



5415e, Vernon's Texas Civil Statutes), before it was repealed shall be treated as an owner of the land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes provided in Subsection (a) of this section without obtaining a permit from the Commissioners' Court and to this end the exemptions enumerated within Subsection (a) shall apply in such circumstances.

4. Permit Required. No person shall excavate, take, remove, or carry away sand, marl, gravel, or shell from land located on Bolivar Peninsula without first having submitted written application to and obtained a permit from the Commissioners' Court.
5. Definitions. As used herein:
  - a. Applicant means any person applying for a permit for the excavating, taking, removing, or carrying away of sand, marl, gravel, or shell from land on Bolivar Peninsula and subject to the requirements of this Order.
  - b. Bolivar Peninsula means that area of Bolivar Peninsula located within the unincorporated areas of Galveston County, Texas.
  - c. Commissioners' Court means the Commissioners' Court of Galveston County, Texas.
  - d. County means Galveston County, Texas.
  - e. Permit means the document issued by the Commissioners' Court authorizing the excavating, taking, removing, or carrying away of sand, marl, gravel, or shell in accordance with its provisions.
  - f. Permittee means any person authorized to act under a permit issued pursuant to this Order.
6. Prerequisite to Issuance of Permit. In accordance with Tex. Nat. Res. Code § 61.215, no permit may be issued by the Commissioners' Court under this Order unless the applicant is the owner of the land on which the proposed excavating, taking, removing, or carrying away is to take place or unless the applicant is acting with the knowledge and consent of the owner.
7. Advice and Counsel of the County Engineer.
  - a. The decision to issue a permit under this Order shall be made by the Commissioners' Court with the advice and counsel of the County Engineer.
  - b. Accordingly, whenever an application has been filed with the Commissioners' Court, the County Engineer shall investigate the matter

and make his recommendation to the Commissioners' Court. The County Engineer shall make his recommendation in accordance with this Order and shall use the additional factors specified within this Subsection as guidelines in determining his recommendation:

- 1.) no operation is to be allowed within fifty (50) feet from any property line or dedicated public road right-of-way line;
  - 2.) the sides of all pits are to be maintained at no greater than 3 on 1 slope;
  - 3.) new sand pits proposed to be located within 1,000 feet of existing sand pits, active or abandoned, shall be subject to study and recommendation of the County Engineer;
  - 4.) no excavation shall be allowed within 1,000 feet of the vegetation line.
8. Application for Permit. In accordance with Tex. Nat. Res. Code § 61.214, the application shall include:
- a. the name of the applicant;
  - b. the location and dimensions of the proposed excavation;
  - c. the property interest or contractual right that enables the applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and
  - d. certification by the County Treasurer that the applicant has deposited a filing fee of \$50.00.
9. Notice of Applications Received.
- a. The Commissioners' Court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand, marl, gravel, or shell.
  - b. The notice shall be published once in a newspaper of general circulation in Galveston County, Texas.
  - c. The notice shall include the name of the applicant and the location and dimensions of the proposed activity.
10. Public Hearing.

- a. The Commissioners' Court shall hold a public hearing if the hearing is requested by any citizen within ten (10) days after notice of the application is published under Section 9 of this Order.
  - b. Notice of the public hearing shall be published once a week for at least two (2) weeks in a newspaper of general circulation in Galveston County.
  - c. The public hearing may not be held less than 30 days from the date of the first publication of notice of the public hearing under subsection (a) of this Section.
11. Issuance of Permit (required finding). On a finding that the proposed excavating, taking, removing, or carrying away would not create hazardous conditions or imperil lives or property by exposing Bolivar Peninsula to the ravages of storm water, the Commissioners Court may issue a permit to the applicant, and the permit shall be valid for six (6) months from the date of its issuance.
  12. Return of Filing Fee (upon refusal). If the Commissioners' Court refuses to issue the permit, the applicant may recover his or her filing fee from the County Treasurer.
  13. No assignment of permit. No permit may be assigned without the prior approval of the Commissioners' Court.
  14. Termination and Revocation of Permit. Failure or refusal of the permittee to comply with the terms and conditions of the permit operates as an immediate termination and revocation of all rights conferred by or claimed under the permit.
  15. Enforcement.
    - a. General Prohibition. No person shall violate any provision of Subchapter F of Chapter 61 of the Texas Natural Resources Code or this Order or any permit or conditions contained therein.
    - b. Suits for Orders and Injunctions. The attorney general, any county attorney, district attorney, criminal district attorney, or other attorney at the request of the Commissioners Court, shall file in a District Court of Galveston County, Texas, a suit seeking temporary or permanent court orders or injunctions to prohibit any excavating, taking, removing, or carrying away of any sand, marl, gravel, or shell from land located on Bolivar Peninsula in violation of the provisions of this Order.
    - c. Penalty. A person who for himself or herself or on behalf of or under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on Bolivar Peninsula in violation of the provisions of this Order shall be fined not less than \$10.00

nor more than \$200.00. Each day a violation occurs constitutes a separate offense.

16. Application of Order during Conditions of Non-Accessibility. In accordance with Tex. Nat. Res. Code § 61.226, in the event Bolivar Peninsula is not accessible by a public road or common carrier ferry facility (conditions of non-accessibility), the provisions of this Order shall not apply as long as the conditions of non-accessibility exist.
17. Pipeline Easements. In accordance with Tex. Nat. Res. Code § 61.119(c), none of the provisions of this Order prohibit the Commissioners' Court from issuing a permit to a person who holds a right-of-way easement granted by the Commissioner of the General Land Office for a pipeline to cross State land, provided the applicant complies with the provisions of this Order relating to the issuance of permits.
18. Authority of Texas Parks and Wildlife Department. In accordance with Tex. Nat. Res. Code § 61.227, none of the provisions of this Order may be construed to repeal or modify the provisions of Chapter 86 of the Texas Parks and Wildlife Code, which relate to the powers and duties of the Parks and Wildlife Department over matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value and gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation, nor may this Order be construed to create additional or supplemental requirements or procedures to those provided in Chapter 86 of the Texas Parks and Wildlife Code.
19. Severability/Validity.
  - a. Severability. If any provision in this Order is held invalid by a court of competent jurisdiction, the invalidity does not affect the other provisions of the Order that can be given effect without the invalid provision, and to this end the provisions of this Order are severable.
  - b. Validity and Enforceability. If any current or future legal limitations affect the validity or enforceability of a provision of this Order, then the legal limitations are made a part of this Order and shall operate to amend this Order to the minimum extent necessary to bring this Order into conformity with the requirements of the limitations, and as so modified, this Order shall continue in full force and effect.
20. Repeal of conflicting orders. All orders and resolutions of the Commissioners' Court or parts thereof in conflict with this Order are repealed herewith to the extent of such conflict only.

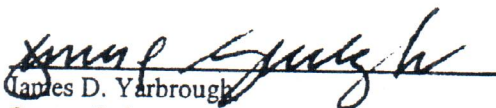
21. Headings. The headings at the beginning of the various provisions of this Order have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Order.

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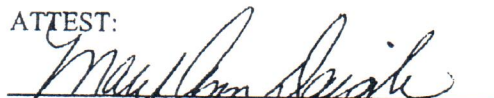
Upon Motion Duly Made and Seconded, the foregoing Galveston County Commissioners' Court Order Adopting Regulations for the Removal of Sand, Marl, Gravel, and Shell on Bolivar Peninsula is hereby **ADOPTED** on this, the 8<sup>th</sup> day of December 2008; and

It is **Further Ordered** herein that the County Judge is authorized to **EXECUTE** this Order, evidencing such Adoption, on behalf of the Commissioners' Court of Galveston County, Texas.

COUNTY OF GALVESTON, TEXAS, By:

  
James D. Yarbrough  
County Judge

ATTEST:

  
Mary Ann Daigle, County Clerk

