

AGENDA ITEM MEMO

BOARD MEETING DATE: April 6, 2023

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Rebecca Trevino, Chief Financial Officer
Matt Nelson, Deputy Executive Administrator

FROM: Reem Zoun, P.E., CFM, Director, Flood Planning
James Bronikowski, P.E., CFM, Manager, Regional Flood Planning

SUBJECT: Proposed rule amendments relating to regional and state flood planning

ACTION REQUESTED

Consider authorizing publication of proposed Texas Administrative Code Chapters 361 and 362 relating to regional and state flood planning.

BACKGROUND

Senate Bill 8 (SB 8) of the 86th Legislature, Regular Session established the framework for the Texas Water Development Board (TWDB) to institute flood planning across the state. Texas Water Code (TWC) §16.061 requires the TWDB to prepare and adopt a comprehensive state flood plan not later than September 1, 2024, and every five years after. Further, TWC §16.062 requires the TWDB to designate flood planning regions, designate representatives from each flood planning region to serve as the initial regional flood planning group (RFPG), provide technical and financial support for the RFPGs, and adopt guidance principles for regional and state flood planning.

In 2020, the Board adopted new 31 Texas Administrative Code (TAC) Chapters 361 and 362 relating to regional and state flood planning to implement the flood planning requirements.

KEY ISSUES

As a first step in the rulemaking update process, the TWDB collected preliminary input from a wide variety of RFPG stakeholders to better inform the development of draft

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proposed revisions to the rules. The input received during this comment period was thoughtful and constructive and continues to serve as a helpful resource for staff.

The TWDB coordinated with other relevant state agencies in to review and update the state flood planning guidance principles in 31 TAC §362.3 as required by TWC §16.061(c), however, no changes were recommended by these agencies.

The Executive Administrator proposes updates to TAC Chapters 361 and 362 to implement the second cycle of regional and state flood planning. Chapter 361 contains rules regarding RFPGs and regional flood plans; Chapter 362 contains rules regarding the development of the state flood plan.

Chapter 361 Subchapter A of these rules provides the process to establish flood planning regions, the initial establishment of planning group memberships, and outlines the deliverables that are expected of each RFPG. Proposed amendments to this section include new definitions for terms commonly used and refinement of several other definitions to better facilitate the regional flood planning process and documents. In particular, the proposed amendments include definitions of critical facilities and emergency need. Modifications are proposed to the composition of the RFPGs and these proposed amendments will allow greater flexibility for the RFPGs in determining the members of their groups, while maintaining the statutorily required composition of the groups. In particular, the proposed amendments require the RFPGs to consider including a non-voting position to represent regional or local transportation authorities such as the Texas Department of Transportation.

The proposed amendments provide clarification and further direction on the governance of the RFPGs. In particular, the proposed amendments will provide additional clarity that only subcommittees formed to address geographic-specific issues must include one member from each of the interest categories. This is intended to allow the groups more flexibility in forming non-geographic specific subcommittees.

Chapter 361 Subchapter B includes guidance principles, notice requirements, and the types of information that the RFPGs must consider when developing their plans.

The proposed amendments include significant changes to notice requirements which have been updated to be more consistent and less burdensome for the RFPGs and the planning group sponsors. The proposed amendments also give each RFPG the flexibility to add notice requirements, including print notices, within their own region and removes the requirement for 14-day notice for some RFPG actions. As proposed, public notice for all planning group actions must be posted at least 7 days prior to the action. This includes all meetings and subcommittee meetings. The meeting at which the RFPGs take public input related to the draft regional flood plan will continue to require 30-day notice.

Chapter 361 Subchapter C requires basic background information about the region and major flooding risks and existing major flood infrastructure. The proposed amendments require that each region then evaluate what could be harmed by floods both now and in the

future if there are no new flood mitigation projects or changes to existing floodplain policies. The proposed amendments also require RFPGs to evaluate its current floodplain management policies and consider recommending changes. Subchapter C further requires the RFPGs to identify solutions to address the flood risks to life and property and to identify flood-prone areas that do not yet have sufficient information to identify potential flood solutions and, accordingly, will require more detailed evaluations. This subchapter then requires that the RFPGs evaluate the impacts of its proposed flood management solutions and make recommendations.

The proposed amendments include several changes to provide clarity and efficiency. The list of natural features and constructed major infrastructure within the regions is amended to remove some of the examples. Clarification was added as to what data is necessary for the regions to provide related to the existing and future condition risk of flood in each region, and the proposed amendments remove the requirement that data is summarized based on a hydrologic unit code (HUC) 8 watershed level and instead refers stakeholders to the guidance provided by the Executive Administrator. This change will provide greater flexibility for the RFPGs as well as for the TWDB to align the data requested with the information needed by the TWDB.

Another key change in these proposed amendments are an added requirement for the RFPGs to include a statement that the plan adequately provides for the preservation of life and property and the development of water supply sources. These amendments are intended to provide a clearer basis for evaluating the regional flood plans for approval.

The proposed amendments also include changes intended to provide more clarity and detailed expectations of the RFPGs and is intended to provide flexibility to the RFPGs when evaluating potential flood mitigation solutions. The proposed amendments also remove the requirement for an equitable comparison and consistent assessment of all potentially feasible flood mitigation projects and flood management strategies. Feedback from RFPGs and their technical consultants indicated that this requirement was overly burdensome for a planning level analysis, and that the data did not generally exist in a form that provided for such comparison of all potentially feasible flood mitigation projects and flood management strategies.

Chapter 361 Subchapter D addresses the processes of adoption, submittal and amendments to regional flood plans. Only minor corrections were made to this subchapter.

Chapter 361 Subchapter E addresses how negative effects on neighboring areas may be resolved by RFPGs and the TWDB. No changes were made to this subchapter in the proposed amendments.

Chapter 361 Subchapter F addresses the process of administering regional flood planning grants including how those funds may be used by the RFPGs. Revisions include simplifying the grant application requirements for planning group sponsors. Another key change allows, subject to limits within the planning grant contracts, for the cost of purchase or rental of audio-visual equipment that is necessary to comply with Texas Government Code

551 related to open meetings and the cost of rental space to hold RFPG meetings to be reimbursed through the regional flood planning grant.

The Chapter 361 rules refer repeatedly to guidance developed by the Executive Administrator that serves as a resource for RFPG stakeholders. Based on stakeholder input, the TWDB will update these guidelines as well as the associated regional flood planning grant contracts. The preamble also includes notes highlighting the updated rule sections that the Executive Administrator is most interested in receiving public input on, and that all comments received will be considered before presenting proposed rule amendments to the Board for final approval.

Chapter 362 provides guidance principles which regional and state flood plans must adhere to. Proposed amendments to this section include refinement of several definitions to better facilitate the state flood planning process and documents, and minor non-substantive changes to conform with the changes proposed in 31 TAC Chapter 361.

These rules were originally drafted without the benefit of previous regional and state flood planning experience in Texas and were therefore drafted with a certain amount of flexibility. The TWDB has carefully considered internal best practices learned and external feedback received to improve the rules entering the second regional flood planning cycle. The regional flood planning rules will be revisited toward the end of each planning cycle, as necessary, to continue to identify these best practices which may, in turn, become the established standards by which future regional flood plans are developed.

ANTICIPATED TIMELINE

April 2023 - Draft rules published (followed by 30-day public comment period)

September 2023 - Board considers adoption of final rules

RECOMMENDATION

The Executive Administrator recommends authorizing the publication of 31 TAC §§361.10 through 361.72 and 362.1 through 362.4 for public comment.

Attachments:

1. Proposed Rulemaking updates for publication in the Texas Register – 31 TAC Chapter 361
2. Proposed Rulemaking updates for publication in the Texas Register – 31 TAC Chapter 362
3. Proposed Repeals for 31 TAC Chapter 361

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §§ 361.10, 361.11, 361.12, 361.13, 361.20, 361.21, 361.22, 361.30, 361.31, 361.32, 361.33, 361.34, 361.35, 361.36, 361.37, 361.38, 361.39, 361.40, 361.41, 361.42, 361.43, 361.44, 361.45, 361.50, 361.51, 361.60, 361.61, 361.62, 361.70, 361.71, and 361.72.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The specific purpose of this rulemaking is to facilitate the regional flood planning process to incorporate changes and improvements to the process and increase the quality of the future flood plans based on lessons learned during the inaugural cycle of this recurring state-wide process. These proposed amendments are intended to make the regional flood planning process more efficient for the flood planning regions while also providing the level of data that will enable the TWDB to prepare a meaningful state flood plan to guide the state in the coming decades.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Several changes are proposed throughout the Chapter such as removing the requirement to summarize data by HUC 8 and changing the reference to annual chance flood events from 1.0% to 1% to clarify the implied level of precision. The order of Flood Mitigation Strategy (FMS), Flood Mitigation Evaluation (FME), and Flood Mitigation Project (FMP) is also revised in this proposal for consistency throughout. Conforming changes are proposed throughout.

Chapter 361 Regional Flood Planning.

Subchapter A. General Information.

Section 361.10 Definitions and Acronyms.

The proposed amendment includes new definitions for terms commonly used in the Chapter and refinement of several other definitions to provide greater clarity and facilitate the regional flood planning process and documents. The TWDB seeks feedback, in particular regarding the definitions of emergency need and critical facilities.

Section 361.11 Designations and Governance of Flood Planning Regions.

Modifications are proposed to the composition of the flood planning groups. The proposed amendments will allow greater flexibility for the flood planning groups in determining the members of their groups, while maintaining the statutorily required composition of the groups. In particular, the proposed amendment requires the RFPGS to consider including a non-voting position to represent regional or local transportation authority such as the Texas Department of Transportation.

Section 361.12 General Regional Flood Planning Group Responsibilities and Procedures.

The proposed amendments to this § 361.12 provide clarification and further direction on the governance of the regional flood planning groups. In particular, the proposed amendments will clarify that only subcommittees that are formed to address geographic-specific issues must include one member from each of the interest categories. This is intended to allow the groups more flexibility in forming non-geographic specific subcommittees.

Section 361.13 Regional Flood Planning Group Deliverables.

The proposed amendment includes minor clean-up and organization of this section. It also removes the requirement for a list of flood management strategies and flood management plans that were identified but found to be infeasible.

Subchapter B. Guidance Principles, Notice Requirements, and General Considerations.

Section 361.21 General Notice Requirements.

The proposed amendment removes the requirement for 14-day notice for some regional flood planning group actions. As proposed, all planning group actions must be noticed 7 days prior to the action. This includes all meetings and subcommittee meetings. However, the meeting at which the regional flood planning groups take public input related to the draft regional flood plan will continue to require 30-days' notice.

Additionally, when the regional flood planning groups adopt their final regional flood plan or any amendments thereto, or make any changes to the membership composition of the RFPG, in addition to the seven-day notice, the RFPG must accept written comments for seven days before the meeting and the meeting materials must be made available online for three days prior to the meeting and fourteen days after the meeting. The TWDB seeks comments on the proposed changes to the notice requirements.

Section 361.22 General Considerations for Development of Regional Flood Plans.

The proposed amendment deletes most of this section and moves the general requirement that the regional flood planning groups use the best available information when developing their flood plans to § 361.13.

Subchapter C Regional Flood Plan Requirements.

Section 361.30 Description of the Flood Planning Region.

The proposed amendment reduces the information requested describing the flood planning regions.

Section 361.31 Description of Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region.

The list of natural features and constructed major infrastructure within the regions is amended to remove some of the examples. Minor typographical errors are also corrected in this section of the proposed amendment.

Section 361.32 Description of the Major Flood Projects Currently Under Development.

The proposed amendment clarifies that when the expected year of completion related to flood projects that have dedicated funding is not available, it does not need to be included in the regional flood plan.

Section 361.33 Existing Condition Flood Risk Analyses in the Region.

In addition to minor typographical clean-ups, the changes proposed in this section add clarification as to what data is necessary for the regions to provide related to the risk of flood in each region. The proposed amendment removes the requirement that data be summarized based on a HUC 8 level and instead refers stakeholders to the guidance provided by the TWDB Executive Administrator. This change will provide greater flexibility for the regional flood planning groups as well as for the TWDB to align the data requested with the information needed by the TWDB.

Section 361.34 Future Condition Flood Risk Analyses in the Region.

The proposed amendment refines the data required for the future condition flood hazard analysis. The requirement to summarize by HUC 8 data is proposed to be removed from this section similar to § 361.33. Additionally, the proposed amendment removes the requirement for an analysis of the 0.2% future flood

condition risk analysis. While it is proposed to be removed from the requirement in the rule, it will be permitted and encouraged in the EA guidance.

Section 361.35 Evaluation of Previous and Current Floodplain Management and Recommendations for Changes to Floodplain Management.

A minor typographical clean-up is proposed for this section.

Section 361.36 Flood Mitigation Need Analysis

Sections 361.36 and 361.37 have been exchanged to better align with the flow of the regional flood plans. The proposed amendment removes the requirement that data be summarized based on a HUC 8 level and instead refers stakeholders to the guidance provided by the TWDB Executive Administrator.

Section 361.37 Flood Mitigation and Floodplain Management Goals

The proposed amendment includes small clarifying changes.

Section 361.38 Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects

The proposed amendment includes changes intended to provide more clarity and detailed expectations of the RFPGs. The proposed amendment provides flexibility to the RFPGs when evaluating solutions for flood mitigation solutions. The proposed amendment also removes the requirement for an equitable comparison and consistent assessment of all potentially feasible FMPs and FMSs. The requirement was overly burdensome and the data did not exist in a form that provided for an equitable comparison.

Section 361.40 Impacts of Regional Flood Plan

A requirement for the RFPGs to include a statement that the plan adequately provides for the preservation of life and property and the development of water supply sources is added. This change conforms to the requirements of Water Code § 16.062(h).

Section 361.45 Implementation and Comparison to Previous Regional Flood Plan

The proposed amendment moves language from the previous section into this section where it fits in a logical manner.

Subchapter D Adoption, Submittal, and Amendments to Regional Flood Plans.

Section 361.50 Adoption, Submittal, and Approval of Regional Flood Plans.

The proposed amendments are minor changes to conform with the rest of the rule.

Section 361.51 Amendments to Regional Flood Plans

The proposed amendment includes a process for the RFPGs to correct minor, non-substantive errors in their RFPs after they have adopted their flood plans, but prior to the Board adopting the State Flood Plan. Prior to adopting errata to a final RFP, the RFPG must provide a minimum seven-day public notice. Once adopted, the RFPG will submit errata containing revised pages to the final RFP and public comments received to the EA for review.

Subchapter E Negative Effects on Neighboring Areas and Failure to Meet Requirements

Section 361.61 Addressing Negative Effects on Neighboring Areas Between Flood Planning Regions.

A minor grammatical change is proposed in this section.

Subchapter F Regional Flood Planning Grants

Section 361.70 Planning Group Sponsor Request for Funding

The proposed changes provide for a simplified process for the planning groups sponsors to request funding from the Board. Additional, non-substantive changes are proposed as well.

Section 361.71 Board Consideration of Funding Requests, Applicant's Responsibilities, and Contract

Minor non-substantive changes are proposed in this section. Additionally, changes are proposed to clarify and simplify the process that the planning group sponsors receive planning grants from the Board.

Section 361.72 Use of Funds

The proposed amendment clarifies that reimbursement is allowed for personnel time spent on preparing the notices required before the meetings. Additionally, the proposed amendment provides the latitude for planning groups to use the planning grant funds to either purchase or rent audio visual equipment that will allow them to host hybrid or online meetings in a way that will comply with the Texas Open Meetings Act. The planning grant contracts will include spending restrictions on the audio-visual equipment purchases. The planning groups will also be able to use planning grant funds for renting space to host RFPG meetings.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules as amended to are necessary to protect water resources of this state as authorized by the Texas Water Code; are necessary to protect the health, safety, and welfare of the residents of this state; and are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it facilitates the regional flood planning process. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in

effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute to develop regional flood plans.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to facilitate the regional and state flood planning process.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code § 16.062. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to facilitate the regional and state flood planning process while making the process more efficient for the regional flood planning

regions. The proposed rule will substantially advance this stated purpose by clarifying requirements of the flood plan regions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The proposed rule may (3) require an increase or decrease in future legislative appropriations to the agency

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in fees paid to the agency; (4) create a new regulation; (5) expand, limit, or repeal an existing regulation; (6) increase or decrease the number of individuals subject to the rule's applicability; or (7) positively or adversely affect this state's economy. But the proposed rule may require an increase or decrease in future legislative appropriations to the agency.

AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

This proposed rulemaking includes an assessment of whether the reasons for initially adopting the rule exist and therefore, this rulemaking satisfies the requirement of a formal review in accordance with Texas Government Code § 2001.039.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include Chapter 361 in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

TEXAS ADMINISTRATIVE CODE: As in effect on 01/12/2023.

<rule>

TITLE 31 NATURAL RESOURCES AND CONSERVATION

PART 10 TEXAS WATER DEVELOPMENT BOARD

CHAPTER 361 REGIONAL FLOOD PLANNING

SUBCHAPTER A GENERAL INFORMATION

§361.10 Definitions and Acronyms

- (a) 1% Annual Chance Flood Event [1.0% annual chance flood event] - Flood event having a 1% [1.0%] chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.
- (b) 0.2% Annual Chance Flood Event [annual chance flood event] - Flood event having a 0.2% chance of being equaled or exceeded in any given year, also referred to as the 500-year flood.
- (c) Board - the governing body of the Texas Water Development Board.
- (d) Critical Facilities – facilities and infrastructure that are critical to the health and welfare of the population and that are especially important following flood hazard events.
- (e) Emergency Need – the need for projects and actions to address a flood hazard that is expected to cause the loss of function of critical facilities or to alleviate immediate threat to life and property from flooding such as imminent anticipated failure of infrastructure.
- (f) [(d)] Executive Administrator (EA) - The Executive Administrator of the TWDB or a designated representative.
- (g) [(e)] FEMA - Federal Emergency Management Agency
- (h) [(f)] FIRM - Flood Insurance Rate Map
- (i) [(g)] Flood - A general and temporary condition of partial or complete inundation of normally dry land area from overflow of inland or tidal waters or from the unusual and rapid accumulation or runoff of surface waters from any source.
- (j) [(h)] Flood-prone - Areas with known risk of flooding primarily during storm events either from existing inundation maps, studies, and/or historic knowledge of flood events. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.
- (k) [(i)] Floodplain - That area of land subject to periodic inundation by floodwaters.

(l) [(j)] Floodplain Management [management] - The operation of an overall program of corrective and preventative measures for reducing flood damage.

(m)[(k)] Flood Mitigation - The implementation of actions, including both structural and non-structural solutions, to reduce flood risk to protect against the loss of life and property.

(n) [(l)] Flood Management Evaluation (FME) – A proposed study to identify flood risk or flood risk reduction solutions. [A proposed flood study of a specific, flood-prone area that is needed in order to assess flood risk and/or determine whether there are potentially feasible FMSs or FMPs.]

(o)[(m)] Flood Management Strategy (FMS) – Long term flood risk reduction solution ideas that still need to be formulated, for example, regulatory enhancements. All solutions and strategies that do not belong in FME or FMP belong to FMS. [A proposed plan to reduce flood risk or mitigate flood hazards to life or property. A flood management strategy may or may not require associated Flood Mitigation Projects to be implemented.]

(p)[(n)] Flood Mitigation Project (FMP) - A proposed project, both structural and non-structural, that has a non-zero capital costs or other non-recurring cost and that when implemented will reduce flood risk, mitigate flood hazards to life or property.

(q) [(o)] Flood Planning Region (FPR) - A geographic area designated by the Board pursuant to Texas Water Code §16.062.

(r) [(p)] Flood Risk - Generally describes the hazard from flood events to life and property, including the likelihood of a hazard occurring; the magnitude of the hazard; the number of people and properties exposed to the hazard; and the vulnerability of the people and properties exposed to the hazard.

(s) [(q)] Flood Risk Map - A map that shows flood risk for Texas communities at some level of detail using best available data.

(t) [(r)] GIS - Geographic Information System

(u) [(s)] GLO - General Land Office

(v) [(t)] HUC - Hydrologic Unit Code level (e.g., HUC10 [HUC8]) as delineated by the United States Geological Survey.

(w) [(u)] Hydrologic and Hydraulic Model - Mathematical model created utilizing computer software that simulates rainfall runoff flow to estimate the extent of water levels and flooding and to test potential ways to reduce flood risk.

(x) [(v)] Nature-based Flood Mitigation [flood mitigation] – Nature-based solutions are sustainable planning, design, environmental management, and engineering practices that weave natural features or processes into the built environment to promote adaptation and resilience. [Mitigation approaches involving the use of natural features, materials, and processes to reduce the risk and impacts of flooding.]

(y) [(w)] Neighboring Area [area] - means any area, including but not limited to upstream and downstream areas, potentially affected by the proposed FMP.

(z) [(x)] Negative Effect - An increase in flood-related risks to life and property, either upstream or downstream of the proposed project. The RFPG may adopt a standard that is more restrictive than the standard provided in TWDB guidance.

(aa) [(y)] Planning Group Sponsor - A political subdivision designated by the Regional Flood Planning Group as authorized to receive funds for developing or revising regional flood plans. A Planning Group Sponsor must have legal authority to conduct procurement of professional services and enter into the contracts necessary for regional flood planning.

(bb) [(z)] Political Subdivision - County, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution [Art. 3 § 52 or Art. 16 § 59 of the constitution] and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation [Water Supply Corporation] created and operating under Chapter [Ch.] 67.

(cc) [(aa)] Potentially Feasible Flood Management Project or Potentially Feasible Flood Mitigation Strategy [Potentially feasible flood management strategy or potentially feasible flood mitigation project] – an [a] FMP or FMS [or FMP] that is permissible, constructible, economically viable, and implementable.

(dd) [(bb)] Regional Flood Plan (RFP) - The plan adopted or amended by a Regional Flood Planning Group pursuant to Texas Water Code §16.062 (relating to Regional Flood Plans) and this chapter.

(ee) [(cc)] Regional Flood Planning Group (RFPG) - A group designated by the Board that develops a Regional Flood Plan, pursuant to Texas Water Code §16.062.

(ff) [(dd)] Residual Risk - The remaining flood risk in an area after the completion of an FMP or FMS or [a FMS or FMP or] set of FMPs or FMSs [or FMPs] that reduce flood risk in that same area.

(gg) [(ee)] State Flood Plan (SFP) - The most recent State Flood Plan adopted or amended by the Board under Texas Water Code §16.061 (relating to State Flood Plan).

(hh) [(ff)] State Flood Planning Database - A database to be developed and maintained by the TWDB that stores data related to Flood Planning. It is used to collect, analyze, and disseminate regional and statewide Flood Planning data.

(ii) [(gg)] State Population Projections - Population projections contained in the most recently adopted State Water Plan as further assembled geographically based on HUC watershed [HUC 8 watersheds] or other appropriate flood-related geographic features determined by the TWDB.

(jj) [(hh)] TWC - Texas Water Code

(kk) [(ii)] TWDB - Texas Water Development Board

§361.11 Designations and Governance of Flood Planning Regions

(a) Once initially designated, the Board may review and update the boundary designations of FPRs as necessary, on its own initiative or upon recommendation of the EA.

(b) If upon FPR boundary designation review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RFPs shall be developed, taking into consideration factors such as:

- (1) river [River] basin and sub-watershed delineations;
- (2) hydraulic [Hydrologic] features of river basins;
- (3) coastal [Coastal] basins and features;
- (4) existing [Existing] FPRs;
- (5) development [Development] patterns;
- (6) public [Public] comment; and
- (7) other [Other] factors the Board deems relevant.

[(c) The Board shall designate an individual member for each of the twelve positions, required in subsection (e), for the initial RFPGs.]

(c) [(d)] [After the Board names members of the initial RFPG, the EA will provide to each member of the initial RFPG a set of model bylaws. The initial] RFPGs shall consider and adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter, Texas Water Code §16.062 [Section 16.062], and Government Code Chapters [Chapter] 551 and 552. The RFPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RFPG shall at a minimum address the following elements:

- (1) methods of formation and governance of executive committee, or subcommittees or subgroups;
- (2) definition of a quorum necessary to conduct business;
- (3) methods to approve items of business including adoption of RFPs or amendments thereto;
- (4) methods to name additional voting and non-voting members;
- (5) terms, conditions, and limits of membership including the terms of member removal;
- (6) any additional notice provisions that the RFPG chooses to include;
- (7) methods to record and preserve minutes;
- (8) methods to resolve disputes between RFPG members on matters coming before the RFPG;
- (9) procedures for handling confidential information; and
- (10) other procedures deemed relevant by the RFPG.

(d) [(e)] RFPGs shall at all times[,] maintain each of the required positions listed below. However, if an [a] FPR does not have an interest in the category below, then the RFPG shall so advise the Executive Administrator and an individual member designation may not be required.

- (1) Public, defined as those persons or entities having no economic or other direct interest in the interests represented by the remaining membership categories;
- (2) Counties, defined as the county governments for the 254 counties in Texas;
- (3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;
- (4) Industries, such as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and that are not small businesses;
- (5) Agricultural interests, defined as those persons or entities associated with the production or processing of plant or animal products;
- (6) Environmental interests, defined as those persons or groups advocating for the protection or conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;
- (7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have either fewer than 500 employees and or less than \$10 million in gross annual receipts;
- (8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority; this category may include a transmission and distribution utility;
- (9) River authorities, defined as any districts or authorities created by the legislature that contain areas within their boundaries of one or more counties and that are governed by boards of directors appointed or designated in whole or part by the governor, including without limitation the San Antonio River Authority and the Palo Duro River Authority;
- (10) Flood Districts, defined as any districts or authorities, created under authority of either the Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with flood management responsibilities, including drainage districts, levee improvement districts, but does not include river authorities;
- (11) Water Districts, defined as any districts or authorities, created under authority of either the Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with flood management responsibilities, including municipal utility districts, freshwater supply districts, and regional water authorities, but does not include drainage districts, levee improvement districts, river authorities;

(12) Water Utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(13) The RFPGs, at their discretion, may include [At their the discretion, of the RFPGs may include,] additional voting positions upon a two-thirds vote of all of the existing voting positions to ensure adequate representation from the interests in the FPR.

(e) [(f)] The RFPG shall include the following non-voting members, as designated by the head of their agencies [agency] for paragraphs (1) - (7) of this subsection, and [who] shall receive meeting notifications and information in the same manner as voting members.[:]

(1) Staff member of the TWDB;

(2) Staff member of the Texas Commission on Environmental Quality;

(3) Staff member of the General Land Office;

(4) Staff member of the Texas Parks and Wildlife Department;

(5) Staff member of the Texas Department of Agriculture;

(6) Staff member of the State Soil and Water Conservation Board; and

(7) Staff member of the Texas Division of Emergency Management.[:]

(f) The RFPG shall include the following non-voting members who shall receive meeting notifications and information in the same manner as voting members:

(1) [(8)] Non-voting member liaisons designated by each RFPG, as necessary, to represent portions of major river basins that have been split into more than one FPR to coordinate between the upstream and downstream FPRs located within that same river basin. This non-voting member liaison may, at the discretion of the RFPG, be met by a voting member that also meets another position requirement under subsection (e) of this section; and

(2) [(9)] For FPRs that touch the Gulf Coast, member liaisons designated by each RFPG representing coastal portions of FPRs to coordinate with neighboring FPRs along the Gulf Coast. This non-voting position member liaison may, at the discretion of the RFPG, be met by a voting member that also meets another position requirement under subsection (e) of this section.

(g) Each RFPG shall [may] consider including a non-voting position [designated by each RFPG] to represent regional or local transportation authorities for example, from the Texas Department of Transportation, who shall receive meeting notifications and information in the same manner as voting members.

(h) Each RFPG shall provide a current list of its voting and non-voting positions to the EA; the list shall identify each position required under subsection (e) as well as any other positions added by the RFPG and the individual member name that fills each position.

(i) Each RFPG, at its discretion, may at any time add additional voting and non-voting positions to serve on the RFPG including any new interest category in accordance with subsection (e)(13) of this section, including any additional state or federal agencies, and additional representatives of those interests already listed in, and as limited by, subsection (e) of this section that the RFPG considers appropriate for development of its RFP. Adding any new voting position that increases the total number of voting positions may only occur upon a two-thirds vote of all voting positions.

(j) Each RFPG, at its discretion, may remove individual voting or non-voting positions, other than those listed under subsection (f)(1) - (7) of this section, or eliminate positions in accordance with the RFPG bylaws as long as minimum requirements of RFPG membership are maintained in accordance with subsections (e) and (f) of this section.

(k) RFPGs may enter into formal and informal agreements to coordinate, avoid affecting neighboring areas, and share information with other RFPGs or any other interests within any FPR for any purpose the RFPGs consider appropriate including expediting or making more efficient planning efforts.

§361.12 General Regional Flood Planning Group Responsibilities and Procedures

(a) The following activities are required of each RFPG every planning cycle:

(1) Designate a political subdivision as a Planning Group Sponsor of the RFPG eligible to apply for financial assistance to be used by the RFPG for planning activities. The Planning Group Sponsor will prepare and submit funding applications on behalf of the RFPG pursuant to Chapter 361, Subchapter F of this title (related to Regional Flood Planning Grants). The RFPG may, at its discretion, designate a different Planning Group Sponsor at any time. The Planning Group Sponsor will be responsible for the following:

(A) General management of the contract between the Planning Group Sponsor and the TWDB;

(B) The general management of the contract between the Planning Group Sponsor and the consultant(s); and

(C) In accordance with the RFPG's bylaws and notice provisions, the preparation of a scope(s) of work for regional flood planning grant funding that identifies responsible parties for task execution, including a task schedule, task and expense budgets, and describes interim draft reports or deliverables, and final reports for the planning process.

(2) Select a technical consultant(s) to be procured by the Planning Group Sponsor in accordance with the procurement requirements that apply to that political subdivision and [Texas] Government Code Chapter 2254.

(3) Hold at least one public meeting, that may also be a regular RFPG meeting, and in accordance with the notice requirements in §361.21 of this title (relating to General Notice Requirements)[,] to determine what, if any, additional public notice the RFPG determines is necessary to ensure adequate public notice in its own FPR, including in print form if desirable.

(4) Hold public meetings at central locations readily accessible to the public within the FPR to gather general suggestions and recommendations from the public as to issues, provisions, and types of FMEs, FMPs, and FMSs, [FMPs, and FMEs] that should be considered or addressed or provisions that should be considered

and potentially included during that regional flood planning cycle in accordance with the public notice requirements in §361.21 of this title.

(5) Approve the contract(s) and any subsequent amendments thereto between the Planning Group Sponsor and the technical consultant or TWDB Scope(s) of Work or budgets in open meetings as necessary and in accordance with §361.21 of this title.

(6) Hold regular RFPG meetings, at a minimum, annually.

(b) The RFPG must follow its bylaws to reconcile any work and consider recommendations of any subcommittee or subgroups, including any strategies or projects identified for the RFPG's consideration.

(c) Each RFPG may, at its discretion, designate committees or subcommittees or subgroups within its FPR to meet separately to work on certain assigned issues that the RFPG considers relevant to its plan such as topics relevant across the entire region or issues related to specific geographical areas within the FPR or coordination of shared issues across neighboring FPRs.

(1) If an [a] RFPG creates a sub-regional committee or subcommittee or subgroup to address issues related to a specific geographical area smaller than the full FPR, it shall, to the extent practical, define such sub-regional geographic areas based on boundaries that are coterminous with full HUC8 watersheds located within the FPR.

(2) If an RFPG creates any [Any] sub-regional committee, [or] subcommittee or subgroup to address issues related to a specific geographical area smaller than the full RFPG, it shall [must] include at least one voting member representing each of the interests under §361.11(d)(1)-(12) [§361.11(e)(1) - (12)] of this title (relating to Designations and Governance of Flood Planning Regions).

(3) Any outcomes from the activities of such committees or subcommittees or subgroups shall be strictly for the purpose of providing information or recommendations as specifically directed by the full RFPG and for potential consideration by the full RFPG.

(4) RFPGs may not authorize committees or subcommittees or subgroups groups or committees to take any actions regarding:

(A) Modifying the budget or scope of the RFPG planning contract(s);

(B) Directing the RFPG consultant's work or associated expenditure of funds without direct authorization and scope from the RFPG; and

(C) Other activities that are the responsibility of the full RFPG as determined by the flood planning contract with the TWDB and any associated guidance provided by the EA.

(5) Each RFPG or committee or subcommittee or subgroup of an [a] RFPG is subject to Chapters 551 (relating to Open Meetings) and 552 (relating to Public Information), Government Code.

§361.13 Regional Flood Planning Group Deliverables

(a) Each RFPG is expected to consider a wide variety of available, relevant, best available information and tools when developing the regional flood plan.

(b) [(a)] Each RFPG shall deliver a draft and final, adopted RFP in accordance with EA guidance. The RFPs must include the following:

(1) written report content including various presentations of data, tables, charts, maps, and written summaries of certain results related to §§361.30 - 361.45 of this title (relating to Regional Flood Plan Requirements) in accordance with EA guidance and the TWDB grant contract;

(2) [a single,] standardized tables [table] that [will] include [a] lists [list] of all recommended FMEs, FMPs, and FMSs [and FMPs,] and certain key information associated with each FMP, in accordance with guidance and template [to be] provided by the EA. This table will be the basis for prioritizing recommended FMPs in the state flood plan;

(3) Geographic Information System (GIS) database deliverables and other information in accordance with the contract and guidance provided by and in a manner determined by the EA; [and]

(4) associated data organized in a format and manner determined by the EA; and[.]

(5) [(b)] Documentation of the public process in the plan development, including public comments [Comment] received and responses to public comments on the draft RFP.

(c) The order and chapter content of the published RFPs shall generally follow a standard outline as determined by the EA and based on the scope of the regional flood planning contracts.

(d) The content and format of all associated data deliverables, including the data on which the RFPs are based, shall be in conformance with requirements in guidance documents and data templates to be developed and provided by the EA.

(e) The RFPGs shall, in accordance with their regional flood planning contracts and schedule and TWDB guidance, deliver technical memorandums to the EA prior to the draft RFP and throughout the planning process to demonstrate progress in developing its RFP and to support the concurrent development of the state flood plan. The RFPGs shall approve technical memorandums in accordance with a schedule to be provided by the EA and after notice pursuant to §361.21 of this title (relating to General Notice Requirements). At the discretion of the EA, the technical memorandums shall include:

(1) A list of existing political subdivisions within the FPR that have flood-related authorities or responsibilities;

(2) A list of previous flood studies considered by the RFPG to be relevant to development of the RFP;

(3) A geodatabase and associated maps in accordance with EA guidance that the RFPG considers to be best representation of the region-wide 1% [1.0%] annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the type [source] of flooding for each area as applicable, for use in its risk

analysis, including indications of locations where such boundaries remain undefined;

(4) A geodatabase and associated maps in accordance with EA guidance that identifies additional flood-prone areas not described in paragraph (3) of this subsection) based on location of hydrologic features, historic flooding, and/or local knowledge;

[(5) A geodatabase and associated maps in accordance with EA guidance that identifies areas where existing hydrologic and hydraulic models needed to evaluate FMSs and FMPs are available;]

(5) [(6)] A list of available flood-related models that the RFPG considers of most value in developing its plan;

(6) [(7)] The flood mitigation and floodplain management goals adopted by the RFPG per §361.37 [§361.36] of this title (relating to Flood Mitigation and Floodplain Management Goals);

(7) [(8)] The documented process used by the RFPG to identify potentially feasible FMEs, FMPs, and FMSs [and FMPs]; and

(8) [(9)] A list of potential FMEs and potentially feasible FMPs and FMSs [and FMPs] identified by the RFPG, if any. [; and]

[(10) A list of FMSs and FMPs that were identified but determined by the RFPG to be infeasible, including the primary reason for it being infeasible.]

(e) [(f)] The information provided by the RFPG will provide the basis for much of the development and content of the state flood plan.

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

<rule>

SUBCHAPTER B GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

§361.20 Guidance Principles for State and Regional Flood Planning

(a) Development of RFPs and the State Flood Plan shall be guided by the principles stated in §362.3 of this title (relating to Guidance Principles).

(b) Each RFPG shall include a statement in their draft and final regional flood plans related to the RFPG's conformance with §362.3. The statement must include an explanation of how the RFP satisfies the requirements of each of the guidance principles including that the plan will not negatively affect a neighboring area.

§361.21 General Notice Requirements

(a) Each RFPG and any committee, subcommittee, or subgroup of an RFPG are subject to Chapters 551 and 552, Government Code.

(b) Each RFPG shall create and maintain a website that they will use to post public notices of all its full RFPG, subgroup, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with the items listed below in subsection (h)(1) - (3) of this section.

(c) Each RFPG shall provide a means by which it will accept written public comments [Comment] prior to and after meetings. The RFPGs must also allow oral public comments [Comment] during RFPG meetings.

(d) Confidential materials that fall under protection in accordance with the Homeland Security Act, may not be made available to the general public.

(e) Each RFPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RFPG activities.

(f) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines provided in subsection (h)(1) - (3) of this section to all voting and non-voting RFPG members; and any person or entity who has requested notice of RFPG activities.

(g) At a minimum, all notices must be posted to the RFPG website and in the Texas Register on the Secretary of State [secretary of state] website and must include:

(1) the date, time, and location of the meeting;

(2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments [Comment] will be received from the members and public.

(h) In addition to subsections (a) - (g) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply to any RFPG meetings and any RFPG committee, subcommittee, or subgroup meetings:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available online at least three days prior to and seven days following the meeting when the planning group will take the following actions:

- (A) regular RFPG meetings and any RFPG committee, subcommittee, or subgroup meetings;
- (B) approval of requests for funds from the Board;
- (C) amendments to the regional flood planning scope of work or budget;
- (D) approval to submit established deliverables to the Board or EA including technical memorandums;
- (E) approval of replacement RFPG members to fill voting and non-voting position vacancies; [and]
- (F) any other RFPG approvals required by TWDB contract or EA guidance not specifically addressed under paragraph (2) or (3) of this subsection;[.]
- (G) holding pre-planning public meetings to obtain input on development of the next RFP per TWC 16.062(d);
- (H) determining flood mitigation and floodplain management goals per §361.36 of this title; and
- (I) approving process for identifying potential FMEs and potentially feasible FMSs and FMPs per §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects).

(2) at a minimum, notice must be provided at least seven [14] days prior to the meeting, written comments [Comment] must be accepted for seven [14] days prior to the meeting and considered by the RFPG members prior to taking the associated action, and meeting materials must be made available online for a minimum of three [7] days prior to and 14 days following the meeting, when the planning group will take the following actions:

[(A) holding pre-planning public meetings to obtain input on development of the next RFP per TWC 16.062(d);]

[(B) determining flood mitigation and floodplain management goals per §361.36 of this title;]

[(C) approving process for identifying potential FMEs and potentially feasible FMSs and FMPs per §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects);]

(A)[(D)] adoption of the final RFP per TWC 16.062(h);

(B)[(E)] approval of amendments to RFPs per §361.51 of this title (relating to Amendments to Regional Flood Plans [Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects]); and

(C) [(F)] approval of any changes to the number of and representation make-up of the RFPG membership. This includes the addition or removal of any voting or non-voting interest category or position, any changes to the representation categories of existing voting and non-voting positions, or the removal of any voting or non-voting positions, including for existing interest categories that may have more than one representative

position.

(3) for meetings at which the planning group will take public comment [input] related to the RFPG's draft RFP per TWC 16.062(f) - (g), the following additional public notice provisions must be met:

(A) The draft RFP must be made available for public inspection online for 30 days prior to the first meeting, if more than one meeting is held, and 30 days following the first meeting;

(B) At a minimum, notice must be provided at least 30 days prior to the first meeting;

(C) Notice must be provided to all adjacent RFPGs;

(D) Notice of the meeting must include a summary of the regional flood plan;

(E) Notice must include information on how the public may submit comments; [Comment];

(F) A hard copy of the draft RFP must be made available for public inspection in at least one [three] publicly accessible location [locations] within the FPR for at least 30 days prior to the first meeting and 30 days following the first meeting; and

(G) Written comment [Comment] must be accepted for consideration for at least 30 days prior to the first meeting and at least 30 days following the first meeting for consideration and response prior to adoption of the final plan under §361.50 of this title (relating to Adoption, Submittal, Notifications, and Approval of Regional Flood Plans) and oral comments [Comment] must be accepted during the meeting.

(i) All notice periods given are based on calendar days.

(j) RFPGs shall also provide additional public notice, if any, in accordance with their decision under §361.11(d)(6) of this title (relating to Designations and Governance of Flood Planning Regions), including provision of print notices, if applicable.

(k) Each RFPG shall include a statement in their draft and final adopted regional flood plans regarding the RFPG's conformance with this section.

[§361.22 General Considerations for Development of Regional Flood Plans]

[RFPGs are expected to consider a wide variety of available, relevant information and tools when developing regional flood plans including:

(1) Historic flood data including stream flows, and storm surge;

(2) Historic rainfall, including Atlas 14 or subsequent data;

(3) NFIP claims, repetitive loss properties, and severe repetitive loss properties;

(4) Topographic data including subsidence trends;

- (5) Bathymetric data, including relative sea level change;
- (6) Existing and projected population;
- (7) Land use planning and regulation as it may affect flood risk;
- (8) Flood-related infrastructure;
- (9) Non-flood related infrastructure, critical facility, and property data;
- (10) Models including hydrologic, hydraulic, or any available screening-level models;
- (11) Flood risk maps;
- (12) Existing flood risk analyses, including location, likelihood and magnitude of the hazard, exposure analysis and vulnerability analyses;
- (13) Future flood risk analyses including location, likelihood and magnitude of the hazard, exposure analysis and vulnerability analyses;
- (14) Historic losses due to floods;
- (15) Flood disaster reports;
- (16) Other regional and local flood planning studies;
- (17) Other regional and local flood hazard mitigation plans;
- (18) State of Texas hazard mitigation plan;
- (19) Coastal resiliency master plan;
- (20) Critical transportation corridors, including consideration of both existing corridors and future corridors;
- (21) Floodplain management practices;
- (22) Planned and anticipated future development and its potential impacts on the plan;
- (23) Flood management and mitigation best management practices;
- (24) Watershed protection plans;
- (25) Flood risk screening tools;
- (26) Flood-related federal agency information; and
- (27) Any other information deemed relevant by the RFPG.]

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

<rule>

SUBCHAPTER C REGIONAL FLOOD PLAN REQUIREMENTS

§361.30 Description of the Flood Planning Region

Regional flood plans shall include brief, general descriptions of the following:

- (1) social and economic character of the region such as information on development, population, and economic activity; [and economic sectors most at risk of flood impacts;]
- (2) the areas in the FPR that are flood-prone and the types of major flood risks to life and property in the region;
- (3) key historical flood events within the region including associated fatalities and loss of property;
- (4) political subdivisions with flood-related authority [and whether they are currently actively engaged in flood planning, floodplain management, and flood mitigation activities]; and
- [(5) the general extent of local regulation and development codes relevant to existing and future flood risk;]
- [(6) agricultural and natural resources most impacted by flooding; and]
- (5) [(7)] existing local and regional flood plans within the FPR.

§361.31 Description of the Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region

(a) Regional flood plans shall include a general description of the location, condition, adequacy, and functionality of [natural features and constructed] major flood related infrastructure [infrastructure] within the FPR including, but not limited to:

(1) natural features, including:

(A)[(1)] rivers, tributaries, and functioning floodplains;

(B) playa lakes; [(2) wetlands;]

(C) sinkholes; [(3) playa lakes;]

(2) constructed flood infrastructure, including:

(A) dams and reservoirs that provide flood protection;

[(4) sinkholes;]

[(5) alluvial fans;]

[(6) vegetated dunes;]

(B) [(7)] levees;

(C) low water crossings;

(D) coastal barriers;

(E) stormwater management systems including tunnels and pump stations;

[(8) sea coastal barriers, walls, and revetments;]

[(9) tidal barriers and gates;]

[(10) stormwater tunnels;]

[(11) stormwater canals;]

[(12) dams that provide flood protection;]

(F) [(13)] detention and retention ponds; and

[(14) weirs;]

[(15) storm drain systems; and]

(G) [(16)] any other flood-related infrastructure.

(b) for non-functional or deficient natural flood mitigation features or major flood infrastructure, explain, in general, the reasons for the features or infrastructure being non-functional or deficient, provide a description of the condition and functionality of the feature or infrastructure and whether and when the natural flood feature or major flood infrastructure may become fully functional, and provide the name of the owner and operator of the major flood infrastructure. [infrastructure.]

§361.32 Description of the Major Infrastructure and Flood Mitigation Projects Currently Under Development

Regional flood plans shall include a general description of the location, source of funding, and anticipated benefits of proposed or ongoing flood mitigation projects in the FPR including:

- (1) new structural flood mitigation projects currently under construction;
- (2) non-structural flood mitigation projects currently being implemented; and
- (3) structural and non-structural flood mitigation projects with dedicated funding to construct and, when available, the expected year of completion.

§361.33 Existing Condition Flood Risk Analyses in the Region

(a) The RFPGs shall perform existing condition flood risk analyses for the region comprised of [comprising]:

- (1) flood hazard analyses that determines location, magnitude and frequency of flooding;
- (2) flood exposure analyses to identify who and what might be harmed within the region; and
- (3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

(b) RFPGs shall perform existing condition flood hazard analyses [analysis] to determine the location and magnitude of both 1% [1.0%] annual chance and 0.2% annual chance flood events as follows:

- (1) collect data and conduct analyses sufficient to characterize the existing conditions for the planning area;
- (2) identify areas within each FPR where hydrologic and hydraulic model results are already available and summarize the information;
- (3) utilize best available data, hydrologic and hydraulic models for each area;

(4) identify known flood-prone areas based on location of hydrologic features, historic flooding, and local knowledge obtained from outreach activities and public meetings;

(5) all existing condition flood hazard analyses may consider and include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan;

(6) all existing condition flood hazard analyses shall consider where existing levees or dams do not meet FEMA accreditation as inundated by flooding without those structures in place. Provisionally accredited structures may be allowed to provide flood protection, unless best available information demonstrates otherwise;

(7) [(4)] prepare a map showing areas identified by the RFPG as having an annual likelihood of inundation of more than 1% [1.0%] and 0.2%, the areal extent of this inundation, and the types [sources] of flooding for

each area; and

(8)[(5)] prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding and/ or local knowledge.

(c) The RFPs shall develop [high-level, region-wide and largely GIS-based,] existing condition flood exposure analyses, using the information identified in the flood hazard analyses [analysis] to identify who and what might be harmed within the region for, at a minimum, both 1% [1.0%] annual chance and 0.2% annual chance flood events as follows:

(1) analyses of existing development within the existing condition floodplain and the associated flood hazard exposure;

[(2) for the floodplain as defined by FEMA or as defined by an alternative analysis if the FEMA-defined floodplain is not considered best available; and]

[(3) may include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan.]

(2) [(4)] all existing condition flood exposure analyses shall consider the population and property located in areas where existing levees or dams do not meet FEMA accreditation as inundated by flooding without those structures in place. Provisionally accredited structures may be allowed to provide flood protection, unless best available information demonstrates otherwise.

(3) [(5)] In accordance with guidance [to be] provided by the EA, the existing condition flood exposure analyses shall consider available datasets to estimate the potential flood hazard exposure including, but not limited to:

(A) the number of residential properties and associated population;

(B) the number of non-residential properties;

(C) other public infrastructure;

(D) major industrial and power generation facilities;

(E) number and types of critical facilities;

(F) number of roadway crossings;

(G) length of roadway segments; and

(H) agricultural area and value of crops exposed.

(4) [(6)] The existing condition flood exposure analyses shall include a qualitative description of expected loss of function, which is the effect that a flood event could have on the function of inundated structures (residential, commercial, industrial, public, or others) and infrastructure, such as transportation, health and

human services, water supply, wastewater treatment, utilities, energy generation, and emergency services.

[(d) Existing condition vulnerability analysis;]

(d) The RFPGs shall perform existing condition vulnerability analyses to identify vulnerabilities of communities and critical facilities identified in subparagraphs (b) and (c) above, as follows:

(1) RFPGs shall identify resilience of communities located in flood-prone areas identified as part of the existing condition flood exposure analyses, utilizing relevant data and tools.

(2) RFPGs shall identify the location [vulnerabilities] of critical facilities and evaluate the critical facilities' vulnerability to flooding based on existing information, in accordance with EA guidance. [by looking at factors such as proximity to a floodplain or other bodies of water, past flooding issues, emergency management plans, and location of critical systems like primary and back-up power.]

(e) All data produced as part of the existing condition flood exposure analysis and the existing condition vulnerability analysis shall be summarized in the RFP in accordance with guidance provided by the EA. The data [and] shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

[(4) HUC8;]

(4) [(5)] existing flood authority boundaries;

(5) [(6)] social vulnerability indices [Social Vulnerability Indices] for counties and census tracts; and

(6) [(7)] other categories as determined by RFPGs or to be designated by the EA.

(f) The information developed by the RFPG under this section shall be used to assist the RFPG establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

§361.34 Future Condition Flood Risk Analyses in the Region

(a) RFPGs shall perform potential future condition flood risk analyses for the region comprised of: [comprising:]

(1) flood hazard analyses that determines location, magnitude and frequency of flooding;

(2) flood exposure analyses to identify who and what might be harmed within the region; and

(3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

(b) RFPGs shall perform a future condition flood hazard analysis to determine, at a minimum, the location of 1% [both 1.0%] annual chance [and 0.2% annual chance] flood events as follows:

(1) collect best available data and conduct analyses sufficient to characterize the future conditions for the planning area based on a "no-action" scenario of approximately 30 years of continued development and population growth under current development trends and patterns, and existing flood regulations and policies. RFPGs shall consider the following as available and pertinent in the FPR: [based on]

(A) current land use and development trends and practices and associated projected population based on the most recently adopted State Water Plan [state water plan] decade and population nearest the next RFP adoption date plus approximately 30 years or as provided for in guidance;

(B) reasonable assumptions regarding locations of residential development and associated population growth;

(C) anticipated relative sea level change and subsidence based on existing information;

(D) anticipated changes to the functionality of the existing floodplain;

(E) anticipated sedimentation in flood control structures and major geomorphic changes in riverine, playa, or coastal systems based on existing information;

(F) assumed completion of major flood mitigation projects currently under construction or that already have dedicated construction funding; and

(G) other factors deemed relevant by the RFPG.

(2) identify areas within each FPR where future condition hydrologic and hydraulic model results are already available and summarize the information;

(3) utilize best available data, hydrologic and hydraulic models for each area;

(4) where future condition results are not available, but existing condition hydrologic and hydraulic model results are already available, the RFPGs shall modify hydraulic models to identify future conditions flood risk for 1% [1.0% and 0.2%] annual chance storms based on simplified assumptions utilizing the information identified in paragraph (1)(A) of this subsection.

(5) prepare a map showing areas of 1% [and 0.2%] annual chance of inundation for future conditions, the areal extent of this inundation, and the types [sources] of flooding for each area.

(6) prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding, and/ or local knowledge.

(c) future condition flood exposure analysis. The RFPGs shall use the information identified in the future condition flood hazard analysis to develop and perform high-level, region-wide and largely GIS-based, future condition flood exposure analyses to identify who and what might be harmed within the region for, at a minimum, for [both] future condition 1% [1.0%] annual chance [and future condition 0.2% annual chance] flood event. [events as follows:] The future condition flood exposure analysis should include an analysis of

existing and future developments within the future condition floodplain and the associated flood hazard exposure.

[(1) analyses of existing and future developments within the future condition floodplain and the associated flood hazard exposure; and]

[(2) to include only those flood mitigation projects with dedicated construction funding scheduled for completion prior to the next RFP adoption date plus 30 years or as provided for in guidance.]

[(3) Identification of flood prone areas associated with the hazard exposure analyses shall be based on analyses that rely primarily on the use and incorporation of existing and available:

(A) FIRMs or other flood inundation maps and GIS related data and analyses;

(B) available hydraulic flood modeling results;

(C) model-based or other types of geographic screening tools for identifying flood prone areas; and

(D) other best available data or relevant technical analyses that the RFPG determines to be the most updated or reliable.]

(d) Future condition vulnerability analysis.

(1) RFPGs shall identify resilience of communities located in flood-prone areas identified in the future condition flood exposure analysis utilizing relevant data and tools.

(2) RFPGs shall identify vulnerabilities of critical facilities to flooding by looking at factors such as proximity to a floodplain, proximity to other bodies of water, past flooding issues, emergency management plans, and location of critical systems like primary and back-up power.

(e) All data produced as part of the future condition flood hazard analysis and future condition flood exposure analysis shall be summarized in the RFP in accordance with guidance provided by the EA and shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

[(4) HUC8;]

[(4) [(5)] existing flood authority boundaries;

[(5) [(6)] social vulnerability indices [Social Vulnerability Indices] for counties and census tracts; and

[(6) [(7)] other categories to be designated by the EA.

(f) The information developed by the RFPG under this section shall be used to assist the RFPG establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

§361.35 Evaluation of Previous and Current Floodplain Management and Recommendations for Changes to Floodplain Management

(a) Recognizing the extent that previous and current practices may have increased flood risks, including residual risks, and considering broad floodplain management and land use approaches that will avoid increasing flood risks, and avoid negatively affecting neighboring areas, the RFPG shall:

(1) consider the extent to which a lack of, insufficient, or ineffective current floodplain management and land use practices, regulations, policies, and trends related to land use, economic development, and population growth, allow, cause, or otherwise encourage increases to flood risks to both:

(A) existing population and property, and

(B) future population and property.

(2) take into consideration the future flood hazard exposure analysis performed under §361.34 of this title (relating to Future Condition Flood Risk Analyses in the Region), consider the extent to which the 1% [1.0%] annual chance floodplain, along with associated flood risks, may change over time in response to anticipated development and associated population growth and other relevant man-made causes, and assess how to best address these potential changes.

(3) based on the analyses in paragraphs (1) - (2) of this subsection, make recommendations regarding forward-looking floodplain management and land use recommendations, and economic development practices and strategies[,] that should be implemented by entities within the FPR. These region-specific recommendations may include [minimum] floodplain management and land use standards and should focus on how to best address the changes in paragraph (2) of this subsection for entities within the region. These recommendations shall inform recommended strategies for inclusion in the RFP.

(b) [(4)] RFPGs may also choose to adopt region-specific, [minimum] floodplain management or land use or other standards that impact flood-risk, that may vary geographically across the region, that each entity in the FPR must adopt prior to the RFPG including in the RFP any FMEs, FMPs or FMSs[, or FMPs] that are sponsored by or that will otherwise be implemented by that entity.

§361.36 Flood Mitigation Need Analysis

(a) Based on the analyses and goals developed by the RFPG under §§361.33 - 361.36 of this title and any additional analyses or information developed using available screening-level models or methods, the RFPG shall identify locations within the FPR that the RFPG considers to have the greatest flood mitigation and flood risk study needs by considering:

(1) the areas in the FPR that the RFPG identified as the most prone to flooding that threatens life and property;

(2) the relative locations, extent, and performance of current floodplain management and land use policies and infrastructure located within the FPR, particularly within the locations described in paragraph (1) of this subsection;

(3) areas identified by the RFPG as prone to flooding that don't have adequate inundation maps;

(4) areas identified by the RFPG as prone to flooding that don't have hydrologic and hydraulic models;

(5) areas with an emergency need;

(6) existing modeling analyses and flood risk mitigation plans within the FPR;

(7) flood mitigation projects already identified and evaluated by other flood mitigation plans and studies;

(8) documentation of historic flooding events;

(9) flood mitigation projects already being implemented; and

(10) any other factors that the RFPG deems relevant to identifying the geographic locations where potential FMEs and potentially feasible FMPs and FMSs shall be identified and evaluated under §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects).

(b) The RFPG shall conduct the analysis in subsection (a) of this section in a manner that will ensure the most effective and efficient use of the resources available to the RFPG.

§361.37 Flood Mitigation and Floodplain Management Goals

Considering the Guidance Principles under §362.3 of this title (related to Guidance Principles), the existing condition flood risk analyses performed under §361.33 of this title (relating to Existing Condition Flood Risk Analyses in the Region), future condition flood risk analyses identified under §361.34 of this title (relating to Future Condition Flood Risk Analyses in the Region), and the consideration of current floodplain management and land use approaches under §361.35 of this title (relating to Evaluation of Previous and Current Floodplain Management Approaches and Recommendations for Changes to Floodplain Management), input from the public, and other relevant information and considerations, RFPGs shall:

(1) Identify specific and achievable flood mitigation and floodplain management goals along with target years by which to meet those goals for the FPR to include, at a minimum, goals specifically addressing risks to life and property.

(2) Recognize and clearly state the levels of residual risk that will remain in the FPR even after the stated flood mitigation goals in paragraph (1) of this section are fully met.

(3) Structure and present the goals and the residual risks in an easily understandable format for the public including in conformance with guidance to be provided by the EA.

(4) Use these goals to guide the RFPG in carrying out the tasks required under §§361.37 - 361.39 of this title.

(5) When appropriate, choose goals that apply to full single HUC8 watershed boundaries or coterminous groups of HUC8 boundaries within the FPR.

(6) Identify both short-term goals (10 years) and long-term goals (30 years).

§361.38 Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects

(a) Based on analyses and decisions under §§361.33 - 361.37 of this title the RFPG shall identify and evaluate potential FMEs and potentially feasible FMPs and FMSs [and FMPs], including nature-based solutions, some of which may have already been identified by previous evaluations and analyses by others. [An FME is a proposed flood study of a specific, flood-prone area, that may include a flood risk analysis, that is needed in order to determine whether there are potentially feasible FMSs or FMPs.] An FME may eventually result in detailed hydrologic and hydraulic analyses and identification of projects or strategies that could be amended into an [a] RFP as FMPs or FMSs. [or FMPs.]

(b) When evaluating FMSs and FMPs the RFPG will, at a minimum, attempt to identify one solution that provides flood mitigation associated with a 1% [1.0%] annual chance flood event. In instances where mitigating for 1% [1.0%] annual chance events is not feasible, the RFPG shall document the reasons for its infeasibility, and at the discretion of the RFPG, other [FMS and] FMPs to mitigate more frequent events may also be identified and evaluated based on guidance [to be] provided by the EA.

(c) A summary of the RFPG process for identifying potential FMEs and potentially feasible FMPs and FMSs [and FMPs] in subsection (a) of this section shall be established and included in the draft and final adopted RFP.

(d) The RFPG shall then identify potentially feasible FMPs and FMSs [and FMPs] in accordance with the RFPG process established under subsection (c) of this section.

(e) For areas within the FPR that the RFPG does not yet have sufficient information or resources to identify potentially feasible FMPs and FMSs [and FMPs], the RFPG shall identify areas for potential FMEs that may eventually result in FMPs.

(f) The RFPG shall evaluate potentially feasible FMPs and FMSs [and FMPs] understanding that, upon evaluation and further inspection, some FMPs or FMSs [or FMPs] initially identified as potentially feasible may, after further inspection, be reclassified as infeasible.

(g) Recommended FMPs will be ranked in the state flood plan and:

(1) shall represent discrete[,] projects;

(2) shall not entail an entire capital program or drainage masterplan; and

(3) may rely on other flood-related projects.

(h) Evaluations of potentially feasible FMPs and FMSs [and FMPs] will require associated, detailed hydrologic and hydraulic modeling results that quantify the reduced impacts from flood and the associated

benefits and costs. Information may be based on previously performed evaluations of projects and related information. Evaluations of potentially feasible FMPs and FMSs [and FMPs] shall include the following information and be based on the following analyses:

- (1) A reference to the specific flood mitigation or floodplain management goal addressed by the feasible FMP or FMS [or FMP];
- (2) A determination of whether FMP or FMS [or FMP] meets an emergency need;
- (3) An indication regarding the potential use of federal funds[,] or other sources of funding[,] as a component of the total funding mechanism;
- (4) An indication of any water supply source benefits;

[(4) An equitable comparison between and consistent assessment of all FMSs and FMPs that the RFPGs determine to be potentially feasible;]

- (5) A demonstration that the FMP or FMS [or FMP] will not negatively affect a neighboring area;
- (6) A quantitative reporting of the estimated benefits of the FMP or FMS, [or FMP,] including reductions of flood impacts of the 1% [1.0%] annual chance flood event and other storm events identified and evaluated if the project mitigates to more frequent event[,] to include, where applicable, but not limited to:
 - (A) Associated flood events that must, at a minimum, include the 1% [1.0%] annual chance flood event and other storm events identified and evaluated;
 - (B) Reduction in habitable, equivalent living units flood risk;
 - (C) Reduction in residential population flood risk;
 - (D) Reduction in critical facilities flood risk;
 - (E) Reduction in road closure occurrences;
 - (F) Reduction in acres of active farmland and ranchland flood risk;
 - (G) Estimated reduction in fatalities, when available;
 - (H) Estimated reduction in injuries, when available;
 - (I) Reduction in expected annual damages from residential, commercial, and public property; and
 - (J) Other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits.

- (7) A quantitative reporting of the estimated capital cost of projects in accordance with guidance provided by the EA;

[(8) Calculated benefit-cost ratio for FMPs in accordance with guidance to be provided by the EA and based on current observed conditions;]

(8) [(9)] For projects that will contribute to water supply, all relevant evaluations required under §357.34(e) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects), as determined by the EA based on the type of contribution, and a description of its consistency with the currently adopted State Water Plan;

(9) [(10)] A description of potential impacts and benefits from the FMP or FMS [or FMP] to the environment, agriculture, recreational resources, navigation, water quality, erosion, sedimentation, and impacts to any other resources deemed relevant by the RFPG;

(10) [(11)] A description of residual, post-project, and future risks associated with FMPs including the risk of potential catastrophic failure and the potential for future increases to these risks due to lack of maintenance;

(11) [(12)] Implementation issues including those related to right-of-ways, permitting, acquisitions, relocations, utilities and transportation; and

(12) [(13)] Funding sources and options that exist or will be developed to pay for development, operation, and maintenance of the FMP or FMS [or FMP].

(i) Evaluations of potential FMEs will be at a reconnaissance or screening-level, unsupported by associated detailed hydrologic and hydraulic analyses. These will be identified for areas that the RFPG considers a priority for flood risk evaluation but that do not yet have the required detailed hydrologic and hydraulic modeling or associated project evaluations available to evaluate specific FMPs or FMSs [or FMPs] for recommendation in the RFP. These FMEs shall be based on recognition of the need to develop detailed hydrologic models or to perform associated hydraulic analyses and associated project evaluations in certain areas identified by the RFPG. Evaluations of potential FMEs shall include the following analyses:

(1) A reference to the specific flood mitigation or floodplain management goal to be addressed by the potential FME.

(2) An indication [A determination] of whether FME may meet an emergency need.

(3) An indication regarding the potential use of federal funds, or other sources of funding as a component of the total funding mechanism.

[(4) An equitable comparison between and consistent assessment of all FMEs.]

(4) [(5)] An indication of whether hydrologic and or hydraulic models are already being developed or are anticipated in the near future and that could be used in the FME.

(5) [(6)] A quantitative reporting of the estimated benefits, including reductions of flood risks, to include, as applicable:

(A) Estimated habitable, living unit equivalent and associated population in FME area;

- (B) Estimated critical facilities in FME area;
 - (C) Estimated number of roads closures occurrences in FME area, when available;
 - (D) Estimated acres of active farmland and ranchland in FME area; and
 - (E) A quantitative reporting of the estimated study cost of the FME and whether the cost includes use of existing or development of new hydrologic or hydraulic models.
- (6) [(7)] For FMEs, RFPGs do not need to demonstrate that an FME will not negatively affect a neighboring area.
- (j) RFPGs shall evaluate and present potential FMEs and potentially feasible FMPs and FMSs [and FMPs] with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RFP.
 - (k) Analyses under this section shall be performed in accordance with guidance requirements to be provided by the EA.
 - (l) All data produced as part of the analyses under §361.38 of this title (related to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects) shall be organized and summarized in the RFP in accordance with guidance provided by the EA and shall be provided in a format determined by the EA.
 - (m) Analyses shall clearly designate a representative location of the FME and beneficiaries including a map and designation of HUC level as determined by the EA [HUC8] and county location.

§361.39 Recommended Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies, and Flood Mitigation Projects]

- (a) RFPGs shall recommend FMPs and FMSs [and FMPs] to reduce the potential impacts of flood based on the evaluations under §361.38 of this title (related to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects) and [Projects]and] RFPG goals and that must, at a minimum, mitigate for flood events associated with a 1% [at 1.0 percent] annual chance (100-yr flood), where feasible. In instances where mitigating for 100-year events are [is] not feasible, FMPs and FMSs [FMS and FMPs] to mitigate more frequent events may be recommended based on guidance to be provided by the EA. Recommendations shall be based upon the identification, analysis, and comparison of alternatives that the RFPG determines will provide measurable reductions in flood impacts in support of the RFPG's specific flood mitigation and/or floodplain management goals.
- (b) RFPGs shall provide additional information in conformance with guidance [to be] provided by the EA which will be used to rank recommended FMPs in the state flood plan.
- (c) RFPGs shall calculate the benefit-cost ratio for recommended FMPs in accordance with guidance provided by the EA.

(d)[(c)] RFPGs shall recommend FMEs that the RFPG determines are most likely to result in identification of potentially feasible FMPs and FMSs [and FMPs] that would, at a minimum, identify and investigate one solution to mitigate for flood events associated with a 1% [1.0%] annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.

(e)[(d)] Recommended FMSs or FMPs may not negatively affect a neighboring area or an entity's water supply.

(f)[(e)] Recommended FMSs or FMPs that will contribute to water supply may not result in an overallocation of a water source based on the water availability allocations in the most recently adopted State Water Plan.

(g)[(f)] Specific types of FMEs, FMPs, or FMSs[, or FMPs] that should be included and that should not be included in RFPs must be in accordance with guidance [to be] provided by the EA.

§361.40 Impacts of Regional Flood Plan

Regional flood plans shall include:

(1) a region-wide summary of the relative reduction in flood risk that implementation of the regional flood plan would achieve within the region including with regard to life, injuries, and property;

(2) a statement that the FMPs in the plan, when implemented, will not negatively affect neighboring areas located within or outside of the FPR;

(3) a statement that the plan adequately provides for the preservation of life and property and the development of water supply sources, where applicable;

(4) [(3)] a general description of the types of potential positive and negative socioeconomic or recreational impacts of the recommended FMPs and FMSs [and FMPs] within the FPR; and

(5) [(4)] a general description of the overall impacts of the recommended FMPs and FMSs in the RFP on the environment, agriculture, recreational resources, water quality, erosion, sedimentation, and navigation.

§361.41 Contributions to and Impacts on Water Supply Development and the State Water Plan

(a) Regional flood plans shall include a region-wide summary and description of the contribution that the regional flood plan would have to water supply development including a list of the specific flood management strategies and[/or] flood mitigation projects that would contribute to water supply; and

(b) a description of any anticipated impacts, including to water supply or water availability or projects in the State Water Plan, that the regional flood plan FMSs and FMPs may have.

§361.42 Flood Response Information and Activities

RFPGs are to summarize the nature and types of flood response preparations within the FPR including providing where more detailed information is available regarding recovery. RFPGs shall not perform analyses or other activities related to planning for disaster response or recovery activities.

§361.43 Administrative, Regulatory, and Legislative Recommendations

RFPGs shall develop and include in their flood plans:

- (1) legislative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation;
- (2) other regulatory or administrative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation;
- (3) any other recommendations that the RFPG believes are needed and desirable to achieve its regional flood mitigation and floodplain management goals; and
- (4) recommendations regarding potential[,] new revenue-raising opportunities[,] including potential new municipal drainage utilities or regional flood authorities[,] that could fund the development, operation, and maintenance of floodplain management or flood mitigation activities in the region.

§361.44 Flood Infrastructure Financing Analysis

RFPGs shall indicate how individual local governments, regional authorities, and other political subdivisions in their region propose to finance the region's recommended FMSs, FMPs, and FMEs included in their flood plan. The assessment shall also describe what role the RFPG proposes for the state in financing recommended FME, FMPs, and FMSs[,] FMPs, and FMEs. As projects are implemented, those improvements and associated benefits shall be incorporated into and reflected in the subsequent RFPs.]

§361.45 Implementation and Comparison to Previous Regional Flood Plan

Each RFPG shall, in accordance with guidance from the EA:

- (1) collect information from local sponsors of FMPs on implementation of previously recommended FMPs and provide to the EA; [and]
- (2) as projects are implemented, incorporate those improvements and associated flood-risk reduction benefits into the plan and reflect in the subsequent RFPs; and
- (3) [(2)] include a general description of how the new RFP differs from the previous plan including with regard to the status of existing flood infrastructure, flood mitigation achieved, goals, and recommended projects.

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

<rule>

SUBCHAPTER D ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL FLOOD PLANS

§361.50 Adoption, Submittal, Notifications, and Approval of Regional Flood Plans

(a) The RFPGs shall approve each recommended FME, FMP, and FMS [FMS, and FMP] by a separate vote and shall adopt their draft and final RFPs by a vote and submit their final adopted RFPs to the Board every five years on a date to be determined by the EA, as modified by subsection (d)(2)(D) of this section, for approval and inclusion in the State Flood Plan.

(b) The draft RFP submitted to the EA must be in the electronic and paper format specified by the EA. Each draft RFP must certify that the draft RFP is complete and adopted by the RFPG.

(c) Prior to adopting a final RFP, the RFPGs shall consider the following comments [Comment] in accordance with §361.21 of this title (relating to General Notice Requirements) to include:

(1) any written or oral comments [Comment] received from the public on the draft RFP; and

(2) the EA's written comments [Comment] on the draft RFP.

(d) RFPGs shall submit the draft RFP and the adopted RFPs and any subsequent amendments to approved RFPs to the EA in conformance with this section.

(1) RFPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) A list of recommended FMEs, FMPs, and FMSs, [FMPs, FMEs, and FMSs,] with accompanying data to be used by the EA to rank each associated non-zero capital costs or other non-recurring costs in accordance with specifications and guidance to be provided by the EA;

(C) An executive summary that documents key RFP findings and recommendations; and

(D) In the adopted RFP, summaries of all written and oral comments [Comment] received pursuant to subsection (c) of this section, with a response by the RFPG explaining how the plan was revised or why changes were not warranted in response to written comments [Comment] received under subsection (c) of this section.

(2) RFPGs shall submit RFPs to the EA according to the following schedule:

(A) Draft RFPs are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the draft RFP, the RFPGs shall provide and or upload data, metadata, and all other relevant digital information supporting the plan to the Board, including to the Board's State Flood Plan Database, when available. All changes and corrections to this information must be entered into or otherwise updated in RFPG's dataset including into the Board's State Flood Plan Database, when available, prior to submittal of a final adopted RFP.

(C) The RFPG shall make publicly available and transfer copies of all data, models, and reports generated by the planning process and used in developing the RFP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RFPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RFPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted by the EA.

(E) Once approved by the Board, RFPs shall be made available on the Board website.

(e) Upon receipt of an RFP adopted by the RFPG, the Board shall consider approval of such plan based on the following criteria:

(1) verified adoption of the RFP by the RFPG;

(2) whether the RFP satisfies the requirements for regional flood plans adopted in the guidance principles at §361.20 of this title (relating to Guidance Principles for State and Regional Flood Planning);

(3) whether the RFP adequately provides for the preservation of life and property and the development of water supply sources, where applicable; and

(4) the RFP does not negatively affect a neighboring area.

(f) The Board may approve an RFP only after it has determined that the RFP complies with statute and rules.

(g) RFPs approved by the Board pursuant to this chapter shall be incorporated into the State Flood Plan as outlined in §362.4 of this title (relating to State Flood Plan Guidelines).

[(h) The initial RFP shall be delivered to the EA on or before January 10, 2023.]

§361.51 Amendments to Regional Flood Plans

(a) Local Flood Planning Amendment Requests. A Political Subdivision in the FPR may request an RFPG to consider an amendment to an adopted RFP based on changed conditions or new information. An RFPG must formally consider such request within 180 days after its receipt and shall amend its adopted RFP if it determines an amendment is warranted.

(b) If the Political Subdivision is not satisfied with the RFPG's decision on the issue, it may file a petition

with the EA to request review of the RFPG's decision and consider the amendment to the approved RFP. The Political Subdivision shall send the petition to the EA and the chair of the affected RFPG.

(1) The petition must include:

(A) the changed condition or new information that affects the approved RFP;

(B) the specific sections and provisions of the approved RFP that may be affected by the changed condition or new information;

(C) the efforts made by the Political Subdivision to work with the RFPG to obtain an amendment; and

(D) any other information that may be useful to the EA in determining whether an amendment is necessary.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RFP, the EA shall request the RFPG to consider making the appropriate change. If the RFPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA explaining the reason for not amending the RFP, after which the EA may present the issue to the Board for consideration at a public meeting. The Board may then direct the RFPG to amend its RFP.

(c) Amendments to RFPs and State Flood Plan. An RFPG may amend an adopted, Board-approved RFP at a regular RFPG meeting, [after giving notice for an amendment and providing notice in accordance with §361.21 of this title (relating to General Notice Requirements).] An RFPG must obtain Board approval of all amendments to RFPs under the standards and procedures of this section. The RFPG may initiate an amendment or an entity may request an RFPG to amend its adopted, Board-approved RFP.

[(1) An RFPG's consideration for action to initiate an amendment may occur at a regular RFPG meeting.]

(1)[(2)] The RFPG shall hold a public meeting at which the RFPG may choose to take action on the amendment. The amendment shall be available for EA and public comment in accordance with §361.21 of this title.

(2)[(3)] The RFPG [may adopt the amendment at a regularly scheduled RFPG meeting held in accordance with §361.21 of this title. The] amendment materials shall be submitted to the EA and shall:

(A) include the RFPG responses to all comments [Comment] received on the amendment in associated with notice in §361.21 of this title; and

(B) demonstrate that the amended RFP complies with statute and rules including that it satisfies the requirements in the guidance principles §362.3 of this title (relating to Guidance Principles) and does not negatively affect a neighboring area.

(3) [(4)] After adoption of the amendment, the RFPG shall submit the amendment and its response to comment [Comment] to the Board which shall consider approval of the amendment following EA review of the amendment.

(d) All amendments to an RFP must meet all the requirements related to development of an RFP.

(e) Following amendments of RFPs, the Board shall make any necessary amendments to the State Flood Plan as outlined in §362.4(b) of this title (relating to State Flood Plan Guidelines).

(f) RFPGs may adopt errata to the final RFP to correct minor, non-substantive errors identified after adoption of the final RFP but prior to adoption of the corresponding State Flood Plan. Before adopting errata to a final RFP, the RFPG must provide public notice and receive comments in accordance with §361.21 of this title. Upon adoption of the errata, the RFPG shall submit to the EA an errata package containing revised pages of the RFP and public comments received. The EA will notify the RFPG within 60 days whether the errata are acceptable as errata or will need to be made through the amendment process.

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

<rule>

SUBCHAPTER E NEGATIVE EFFECTS ON NEIGHBORING AREAS AND FAILURE TO MEET REQUIREMENTS

§361.60 Addressing Negative Effects on Neighboring Areas Within Flood Planning Regions

RFPGs shall resolve issues related to projects in their plan that will negatively affect neighboring areas within the FPR. The EA will provide technical assistance, within available resources, to the RFPGs requesting such assistance and may assist in facilitating resolution of issues within FPRs.

§361.61 Addressing Negative Effects on Neighboring Areas Between Flood Planning Regions

(a) In the event an RFPG has asserted or the Board finds that there is an element of a draft RFP that will negatively affect a neighboring area in a different FPR, the involved regions shall make a good faith effort to voluntarily work together to resolve the issue.

(b) The EA may use the following process to address the issue:

(1) notify the affected RFPGs of the nature of the potential negative effect;

(2) request affected RFPGs appoint a representative or representatives authorized to negotiate on behalf of the RFPG and notify the EA in writing of the appointment; and

(3) assist in negotiating resolutions of the issue with RFPGs.

(c) In the event the negotiations are unsuccessful, the EA may:

- (1) propose a recommendation for resolution of the issue to the Board; or
- (2) hold a public meeting on the proposed recommendation for resolution of the issue at a time and place determined by the EA. At the meeting, the EA may take comments [Comment] from the RFPGs, Political Subdivisions, and members of the public on the issues identified by the Board as unresolved issues; and
- (3) after the public meeting, the EA may make a recommendation to the Board for resolution of the issue.
- (d) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RFPG and determine the resolution of the issue.
- (e) The EA shall notify affected RFPGs of Board's decision and shall direct changes to the affected RFPs, to be incorporated in accordance with Texas Water Code §16.062(i).
- (f) The Board may also, at its discretion, consider approving a regional flood plan with the exception of the specific element that will negatively affect a neighboring area.

§361.62 Failure of a Regional Flood Plan to Meet Regional Flood Planning Requirements

- (a) In the event the Board finds that the RFP does not meet the requirements of the Texas Water Code §16.062, this chapter, and Chapter 362 of this title (relating to State Flood Planning Guidelines), the Board shall direct the RFPG to make changes necessary for compliance with legal requirements.
- (b) In the event the Board directs the RFPG to make changes to its RFP, the RFPG may request a reasonable amount of time, within any statutory deadlines, to complete the required changes.

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

<rule>

SUBCHAPTER F REGIONAL FLOOD PLANNING GRANTS

§361.70 Planning Group Sponsor Request for Funding [Notice of Funds and Submission and Review of Regional Flood Planning Applications]

- (a) The EA will notify the RFPGs that funds are available and that applications will be accepted from Planning Group Sponsors for grants to develop or negotiate a scope of work or to develop or revise regional flood plans. An [A] RFPG may not receive grant funds unless the RFPG has provided the EA with a copy of the RFPG's adopted by-laws.

(b) The RFPG shall provide a written designation to the EA naming the Planning Group Sponsor that is authorized to request [apply for] grant funds on behalf of the RFPG. [The RFPG shall ensure that the Planning Group Sponsor has the legal authority to conduct the procurement of professional services and enter into the contracts necessary for regional flood planning.]

(c) The RFPG meeting to consider its additional, region-specific, public notice requirements in accordance with §361.12(3) of this title (relating to General Regional Flood Planning Group Responsibilities and [an] Procedures) must occur prior to taking action regarding its request for funding under this subchapter and must be documented in its application for funding.

(d) The designated Planning Group Sponsor shall provide notice that a request [an application] for funding is being submitted in accordance with §361.21 of this title (relating to General Notice Requirements).

(e) The EA may request clarification from the Planning Group Sponsor, if necessary, to evaluate the application. Incomplete applications may be rejected and returned to the applicant.

[(f) The applications will be evaluated on the following criteria:

(1) degree to which proposed flood planning does not duplicate previous or ongoing flood or water planning;

(2) application organization, responsiveness, and reasonableness of budget;

(3) scope of work;

(4) eligibility of tasks for funding under this subchapter;

(5) the relative need of the Planning Group Sponsor for the funding based upon an assessment of the necessary scope of work, amount of work, and cost to develop the regional flood plan as compared to statewide needs for development of all regional flood plans;

(6) the degree to which the scope of work associated with the funding and to be performed by the RFPG will address the flood risks in the FPR; and

(7) Conformance with the requirements in the Board request for applications including other information as may be required in the application.]

§361.71 Board Consideration of Funding Requests, [Applications,] Applicant's Responsibilities, and Contract

(a) The EA will provide a summary of regional flood planning funding allocations [applications] with recommendations for approval to the Board for consideration at a [regularly scheduled] public meeting of the Board. The EA shall notify the RFPGs [applicants] and other persons who have provided comments [Comment] of the time and place of such meeting.

(b) [The Board may approve, deny, amend, or continue consideration of an application.] If the Board approves the funding allocation, [an application for funding,] the Planning Group Sponsor will be notified of the [amount of funds available and the] deadline for executing a contract with the Board. If the Planning

Group Sponsor [applicant] does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The Planning Group Sponsor may request an extension of time for good cause shown prior to the contract execution deadline.

(c) The Board may approve, deny, amend, or continue consideration of allocation of funding to any Planning Group Sponsor.

(d)[(c)] The Planning Group Sponsor must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a plan.

(e)[(d)] The [the] contracts and sub-contracts for regional flood planning funds shall include:

- (1) a detailed statement of the purpose for which the money is to be used;
- (2) a scope of work;
- (3) the total amount of money to be paid under the contract and, as determined by the EA, subdivided into budget tasks;
- (4) the time for completion; and
- (5) any other terms and conditions required by the EA or agreed to by the contracting parties.

§361.72 Use of Funds

(a) Limitations of funding. The Board has sole discretion in determining which activities are necessary for the development or revision of RFPs. However, no funds provided by the Board may be expended by RFPGs for the following:

- (1) activities for which the Board determines existing information, data, or analyses are sufficient for the planning effort including but not limited to:
 - (A) model development, modeling, or collection of data describing flood hazard exposure or flood risks where information for evaluation of flood hazard exposure or flood risks is currently available from other sources or that will be made available by TWDB or others in sufficient time to be utilized by the RFPG in development of their RFP;
 - (B) detailed technical evaluations of FMEs or FMSs or FMPs, including regarding feasibility, cost, or impacts, where recent, sufficient information for planning is available, including from the Board or other entity, to evaluate the FMEs or FMSs or FMPs;
 - (C) evaluations of topics not directly related to the regional flood planning contract scope of work or related flood planning rules for development of regional flood plans; and
 - (D) revision of the Board-adopted state population projections.

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) costs associated with administration of the plan's development by the Planning Group Sponsor or RFPG members, including but not limited to:

(A) compensation for the time or expenses of RFPGs members' service on or for the RFPG;

(B) costs of administering the RFPGs, other than those explicitly allowed under subsection (b) of this section;

(C) staff or overhead costs for time [spent providing public notice and meetings, including time] and expenses for attendance at such meetings;

(D) costs for training;

(E) costs of developing an application for funding or reviewing materials developed due to this grant; and

(F) costs of administering the regional flood planning grant and associated contracts.[:]

(4) analysis or other activities related to planning for disaster response or recovery activities; and

(5) analyses of benefits and costs of FMSs beyond the scope of such analyses that is specifically allowed or required by regional flood planning guidance to be provided by the EA unless the RFPG demonstrates to the satisfaction of the EA that these analyses are needed to determine the selection of the FMS or FMP.

(b) The following administrative costs are eligible for funding if the RFPG or its chairperson approves [certifies,] during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act, are available only for attendance at a posted meeting of the RFPG unless the travel is specifically authorized by the RFPG and EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RFPGs and certified by the chairperson;

(3) direct costs, [excluding personnel-related costs] of the Planning Group Sponsor, for placing public notices for the legally required public meetings and of providing copies of information for the public and for members of the RFPGs as needed for the efficient performance of planning work;

(4) the cost of public notice postings including a website and for postage for mailing notices of public meetings; [and]

(5) the Planning Group Sponsor's personnel costs, for the staff hours that are directly spent providing, preparing for, and posting public notice for RFPG meetings, including time and direct expenses for their support of and attendance at such RFPG meetings in accordance with, and as specifically limited by, the flood planning grant contract with the Board;[.]

(6) the reasonable cost of purchase or rental of audio-visual equipment that is necessary to comply with Texas Government Code Chapter 551 related to Open Meetings; and

(7) the cost for rental space to hold RFPG meetings.

(c) Subcontracting. An [A] RFPG through the Planning Group Sponsor's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional flood plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §§ 362.2-362.4

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The specific purpose of this rulemaking is to incorporate the changes proposed in the regional flood planning rules to the state flood plan development rules as applicable.

The intent of the amendments is to develop the statewide flood plan to incorporate changes and improvements to the process and increase the quality of the flood plan based on lessons learned during the inaugural cycle of this recurring state-wide process.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

PART 10 TEXAS WATER DEVELOPMENT BOARD CHAPTER 362 STATE FLOOD PLANNING GUIDELINES SUBCHAPTER A STATE FLOOD PLAN DEVELOPMENT

Section 362.2 Definitions and Acronyms

The proposed definition of Flood Management Strategy (FMS) is modified to better capture the intent behind an FMS so that it is useful information.

Section 362.3 Guidance Principles

Minor changes are proposed to the guidance principles. The guidance principles are used by the regional flood planning groups in developing their regional flood plans and they will be used by the Board in developing the state flood plan in 2024. The proposed changes are minor non-substantive changes.

Section 362.4 State Flood Plan Guidelines

Minor non-substantive changes are proposed to conform with the changes proposed in 31 TAC § 361.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no

foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules as amended to are necessary to protect water resources of this state as authorized by the Texas Water Code; are necessary to protect the health, safety, and welfare of the residents of this state; and are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it facilitates the regional flood planning process. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute to develop regional flood plans.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the

environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to facilitate the state flood planning process.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code § 16.062. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to facilitate the state flood planning process while making the process more efficient for the regional flood planning regions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The proposed rule may (3) require an increase or decrease in future legislative appropriations to the agency

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in fees paid to the agency; (4) create a new regulation; (5) expand, limit, or repeal an existing regulation; (6) increase or decrease the number of individuals subject to the rule's applicability; or (7) positively or adversely affect this state's economy. But the proposed rule may require an increase or decrease in future legislative appropriations to the agency.

AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

This proposed rulemaking includes an assessment of whether the reasons for initially adopting the rule exist and therefore, this rulemaking satisfies the requirement of a formal review in accordance with Texas Government Code § 2001.039.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include Chapter 361 in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.061 State Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning.

TITLE 31 NATURAL RESOURCES AND CONSERVATION

PART 10 TEXAS WATER DEVELOPMENT BOARD

CHAPTER 362 STATE FLOOD PLANNING GUIDELINES

SUBCHAPTER A STATE FLOOD PLAN DEVELOPMENT

§362.1 Applicability

This subchapter governs the TWDB's preparation, development, and formulation of the state flood plan and the Board's adoption of the state flood plan.

§362.2 Definitions and Acronyms

(a) 1% Annual Chance Flood Event [1.0% annual chance flood event]--Flood event having a 1% [1.0%] chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.

(b) 0.2% Annual Chance Flood Event [annual chance flood event]--Flood event having a 0.2% chance of being equaled or exceeded in any given year, also referred to as the 500-year flood.

(c) Board--The governing body of the Texas Water Development Board.

(d) Executive Administrator (EA)--The Executive Administrator of the TWDB or a designated representative.

(e) Flood Mitigation--The implementation of actions, including both structural and non-structural solutions, to reduce flood risk to protect against the loss of life and property.

(f) Flood Management Evaluation (FME)—A proposed study to identify flood risk or flood risk reduction solution. [A proposed flood study of a specific, flood-prone area that is needed in order to assess flood risk and/or determine whether there are potentially feasible FMSs or FMPs.]

(g) Flood Management Strategy (FMS)—Long term flood risk reduction solution ideas that still need to be formulated, for example, regulatory enhancements. All solutions and strategies that do not belong in FME or FMP belong to FMS. [A proposed plan to reduce flood risk or mitigate flood hazards to life or property. A flood management strategy may or may not require associated Flood Mitigation Projects to be implemented.]

(h) Flood Mitigation Project (FMP)--A proposed flood project, both structural and non-structural, that has a non-zero capital costs or other non-recurring cost and that when implemented will reduce flood risk or mitigate flood hazards to life or property.

(i) Neighboring area--Any area, including but not limited to upstream and downstream areas, potentially affected by the proposed flood mitigation project.

(j) Political Subdivision--County, city, or other body politic or corporate of the state, including any district or authority created under Art. 3 §52 or Art. 16 §59 of the constitution and including any interstate compact commission to which the state is a party and any nonprofit WSC created and operating under Ch. 67.

(k) Regional Flood Plan (RFP)--The plan adopted or amended by a Regional Flood Planning Group pursuant to Texas Water Code §16.062 (relating to Regional Flood Plans) and this chapter.

(l) State Flood Plan (SFP)--The most recent State Flood Plan adopted or amended by the Board under Texas Water Code §16.061 (relating to State Flood Plan).

(m) TWDB--Texas Water Development Board.

§362.3 Guidance Principles

(a) Regional flood planning guidance principles shall be the same as the state flood planning guidance principles and will be revisited every five years.

(b) Development of the regional and state flood plans shall be guided by the following principles. The regional and state flood plans:

(1) shall be a guide to state, regional, and local flood risk management policy;

(2) shall be based on the best available science, data, models, and flood risk mapping;

(3) shall focus on identifying both current and future flood risks, including hazard, exposure, vulnerability and residual risks; selecting achievable flood mitigation goals, as determined by each RFPG for their region; and incorporating strategies and projects to reduce the identified risks accordingly;

(4) shall, at a minimum, evaluate flood hazard exposure to life and property associated with the 1% and 0.2% [0.2 percent] annual chance flood events [event] (the 100 and 500-year floods [flood]) and, in these efforts, shall not be limited to consideration of historic flood events;

(5) shall, [when possible and] at a minimum, evaluate flood risk to life and property associated with 1% [1.0 percent] annual chance flood event (the 100-year flood) and address, when feasible, through recommended [strategies and] projects and strategies, the flood mitigation goals of the RFPG (per item 2 above) to address flood events associated with a 1% [1.0 percent] annual chance flood event (the 100-year flood); and, in these efforts, shall not be limited to consideration of historic flood events;

(6) shall consider the extent to which current floodplain management, land use regulations, and economic development practices increase future flood risks to life and property and consider recommending adoption of floodplain management, land use regulations, and economic development practices to reduce future flood risk;

(7) shall consider future development within the planning region and its potential to impact the benefits of flood management strategies (and associated projects) recommended in the plan;

(8) shall consider various types of flooding risks that pose a threat to life and property, including, but not limited to, riverine flooding, urban flooding, engineered structure failures, slow rise flooding, ponding, flash flooding, and coastal flooding, including relative sea level change and storm surge;

(9) shall focus primarily on flood management strategies and projects with a contributing drainage area greater than or equal to 1.0 (one) square mile [miles] except in instances of flooding of critical facilities or transportation routes or for other reasons, including levels of risk or project size, as determined by the RFPG;

(10) shall consider the potential upstream and downstream effects, including environmental, of potential flood mitigation projects and flood management strategies [(and associated projects)] on neighboring areas. In recommending projects and strategies, RFPGs shall ensure that no neighboring area is negatively affected by the regional flood plan;

- (11) shall include an assessment of existing, major flood mitigation infrastructure and will recommend both new strategies and projects that will further reduce risk, beyond what existing flood strategies and projects were designed to provide, and make recommendations regarding required expenditures to address deferred maintenance on or repairs to existing flood infrastructure;
- (12) shall include the estimate of costs and benefits at a level of detail sufficient for RFPs and sponsors of flood mitigation projects to understand project benefits and, when applicable, compare the relative benefits and costs, including environmental and social benefits and costs, between feasible options;
- (13) shall provide for the orderly preparation for and response to flood conditions to protect against the loss of life and property and reduce injuries and other flood-related human suffering;
- (14) shall provide for an achievable reduction in flood risk at a reasonable cost to protect against the loss of life and property from flooding;
- (15) shall be supported by state agencies, including the TWDB, General Land Office, Texas Commission on Environmental Quality, Texas State Soil and Water Conservation Board, Texas Parks and Wildlife Department, and the Texas Department of Agriculture, working cooperatively to avoid duplication of effort and to make the best and most efficient use of state and federal resources;
- (16) shall include recommended strategies and projects that minimize residual flood risk and provide effective and economical management of flood risk to people, properties, and communities, and associated environmental benefits;
- (17) shall include strategies and projects that provide for a balance of structural and nonstructural flood mitigation measures, including projects that use nature-based features, that lead to long-term mitigation of flood risk;
- (18) shall contribute to water supply development where possible;
- (19) shall also follow all regional and state water planning guidance principles per §358.3 of this title (relating to state water planning guidelines) [(31 TAC) 358.3] in instances where recommended flood projects also include a water supply component;
- (20) shall be based on decision-making that is open to, understandable for, and accountable to the public with full dissemination of planning results except for those matters made confidential by law;
- (21) shall be based on established terms of participation that shall be equitable and shall not unduly hinder participation;
- (22) shall include flood management strategies and projects recommended by the RFPs that are based upon identification, analysis, and comparison of all flood management strategies the RFPs determine to be potentially feasible to meet flood mitigation and floodplain management goals;
- (23) shall consider land-use and floodplain management policies and approaches that support short- and long-term flood mitigation and floodplain management goals;
- (24) shall consider natural systems and beneficial functions of floodplains, including flood peak attenuation and ecosystem services;
- (25) shall be consistent with the National Flood Insurance Program (NFIP) and shall not undermine participation in nor the incentives or benefits associated with the NFIP;

- (26) shall emphasize the fundamental importance of floodplain management policies that reduce flood risk;
- (27) shall encourage flood mitigation design approaches that work with[,] rather than against[,] natural patterns and conditions of floodplains;
- (28) shall not cause long-term impairment to the designated water quality as shown in the state water quality management plan as a result of a recommended flood management strategy or project;
- (29) shall be based on identifying common needs, issues, and challenges; achieving efficiencies; fostering cooperative planning with local, state, and federal partners; and resolving conflicts in a fair, equitable, and efficient manner;
- (30) shall include recommended strategies and projects that are described in sufficient detail to allow a state agency making a financial or regulatory decision to determine if a proposed action before the state agency is consistent with an approved regional flood plan;
- (31) shall include ongoing flood projects that are in the planning stage, have been permitted, or are under construction;
- (32) shall include legislative recommendations that are considered necessary and desirable to facilitate flood management planning and implementation to protect life and property;
- (33) shall be based on coordination of flood management planning, strategies, and mitigation projects with local, regional, state, and federal agencies projects and goals;
- (34) shall be in accordance with all existing water rights laws[,] including, but not limited to, Texas statutes and rules, federal statutes and rules, interstate compacts, and international treaties;
- (35) shall consider protection of vulnerable populations;
- (36) shall consider benefits of flood mitigation projects [management strategies] to water quality, fish and wildlife, ecosystem function, and recreation, as appropriate;
- (37) shall minimize adverse environmental impacts and be in accordance with adopted environmental flow standards;
- (38) shall consider how long-term maintenance and operation of flood mitigation projects [strategies] will be conducted and funded; and
- (39) shall consider multi-use opportunities such as green space, parks, water quality, or recreation, portions of which could be funded, constructed, and or maintained by additional, third-party project participants.

§362.4 State Flood Plan Guidelines

- (a) The EA shall prepare, develop, and formulate the state flood plan and the Board shall adopt a state flood plan pursuant to the schedule in Texas Water Code §16.061.
- (b) The EA shall incorporate into the state flood plan presented to the Board those RFPs approved by the Board pursuant to Texas Water Code §16.062 and Chapter 361 of this title (relating to Regional Flood Planning). The Board shall, not less than 30 days before adoption or amendment of the state flood plan, publish notice of its intent to adopt a state flood plan and shall mail notice to each RFPG. The Board shall hold a public meeting during which it may adopt a state flood plan or amendments thereto.

(c) The state flood plan shall incorporate information from Board-approved RFPs, and shall address, at a minimum, the following:

- (1) basis for state flood planning, including sections on Texas water statutes, rules, regulations, and Texas' flood management and mitigation institutions;
- (2) summary of the condition and adequacy of major flood control infrastructure on a regional basis;
- (3) summary of existing flood risk [hazards] associated with 1% [1.0%] annual chance and 0.2% annual chance flood events;
- (4) description of methods used to develop the regional and state flood plans;
- (5) a statewide, ranked list of recommended FMEs, FMPs, and FMSs[, and FMPs] that have associated one-time capital costs or other non-recurring costs derived from the Board-approved RFPs;
- (6) an analysis of completed, ongoing, and proposed FMEs, FMPs, and FMSs[, and FMPs] included in previous state flood plans including projects funded by the TWDB;
- (7) a discussion of how the recommended FMEs, FMPs, and FMSs[, and FMPs] will reduce flood risk and mitigate flood hazards; and
- (8) legislative recommendations the Board considers necessary to facilitate flood mitigation planning and FME, FMP, and FMS[, and FMP] implementation.

The Texas Water Development Board (TWDB or “board”) proposes the repeal of 31 Texas Administrative Code (TAC) §§361.22, 361.36, and 361.37.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED REPEALS.

The TWDB proposes the repeal to these sections of the rules. New rules 31 TAC §§ 361.36-.37 are being proposed elsewhere in this issue of the Texas Register.

SECTION BY SECTION DISCUSSION OF THE PROPOSED REPEALS

Subchapter B Guidance Principles, Notice Requirements, and General Considerations *§361.22 General Considerations for Development of Regional Flood Plans*

Section 361.22 is proposed to be repealed because the language was not useful to the development of regional or the state flood plans.

Subchapter C Regional Flood Plan Requirements

Section 361.36 Flood Mitigation Need Analysis

Section 361.36 is proposed to be repealed and substitute language is being proposed. The new language that is being proposed is included elsewhere in this issue of the Texas Register.

Section 361.37 Flood Mitigation and Flood Management Goals

Section 361.36 is proposed to be repealed and substitute language is being proposed. The new language that is being proposed is included elsewhere in this issue of the Texas Register.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeal. For the first five years these rules are repealed, there is no expected additional cost to state or local governments resulting from their administration.

The repeal is not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments. The repeal is not expected to have any impact on state or local revenues. The repeal does not require any increase in expenditures for state or local governments. Additionally, there are no foreseeable implications relating to state or local governments’ costs or revenue resulting from this repeal.

Because the repeal will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 does not apply.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from the rulemaking as it facilitates the regional flood planning process. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed repeal is in effect, the repeal will not impose an economic cost on persons required to comply with the repeal as the repeal is being proposed in order to develop regional flood plans as required by statute.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of this repeal. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the repeal. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the repeal in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the repeal is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the repeal is to facilitate the regional and state flood planning process.

Even if the proposed repeal were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This

repeal does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §16.062. Therefore, this proposed repeal does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed repeal and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this repeal is to facilitate the regional and state flood planning process while making the process more efficient for the regional flood planning regions. The proposed repeal will substantially advance this stated purpose by clarifying requirements of the flood plan regions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed repeal because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed repeal does not affect a landowner's rights in private real property because this repeal does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeal. Therefore, the proposed repeal does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed repeal in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed repeal would be in effect, the proposed repeal will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in fees paid to the agency; (4) create a new regulation; (5) expand, limit, or repeal an existing regulation; (6) increase or decrease the number of individuals subject to the rule's applicability; or (7) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include Chapter 361 in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, § 16.452 Texas Infrastructure Resiliency Fund, and §16.453(Floodplain Management Account for funding planning grants),
Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, § 16.452 Texas Infrastructure Resiliency Fund and §16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

CHAPTER 361 REGIONAL FLOOD PLANNING

SUBCHAPTER B GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

§361.22 General Considerations for Development of Regional Flood Plans

SUBCHAPTER C REGIONAL FLOOD PLAN REQUIREMENTS

§361.36 Flood Mitigation and Floodplain Management Goals

§361.37 Flood Mitigation Need Analysis