documented.

(2) If a youth is identified during the screening as potentially at risk for suicide:

(A) the staff member who conducted the screening immediately notifies the facility administrator or designee;

(B) the facility administrator or designee contacts a mental health professional to conduct a suicide risk assessment; and

(C) the youth is placed on the one-to-one suicide observation level until assessed by a mental health professional.

(3) If a TJJD-employed mental health professional is contacted to conduct the suicide risk assessment, the assessment must be completed as soon as possible, not to exceed 72 hours.

(f) Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior.

(1) A staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated suicidal or self-harming behavior must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) immediately notify the facility administrator or designee and document the notification;

(D) provide one-to-one observation;

(E) begin a suicide observation log to document status checks of the youth; and

(F) refer the youth for a suicide screening.

(2) As soon as possible but no later than one hour after notification, a trained designated staff member initiates a suicide risk screening or a mental health professional initiates an assessment. If a screening is conducted:

(A) the staff member who conducted the screening immediately communicates the results of the screening to the facility administrator or designee; and

(B) the facility administrator or designee ensures the youth is assessed by a mental health professional.

(3) This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(4) If a TJJD-employed mental health professional is contacted to conduct the suicide risk assessment, the mental health professional assigns an observation level based on the results of the suicide screening.

(5) Youth who are waiting for a suicide risk assessment are not allowed community access (e.g., community service, employment, academic attendance) unless TJJD staff supervise the youth on one-to-one observation.

(6) If the youth is transported to the emergency room, upon return to the medium-restriction facility, the youth is placed on one-to-one observation until assessed by a mental health professional.

(7) In facilities with a TJJD-employed mental health professional who is either on call or on duty, the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements. Upon completion of a suicide risk assessment conducted by a TJJD-employed mental health professional, the mental health professional documents the results of the assessment, including any changes in the youth's observation level.

(2) Notification of Assessment Results.

(A) Upon completion of a suicide risk assessment, the facility administrator or designee ensures appropriate facility staff are notified of the results.

(B) If the youth is placed on suicide alert:

(i) the facility administrator or designee immediately notifies facility staff of the youth's enhanced supervision requirements and any additional instructions; and

(ii) the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(C) If the youth is not placed on suicide alert, the facility administrator or designee notifies the referring staff and the youth's case manager that the youth was assessed and not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the facility administrator or designee assigns a specific staff member to monitor the youth and document status checks.

(h) Supervision of Youth on Suicide Alert.

(1) The facility administrator or designee coordinates a search of the youth's room and removes any potentially dangerous items.

(2) A suicide observation monitoring sheet must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation sheet.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the observation sheet and document the transfer of supervision.

(3) The monitoring staff member must:

(A) maintain direct visual observation of the youth if required;

(B) document the youth's status at the required interval; and

(C) follow any precautions set by the mental health professional.

(4) The monitoring staff member must not leave a youth assigned to one-to-one observation unattended or let the youth out of the staff member's sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6) Any time a youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B) maintain verbal contact.

(7) Youth on suicide alert are not allowed access to off-site activities or appointments unless it is approved on a case-by-case basis. In such cases, the youth must be supervised on one-to-one observation.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) Subparagraphs (A)-(D) of this paragraph apply to TJJD-employed mental health professionals.

(A) A mental health professional prepares a written treatment plan for each youth on suicide alert, updating or revising the plan as necessary. The treatment plan includes:

(i) identification of the crisis stabilization issues to be addressed in ongoing assessment sessions;

(ii) a plan of action to address these issues; and

(iii) the degree of community restriction necessary to provide for the youth's safety.

(B) The mental health professional consults with facility staff to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan.

(C) While the youth is on suicide alert, the mental health professional assesses the youth as needed, but at least once every two calendar days.

(D) For each assessment, the mental health professional:

(i) reviews relevant suicide alert documentation and information;

(ii) determines whether any changes should be made to the youth's observation level or other precautions; and

(iii) documents any changes in the observation level, community restrictions, or other safety precautions.

(2) Each time a change is made to the youth's observation level or other safety precautions, the facility administrator or designee ensures the changes are documented and facility staff are notified.

(3) If the youth is receiving routine psychiatric services, the facility administrator or designee ensures the psychiatric provider is notified of the youth's placement on suicide alert and of any relevant information concerning the youth's treatment and supervision while on suicide alert.

(j) Youth Who Cannot Be Safely Managed in Current Placement.

(1) If the facility administrator or mental health professional determines that a youth cannot be safely managed within the structure of the current placement due to behavior that indicates imminent risk of suicide or serious self-injury, the facility administrator or designee:

(A) ensures one-to-one observation for the youth until an emergency psychiatric placement is obtained;

(B) obtains emergency psychiatric placement at a TJJD crisis stabilization unit or in a private psychiatric hospital. For youth not on parole status, the facility administrator or designee may also seek temporary admission to protective custody in a high-restriction TJJD facility pending emergency psychiatric placement if no such placements are immediately available; and

(C) maintains communication with staff at the emergency placement to obtain current mental status information and to assess the length and suitability of the current placement.

(2) For youth maintained on constant and/or one-to-one observation longer than seven days in a medium-restriction facility, the facility administrator or designee must pursue an alternative placement with longer-term stabilization, clinical resources, and increased supervision.

(k) Reduction of Observation Level and Removal from Suicide Alert.

(1) The observation level for a youth on suicide alert may be lowered or discontinued only after an assessment by a mental health professional.

(A) A youth's suicide observation level may be lowered by no more than one level every 24 hours.

(B) Only youth on the lowest available observation level may be removed from suicide alert.

(2) The facility administrator or designee notifies facility staff when a youth's observation level is reduced and when a youth is removed from suicide alert.

(3) The youth's parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(4) For youth being treated by a TJJD-employed mental health professional, the mental health professional identifies in the treatment plan any needed follow-up mental health services when the youth is removed from suicide alert.

(l) Release or Discharge of Youth on Suicide Alert. Prior to releasing or discharging a youth on suicide alert to a community placement (i.e., another non-secure placement or home placement), the facility administrator or designee ensures a mental health professional has arranged for appropriate continuity of care when possible.

(m) Training.

(1) All staff who have regular, direct contact with youth receive initial training in suicide prevention and response during new-hire training. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;

(B) high-risk periods for suicidal and/or self-harming behavior;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;

(D) responding to suicidal youth and youth experiencing mental health symptoms;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal ideation.

(2) All staff who have regular, direct contact with youth receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive annual training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening.

(4) All training described by this subsection shall be accompanied by a test or demonstration to establish competency in the subject matter.

(n) Post-Incident Debriefing and Analysis.

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this chapter must be completed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2023.

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Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Effective date: August 1, 2023
Proposal publication date: October 28, 2022
For further information, please call: (512) 490-7278

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SUBCHAPTER F. SECURITY AND CONTROL

37 TAC §380.9745

The Texas Juvenile Justice Department (TJJD) adopts amendments to Texas Administrative Code Chapter 380, Subchapter F, §380.9745 without changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7253). The amended section will not be republished.

SUMMARY OF CHANGES

The amendments to §380.9745, concerning Protective Custody for Youth at Risk of Self-Harm, include removing the requirement for the suicide risk assessments required by this rule to be conducted face-to-face; clarifying that one of the admission criteria is based on protection from *suicidal and/or self-harming behavior* (rather than solely *self-harm*); clarifying that the maximum stay in the protective custody program without director-level approval is *120 hours* (rather than 5 calendar days); adding that the director over facility operations or designee may approve an extension in the protective custody program beyond 120 hours *only after consultation with and agreement of the director over treatment or designee;* adding that, if it is determined that a youth is being held in this program in violation of policy, the *facility administrator and the designated mental health professional* (rather than the facility administrator or duty officer) must be immediately notified; specifying that, if the security dorm supervisor or designee de-

termines that a youth is being held in the protective custody program in violation of policy, the youth must be *released from the program* (rather than returned to the general population) unless the *facility administrator finds that there was no violation* (rather than *unless the facility administrator or duty officer instructs otherwise*); adding that youth may challenge being placed in the program by filing a *grievance* (rather than an appeal) in accordance with the rule on grievances; and removing the requirement for the director of treatment or designee to consult with the designated mental health professional when reviewing the youth's appeal.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 461. INCIDENT COMMANDER

37 TAC §461.7

The Texas Commission on Fire Protection (Commission) adopts §461.7 concerning International Fire Service Accreditation Congress (IFSAC) Seal for Incident Commander. The purpose of the new §461.7 is to outline requirements for obtaining an IFSAC seal for Incident Commander. §461.7 is adopted without changes to the text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1271). The rule will not be republished.

No comments were received from the public regarding the adoption of the new section.

The rule is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2023.

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Mike Wisko
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Texas Commission on Fire Protection
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