

No. 96-1468

Official Order
of the
Commissioner of Insurance
of the
State of Texas
Austin, Texas

Date: DEC 18 1996

Subject Considered:

DESIGNATION OF PARTS OF THE CITIES OF SHOREACRES AND PASADENA
AS CATASTROPHE AREAS ELIGIBLE FOR COVERAGE THROUGH THE TEXAS
CATASTROPHE PROPERTY INSURANCE ASSOCIATION

DOCKET NO. 2265

General remarks and official action taken:

On this day came on for consideration by the Commissioner of Insurance the matter of a petition requesting the designation of a part of the City of Shoreacres and a petition requesting the designation of a part of the City of Pasadena as catastrophe areas eligible for residential and commercial property insurance coverage through the Texas Catastrophe Property Insurance Association (TCPIA).

The Commissioner has jurisdiction of this matter pursuant to the TEX. INS. CODE ANN. art. 21.49. The Commissioner is authorized pursuant to Article 21.49, §3(h) to designate a city or a county as a catastrophe area to be served by the TCPIA upon determination, after notice of not less than 10 days and a hearing, that

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windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within that city or county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. The 74th Texas Legislature amended Article 21.49 §3(h) in House Bill 2593 (Acts 1995, 74th Leg., p. 4724, ch. 944, § 1, eff. Sept. 1, 1995) to provide that a part of a city or a part of a county could also be designated as a catastrophe area eligible for coverage by the TCPIA. Pursuant to Article 21.49, §5A, the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49 including, but not limited to, maximum rates, competitive rates, and policy forms.

The petition requesting the designation of the area located east of State Highway 146 and inside the city limits of the City of Shoreacres as a catastrophe area pursuant to Article 21.49 of the Insurance Code was filed by Mayor Wayne Gamble of the City of Shoreacres on July 1, 1996. On June 24, 1996, the City Council of the City of Shoreacres passed Resolution 96-07 requesting the Texas Department of Insurance (Department) to include the area located east of State Highway 146 and inside the city limits of the City of Shoreacres in the catastrophe area served by the TCPIA and specified the reasons for the request. The petition requesting the designation of the area located east of State Highway 146 and

inside the city limits of the City of Pasadena as a catastrophe area pursuant to Article 21.49 of the Insurance Code was filed by Mr. C. A. Welsh, Director of Planning for the City of Pasadena on August 26, 1996. On August 13, 1996, the City Council of the City of Pasadena passed Resolution No. 96-83 requesting the Department to include the area located east of State Highway 146 and inside the city limits of the City of Pasadena in the catastrophe area served by the TCPIA and specified the reasons for the request. A public hearing to consider the two petitions was held under Docket No. 2265 on November 19, 1996, at 10:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas. Notice of this hearing was published in the November 1, 1996 issue of the *Texas Register* (21 TexReg 10842).

The TCPIA was created by the Texas Legislature in 1971 to provide a method whereby adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of the State of Texas. Currently, the TCPIA provides windstorm and hail insurance to residents of 14 coastal counties and certain designated areas in Harris County who are unable to obtain such coverage in the voluntary market. The 14 counties are: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy Counties. The designated areas in Harris County are

those areas of the cities of Seabrook and La Porte which are located east of State Highway 146 and the City of Morgan's Point. The cities of Shoreacres and Pasadena are also in Harris County.

After careful consideration, the Commissioner has determined that those parts of the cities of Shoreacres and Pasadena located east of State Highway 146 should be designated as catastrophe areas pursuant to Article 21.49 §3(h) of the Insurance Code. This determination is based on the following:

(1) Resolutions of the City Councils of Shoreacres and Pasadena.

(i) Resolution No. 96-07 passed on June 24, 1996, by the City Council of the City of Shoreacres requests the Texas Department of Insurance to include the City of Shoreacres in the area serviced by the Texas Catastrophe Property Insurance Association. This request is based on:

-- Recently the neighboring cities of La Porte, Morgan's Point, and Seabrook were included in the area serviced by the TCPIA.

-- Over 95% of the property located within the city limits of the City of Shoreacres is east of State Highway 146.

-- Residents east of State Highway 146 have been unable to obtain windstorm coverage through their regular insurance agents and have had to obtain such coverage in the secondary market at a much higher rate.

-- The lack of availability of windstorm coverage has hampered development of the City of Shoreacres.

(ii) Resolution 96-83 passed on August 13, 1996, by the City Council of the City of Pasadena requests the Texas Department of Insurance to include areas located east of State Highway 146 and inside the corporate limits of the City of Pasadena as areas to be serviced by the Texas Catastrophe Property Insurance Association. Pursuant to the resolution, the Pasadena City Council "finds and determines that the public health, safety and welfare will be furthered by providing for the availability of windstorm insurance coverage for those eligible locations east of State Highway 146 within the corporate limits of the City of Pasadena." This determination is based on:

-- The cities of La Porte, Morgan's Point, Shoreacres [*sic*] and Seabrook have been included as eligible areas to be serviced by the TCPIA.

-- There are eligible areas for insurance coverage within a portion of the City of Pasadena which are located east of State Highway 146.

-- Residents of property located east of State Highway 146 are currently unable to obtain windstorm insurance coverage through regular issuing agents and must obtain such coverage through the secondary market at a much higher rate.

-- The lack of availability of such windstorm insurance coverage acts as a impediment to the further economic growth and development within that portion of the City of Pasadena.

(2) The testimony presented at the November 19, 1996 hearing. Testimony at the November 19, 1996 hearing on the two petitions was presented

by Department staff, the TCPIA, and Mr. Meredith Wilson, alderman of the City of Shoreacres.

(i) The Department staff presented the following testimony:

-- The areas located east of State Highway 146 and inside the city limits of the City of Shoreacres and the City of Pasadena have a severe exposure to the peril of windstorm because of their location directly on Galveston Bay.

-- Currently there are no insurers in the standard market known to the Department who write or are willing to write new business on residential property located east of State Highway 146 in Harris County. State Farm, Allstate, and Farmers insurance companies have all made public statements that they do not accept new residential property insurance business east of State Highway 146.

-- Based on the Department staff's interviews with local agents, the only markets available for the writing of residential property insurance east of State Highway 146 in Harris County are surplus lines markets, which is an indication that windstorm insurance is not reasonably available. Consumers who must purchase insurance through the surplus lines market must pay much higher costs and are placed at risk because of the lack of protection of the Property and Casualty Guaranty Fund or consumers must go bare with no insurance.

-- The inclusion of other areas located in Harris County as designated catastrophe areas during 1996 has increased the liability of the TCPIA by \$11 million; this is a reasonable indication that windstorm insurance is not available for property located east of State Highway 146 in Harris County.

(ii) The TCPIA did not speak in opposition to or in favor of the petitions and stated that because there is "not much aggregate exposure

financially" with regard to the two petitions, the TCPIA does not have any strong feelings about designating the City of Shoreacres and the City of Pasadena as catastrophe areas.

(iii) Mr. Meredith Wilson, alderman of the City of Shoreacres and a resident of Shoreacres for several years, spoke on behalf of the City Council of Shoreacres and recommended the designation of Shoreacres. He pointed out that Shoreacres is surrounded by the City of La Porte on three sides and Galveston Bay on the other, and stated that, based on his experience, everything that Department staff reported is true.

(3) Staff's recommendation. Staff recommended at the November 19 hearing that the area east of State Highway 146 and inside the city limits of the City of Shoreacres and the area east of State Highway 146 and inside the city limits of the City of Pasadena be designated as catastrophe areas eligible for coverage through the TCPIA. Staff stated that, based on the reasons specified by staff in the hearing, there is sufficient and reasonable evidence to conclude that there are a substantial number of owners of property in the proposed areas who cannot purchase windstorm insurance in the standard market.

(4) The statutory standard in the Insurance Code, Article 21.49 §3(h) is met. This standard is: ". . .that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within that city

or a part of that city or a county or a part of that county, due to such insurable property being located within a city or a part of that city or a county or a part of that county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms." Thus, there are three elements required to comply with this standard: (i) windstorm and hail insurance is not reasonably available; (ii) the lack of availability affects a substantial number of owners of insurable property; and (iii) the insurable property is located within an area that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. The Commissioner finds that these three elements are met on the following bases:

(i) Windstorm and hail insurance is not reasonably available. Not reasonably available" means (i) inability to purchase new or replace existing residential or commercial property insurance either from a licensed agent representing a licensed insurer or directly from a licensed insurer; and (ii) the only available residential or commercial property insurance is from a surplus lines or non-admitted insurer at premiums greatly in excess of rates promulgated for licensed insurers. The Commissioner finds that there is sufficient evidence to support the conclusion that in those areas of the cities of Shoreacres and Pasadena located east of State Highway 146 insurers are restricting their writings, and that the surplus lines market is a primary provider of property

insurance, and, therefore, the statutory standard of "not reasonably available" is met.

(ii) The lack of availability affects a substantial number of owners of insurable property. The Commissioner is relying on a subjective assessment of current market conditions as a means of estimating the number of property owners who are or may be affected adversely by the lack of availability of residential and commercial property insurance. The Commissioner is also relying on prior legislative determination as a guide. When Article 21.49 was enacted in 1971 to provide windstorm and hail insurance coverage in the 14 first tier coastal counties, the insurance availability problem at that time affected less than 10% of the insurable property in those counties. Thus, based on the resolutions passed by the city councils of the cities of Shoreacres and Pasadena, the testimony of staff at the November 19, 1996 hearing, and an assessment of general market conditions along the coast, the Commissioner is of the opinion that the "substantial number of owners of property" standard is met.

(iii) The insurable property is located within an area that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Like the City of Morgan's Point (Commissioner's Order 96-0380, April 5, 1996), and the cities of Seabrook and La Porte (Commissioner's Order 95-1200, November 14, 1995), which have been designated in whole or in part as

catastrophe areas pursuant to Article 21.49, both the cities of Shoreacres and Pasadena, are located on Galveston Bay. Being so located, both cities, especially those areas located east of State Highway 146, are exposed to the same potential wave and windstorm conditions as other Texas coastal communities which are in counties currently included in the TCPIA designated catastrophe area or in Harris County and recently included in the TCPIA designated catastrophe area. Thus, the Commissioner finds that insurable property in those areas of Shoreacres and Pasadena located east of State Highway 146 are subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that, for the reasons specified herein, those parts of the cities of Shoreacres and Pasadena located east of State Highway 146 are hereby designated as catastrophe areas pursuant to the Insurance Code, Article 21.49, §3(h), eligible for coverage through the Texas Catastrophe Property Insurance Association. IT IS FURTHER THE ORDER that this designation shall be effective March 1, 1997. IT IS FURTHER THE ORDER that the Commissioner shall specify by rule the building code and inspection requirements for structures located in the newly designated

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catastrophe areas to qualify for coverage through the Texas Catastrophe
Property Insurance Association.

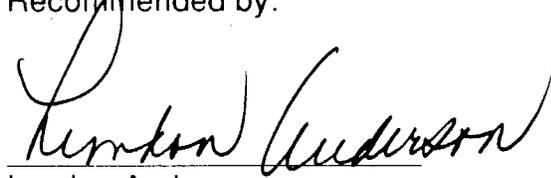
AND IT IS SO ORDERED.

TEXAS DEPARTMENT OF INSURANCE



ELTON BOMER
COMMISSIONER OF INSURANCE

Recommended by:



Lyndon Anderson
Associate Commissioner
Property and Casualty Division