

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** October 5, 2023

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Ashley Harden, General Counsel  
As to certain fiscal elements: Rebecca Trevino, Chief Financial Officer  
Matt Nelson, Deputy Executive Administrator, Office of Planning

**FROM:** Reem Zoun, P.E., CFM, Director, Flood Planning  
Megan Ingram, Senior Regional Flood Planner, Flood Planning

**SUBJECT:** Adoption of amendments to 31 Texas Administrative Code Chapters 361 and 362 relating to Regional and State Flood Planning

### **ACTION REQUESTED**

Consider adopting with changes the previously proposed amendments to 31 Texas Administrative Code Chapters 361 and 362 relating to Regional and State Flood Planning.

### **BACKGROUND**

Senate Bill 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 §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, Texas Water Code §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 the new 31 Texas Administrative Code (TAC) Chapters 361 and 362 relating to Regional and State Flood Planning to implement the flood planning requirements of Texas Water Code §§16.061 and 16.062.

With the near completion of the first cycle of regional flood planning, there is a need to modify the rules prior to the second cycle of planning. The goal of this amendment process is to make the regional flood planning process more efficient while providing the level of information needed to compile a comprehensive state flood plan.

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Jeff Walker, Executive Administrator

As a first step in the rulemaking update process, the TWDB solicited preliminary input from a wide variety of RFPG stakeholders to better inform the development of draft proposed amendments to the rules. In addition to holding a well-attended stakeholder technical meeting, written comments from governmental entities, professional organizations, and other relevant stakeholders were also received by email. The input received during this comment period was thoughtful and constructive and continues to serve as a helpful resource for staff.

Prior to the first cycle of flood planning, as directed by Texas Water Code § 16.061(c), the TWDB coordinated with the Texas Commission on Environmental Quality, the Texas Department of Agriculture, the Texas General Land Office, the Texas Parks and Wildlife Department, the Texas Division of Emergency Management, and the Texas State Soil and Water Conservation Board on the development of guidance principles for the new regional and state flood planning process. Texas Water Code §16.061(c) requires the TWDB to coordinate with these same state agencies to review and update the state flood planning guidance principles in 31 TAC §362.3 at least every fifth year. The TWDB collected preliminary input from these agencies during December 2022, however, amendments to the rules were not requested nor recommended by these agencies.

On April 6, 2023, the Board authorized the publication of the draft proposed amendments to the rules, which were published in the *Texas Register* on April 21, 2023. Public comment was accepted for 30 days until May 22, 2023. Comments were received from entities comprising 26 pages of written comments. TWDB appreciated the comments and made a number of changes as a result.

### **KEY ISSUES**

The Executive Administrator proposes adoption of amended 31 TAC Chapters 361 and 362 to implement 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 includes 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 in the chapter and refinement of several other definitions to better facilitate the regional flood planning process and guidance documents. In particular, the amended rules now require that as part of the technical memorandum deliverable, the RFPGs provide a summary and maps of locations that are considered to be the greatest flood risk.

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

The amendments to Subchapter B require the public meetings to take public comment related to the draft regional flood plan to be held, more specifically, in a central location in

the flood planning region. This is to more closely comply with a statutory requirement from Texas Water Code §16.062(f).

Chapter 361 Subchapter C includes the major substantive requirements for the regional flood plans. It requires basic background information about the region, major flooding risks, and existing major flood infrastructure. It requires that each region evaluate what could be harmed by floods both now and in the future if there are no new flood mitigation projects (FMPs) or changes to existing floodplain policies. It also requires RFPGs to evaluate current floodplain management policies within their flood planning region and consider recommending changes. Subchapter C further requires the RFPGs to identify solutions to address flood risks to life and property and to identify flood-prone areas that do not yet have sufficient information to identify potential flood solutions that will require more detailed evaluations. This subchapter also requires that the RFPGs evaluate the impacts of their proposed flood management solutions and make recommendations.

The amendments to Subchapter C include several changes intended to provide clarity and efficiency. Specifically, the list of natural features and constructed major infrastructure within the regions is further refined by removing some specific features and adding others. The analysis of condition and functionality of natural flood mitigation features or major flood infrastructure is amended to clarify that a burdensome feature-by-feature analysis is not required. Consideration of whether dams meet FEMA accreditation is removed, as dams are not accredited by FEMA.

Based on preliminary feedback from RFPGs and their technical consultants that some requirements were overly burdensome and impractical, the proposed rule amendments removed the requirements that the regional flood plans include the future conditions analysis for the 0.2% annual chance floodplain and the requirement for an equitable comparison and consistent assessment of all potentially feasible FMPs and flood management strategies (FMSs). However, TWDB received significant input during the formal public comment period recommending the restoration of both requirements. These final rules restore both requirements. In its responses to public comments, TWDB highlights that an applicable cursory floodplain dataset is expected to be developed by TWDB and made available to the RFPGs during the second planning cycle, making a future conditions analysis of the 0.2% annual chance floodplain more achievable.

Clarification was added as to what data is necessary for the RFPGs to provide related to the existing and future condition risk of flood in each region. These changes will provide greater flexibility for the RFPGs as well as for the TWDB to align the data requested with the information needed. The amendment also includes changes intended to provide more clarity and detailed expectations of the RFPGs and is intended to provide flexibility to the RFPGs when evaluating flood mitigation solutions.

The proposed amendments moved the flood mitigation needs analysis before the development of flood mitigation and floodplain management goals. Additional proposed amendments throughout Subchapter C are made to better align with this change.

During the first planning cycle, TWDB staff disseminated updated guidance by email to RFPGs regarding FMSs to clarify that TWDB ranking of FMSs will only include those that have non-recurring, noncapital costs. Several changes throughout Subchapter C are made to better align with this clarification in rule.

The amendment requires the assessment of FMP and FMS benefits to include analysis of avoidance of future flood risk and prevention of creation of future flood risk. This is a notable addition to capture proactive projects and strategies that help reduce flood risk.

Chapter 361 Subchapter D of the rules addresses the processes of regional flood plan adoption, submittal, amendments. The amendment clarifies that an individual and separate vote to approve each recommended flood management evaluation, flood mitigation project, and flood management strategy is not required.

Chapter 361 Subchapter F of the rules addresses the process of administering regional flood planning grants including how those funds may be used by the RFPGs. Amendments to this subchapter include the clarification of eligible costs for Planning Group Sponsor staff.

Overall, Chapter 361 has been altered to better align with the flow of the regional flood planning process. Minor typographical errors are also corrected, and clarifications made throughout Chapter 361 in this amendment.

The Chapter 361 rules refer repeatedly to guidance developed by the Executive Administrator and that serves as a resource for RFPG stakeholders. Based on stakeholder input, the TWDB will update these guidelines as well as the regional flood planning grant contracts.

Chapter 362 of these proposed rules addresses development of the state flood plan. The amendment to Chapter 362 includes minor amendments to include consideration of flood management strategies and relevant updated guidance in the guidance principles.

The attached *Preamble for Chapter 361*, *Preamble for Chapter 362*, provides further rule context and describes the public comments received and changes made in response to those comments.

These original regional and state flood planning rules were 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 these rules that will apply to the second planning cycle. The intent is that the regional flood planning rules will be revisited toward the end of each planning cycle, as necessary, to continue to identify the best practices which may, in turn, become the established standards by which future regional flood plans are developed.

Upon adoption of the final regional flood planning rules, the Executive Administrator will begin updating associated guidance documents, including the regional flood planning scope of work. This will inform the development of updated contracts which TWDB will enter into with planning group sponsors late this fall or early winter.

**RECOMMENDATION**

The Executive Administrator recommends the Board adopt with changes the previously proposed amendments to 31 Texas Administrative Code Chapters 361 and 362 relating to Regional and State Flood Planning.

Attachments

1. 31 TAC Ch 361 Adopted Amendments
2. 31 TAC Ch 362 Adopted Amendments
3. 31 TAC Ch 361 Adopted Repeals

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code (TAC) §§ 361.10, 361.11, 361.12, 361.13, 361.20, 361.21, 361.30, 361.31, 361.32, 361.33, 361.34, 361.35, 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. The proposal is adopted with changes as published in the April 21, 2023, issue of the *Texas Register* (48 *Texas Register* 2060).

## BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

Several rule sections that were proposed for removal are restored in these final rules.

### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

#### Subchapter A

Section 361.10 The definitions of Flood Management Evaluation, Flood Management Strategy, Flood Risk, Nature-based Flood Mitigation, Potentially Feasible Flood Mitigation Project or Potentially Feasible Flood Management Strategy were all modified in response to comments.

The definition of Nature-based Flood Mitigation was restored to the original definition.

Sections 361.11 and 361.12 No change from publication.

Section 361.13 The technical memorandums will include a list of ongoing flood studies in addition to previous flood studies considered by the RFPGs to be relevant. The technical memorandums will also include a summary and maps of locations that the RFPG consider the greatest flood risk and flood mitigation needs.

#### Subchapter B

Section 361.20 No change from publication

Section 361.21 Added a requirement that the RFPGs hold a public meeting in a central location to accept comments on the Regional Flood Plan.

#### Subchapter C

There are clarifications to the requirements of the Regional Flood Plan content throughout Subchapter C.

Section 361.30 Allows RFPGs to not include information that is not available. This includes information about key historical flood events. Further clarification of political subdivisions with flood-related authority is provided. Additionally, several descriptors of the FPR that were proposed to be removed from the rule have been restored in this final rule language.

361.31 The list of examples of major flood-related infrastructure that is to be included in the flood plan is modified. The description of natural flood mitigation features and the description of major flood infrastructure were also modified.

361.32 No change from publication

361.33 A change was made to clarify that in the event that data for dams is not available, it is not required as part of the existing condition flood hazard analyses. Minor changes were also made to the existing condition vulnerability analyses.

361.34 Changes to the requirements for several of the required analyses were modified to ensure meaningful data is collected from each region. This involved providing more flexibility to the RFGs while TWDB provides greater detail in guidance.

Minor changes to the future condition risk analyses and the future condition flood exposure analyses were made to provide more flexibility to the RFGs when future condition results are not available.

The identification of vulnerabilities of critical facilities was modified to remove some factors that were supposed to be considered. Now the rule provides much more flexibility for the future condition flood exposure analysis.

The future condition vulnerability analysis was also modified to provide more flexibility for conducting the analysis.

361.35 No change from publication

361.36 Flood mitigation and floodplain management goals are no longer required to be included in the flood mitigation need analysis. The flood mitigation need analysis is now going to be completed prior to the mitigation and management goals.

361.37 A minor clarification was made to the rule.

361.38 A comparison of FMSs and FMPs is restored in the rule, however modifications were made to clarify that an equitable comparison and assessment of the FMSs and FMPs are to be made independently for each category. The FMSs are to be compared among FMSs and the FMPs are to be compared among FMPs.

Additional changes were made to 361.38 to better align the requirements with the data available to the RFGs. For the evaluation of potential FMEs, the estimated flood risk reduction benefits has been removed from the requirements. Further, the order of the evaluations of FMEs and the assessment of potentially feasible FMPs and FMSs is reversed to ensure the FMEs are evaluated prior to the FMPs and FMSs.

361.39 Changes were made to clarify that FMEs and FMSs will be ranked in the state flood plan. Additional clarification was made so the RFGs may provide a reference to a benefit-cost calculation if it has already been done by another entity rather than the RFG calculating the number itself.

361.40 Modified to include a summary of how the recommended actions will meet the needs and goals identified.

361.41, 42, 43, 44, 45- No changes from publication

361.50 Modified so that each individual FME, FMP, and FMS does not have to be voted on individually, rather the RFGs may vote on the items in a way that the RFGs find best.

361.70 The process for the RFPG Sponsor to receive funding has been simplified.

361.72 The RFPG Sponsors will be allowed reimbursement for time spent at the RFPG meetings. Further, Sponsors will also be reimbursed for time spent on administrative tasks.

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

The TWDB reviewed the 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, these rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated these rules and performed an analysis of whether they constitute 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 rules 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 these rules because these are actions 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 these rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject rules do 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 rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

Harris County Engineering Department provided comments related to the Fiscal Note and the Growth Impact Statement of the preamble. Harris County Engineering Department requested clarification related to the Fiscal Note and thought that the Growth Impact Statement asserted that there would be no funding for the Flood Infrastructure Fund.

*Response: The Fiscal Note and the Growth Impact Statement pertain to the rules related to the Regional Flood Plan. Funding projects is a separate process with a separate set of rules.*

The San Jacinto River Authority requested clarification as to whether HUC10 and HUC8 were intended to be referenced in the rules.

*Response: TWDB acknowledges and agrees with the comment. The rules have been modified to remove references to HUC10.*

Halff Associates stated that it supports the proposed reductions in overly burdensome requirements at the planning level analysis. Halff explained that it found that some of the requirements for potentially feasible flood mitigation actions, such as benefit-cost analysis, were time consuming for actions that ultimately could not meet the no negative impact requirement and were therefore not recommended as Flood Mitigation Projects (FMPs). Halff noted that it supports removing requirements that do not add value to the flood planning process.

*Response: The TWDB acknowledges and appreciates the comment. Please find any relevant changes made in subsequent comments and responses. Note that many items that are considered necessary to meet this statutory requirement related to no negative impact and that are needed to evaluate and rank projects, were retained. No changes have been made in response to this comment.*

#### Section 361.10 Definitions and Acronyms

Harris County Engineering Department supports the definitions added for Critical Facilities and Emergency Need.

*Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.*

Halff Associates recommended a definition for “Low Water Crossing” be added to this section.

*Response: TWDB acknowledges and appreciates the comment. Exhibit C: Technical Guidelines for Regional Flood Planning provides a definition for Low Water Crossing. No change has been made in response to this comment.*

Halff recommended that a definition of “Major Flood Infrastructure” be added to the list of definitions. Halff provided example parameters for consideration.

*Response: TWDB acknowledges and appreciates the comment. Since the meaning of “major” differs significantly from flood planning region to flood planning region, flexibility will remain in the rule and each RFPG will determine its meaning. However, guidance documents will be enhanced to offer an optional default definition and include helpful examples. No change has been made in response to this comment.*

Halff recommended adding examples to the definition of “Critical Facilities” with “include but not limited to facilities and infrastructure...”

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that Exhibit C: Technical Guidelines for Regional Flood Planning does contain examples for Critical Facilities. No change has been made in response to this comment.*

Halff recommended removing “Emergency Need” entirely from the regional flood plans. In the alternative, Halff recommended removing the word “imminent” from the proposed definition related to anticipated failure... Halff explained that the planning cycle spans 5 years, which is too long to respond to a true emergency need. Halff stated that this has already created confusion as several residents contacted the Region 3 Trinity RFPG requesting help in the August 2022 flood event in North Texas. Halff went on to explain that the RFPGs do not provide emergency response services and the TWDB rules prohibit them from evaluating emergency response plans.

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that statute Texas Water Code Section 16.062(e)(2)(E)(i) requires an indication of whether a flood mitigation solution “meets an emergency need” and therefore must be addressed in a meaningful manner. A definition has been provided in rule in response to stakeholder input and to improve consistency in how it is considered, statewide. No change has been made in response to this comment.*

Halff recommended adding to the definition of “Floodplain Management” that “effective floodplain management includes regulatory and enforcement requirements/standards for development and other activities in in pluvial and fluvial flood risk areas by the local jurisdiction.”

*Response: TWDB acknowledges and appreciates the comment. The recommendation will be considered for addition to the guidance documents. No change has been made in response to this comment.*

Freese and Nichols suggested revising the definition for Flood Management Evaluation (FME) to be a proposed study to define or “quantify” (in lieu of “identify” as currently drafted) flood risk or flood risk reduction solutions. Freese and Nichols stated that in many cases, flood risk and a potential flood risk reduction solution have already been identified and FMEs have been recommended to further define the solution or satisfy requirements to be considered an FMP.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to revise the definition.*

Halff suggested that the definition for FME include specific categories, such as watershed studies, H&H modeling, mapping, etc.

*Response: TWDB acknowledges and appreciates the comment. Guidance documents will be enhanced accordingly. No change has been made in response to this comment.*

Freese and Nichols suggested revising the definition of Flood Management Strategy (FMS) to better differentiate between FMEs and FMPs as well as clarify the types of actions that are eligible for funding within the FMS category. Freese and Nichols suggested removing the phrase, “ideas that still need to be formulated,” in exchange for, “that result in flood risk reduction benefits that cannot be directly quantified through standard practices.” Freese and Nichols and Halff Associates also suggested that the definition include examples of types of actions that would qualify as an FMS and whose non-recurring, non-capital cost would be eligible for funding under the FMS category, to help to clarify the purpose and use of this category.

*Response: TWDB appreciates the comment and agrees. The rule has been modified to revise the definition for Flood Management Strategy (FMS). Guidance documents will also be updated to include additional specificity and examples.*

Halff recommended that the definition of “Flood Risk” be adjusted to include resilience, such as “...and the vulnerability and resilience of the people...”.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to revise the definition of Flood Risk.*

Halff Associates suggested that “Nature-based Flood Mitigation” be renamed as “Nature-based Flood Risk Reduction”. Halff Associates stated that in areas that are already developed, nature-based solutions are difficult to develop as stand-alone solutions, and instead, nature-based solutions tend to be components of a larger solution.

*Response: TWDB acknowledges and appreciates the comment. “Mitigation” is a commonly used and accepted term, which is helpful when aiming for clarity with Flood Mitigation Projects. No change has been made in response to this comment.*

The National Wildlife Federation recommended that the definition of Nature-based solution not be changed as proposed. The National Wildlife Federation stated that the proposed definition did not accurately capture the goal of nature-based solution projects.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore the original definition of Nature-based Flood Mitigation.*

The Great Edwards Aquifer Alliance suggested modifying the definition of Nature-based Flood Mitigation to include “flood mitigation strategies that provide additional environmental and social benefits”.

*Response: TWDB acknowledges and appreciates the comment. The original definition of Nature-based Flood Mitigation has been restored based on comments received from multiple entities. No further change has been made in response to this comment.*

Matthew Berg and Simfero Consultants stated that the proposed definition of nature-based mitigation is unnecessarily narrow and not reflective of the reality in Texas. Freese and Nichols as well as Matthew Berg and Simfero provided several alternative definitions for nature-based mitigation. Freese and Nichols encouraged the TWDB to adopt a definition that specifically represents the primary goal of these nature-based solutions as flood mitigation, relates to the types of flood risks seen in Texas, and assists RFPGs in determining what components of FMPs can be considered nature-based.

*Response: TWDB acknowledges and appreciates the comments. Based on comments received from multiple entities, the rule has been modified to restore the original definition of Nature-based Flood Mitigation.*

For the definition of Political Subdivision, Halff recommended deleting the proposed addition of “water supply corporation”. Halff Associates explained that many WSCs specifically requested to be removed from the regional flood planning group contact lists because flood planning was irrelevant to their responsibilities.

*Response: TWDB acknowledges and appreciates the comment. Please note that some water supply corporations may have flood-related responsibilities. RFPG contact lists may be modified at the discretion of the RFPGs. No change has been made in response to this comment.*

The definition of “Potentially Feasible Flood Management Project or Potentially Feasible Flood Mitigation Strategy” includes the determination as to whether or not the action is “permissible.” Halff Associates recommended a modification of the definition of Potentially Feasible Flood Management Project or Potentially Feasible Flood Mitigation Strategy because the level of analyses for most FMPs is such that one cannot make definitive statements about potential implementation constraints.

*Response: TWDB appreciates the comment and agrees. The rule has been modified to change the definition.*

## **Section 361.11 Designations and Governance of Flood Planning Regions**

Halff Associates suggested rewording “Water Utilities” to read “Water and/or Wastewater Utilities.”

*Response: TWDB acknowledges and appreciates the comment. Texas Water Code Section 16.062(c) specifically requires water utilities. TWDB notes that the rules will continue to allow flexibility for RFPGs to determine whether wastewater utilities should be included. No change has been made in response to this comment.*

Halff stated its support of the formal inclusion of a transportation authority in regional flood planning. Specifically, Halff recommended that the Texas Department of Transportation (TxDOT) be added as a required non-voting state agency on each of the RFPGs. Halff noted that their participation is critical as most of the hurricane evacuation routes use TxDOT roadways and many TxDOT roadways throughout the state are at risk from periodic inundation, closure, and/or damage during and from flood events. Halff explained that the regional flood plans would benefit from this additional representation.

*Response: TWDB acknowledges and agrees with the comment. The rule was modified at the publication stage to further emphasize that RFPGs, must consider including a non-voting position to represent regional or local transportation authorities for example, from the Texas Department of Transportation.*

Halff encouraged the TWDB to provide funding to the RFPGs during the year that the State Flood Plan is being prepared to allow the RFPGs to perform additional activities that they may not have time or opportunity to perform during the four-year plan development.

*Response: TWDB acknowledges and appreciates the comment. Provision of grant funding to support the development of regional flood plans by RFPGs during each 5-year planning cycle occurs under a separate process from rulemaking. No change has been made in response to this comment.*

The San Jacinto River Authority noted that 361.12(c)(4) does not read right.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified.*

## **Section 361.13 Regional Flood Planning Group Deliverables**

Freese and Nichols suggested that the TWDB consider adding relevant ongoing studies to the technical memo deliverable, 361.13(e)(2). Freese and Nichols explained that ongoing studies are not FMEs since they are already funded, and they are not previous studies because they are not completed. Freese and Nichols stated that ongoing studies also do not fit well in the Ongoing Projects feature class and table since they are not mitigation projects. Further, Freese and Nichols explained that requiring regions to assess where ongoing studies are occurring would add value to the process and would include, for example, identifying FIF Category 1 studies or Base Level Engineering mapping which were eventually requested by the TWDB via comments on deliverables.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to include ongoing studies.*

The American Flood Coalition suggested that a geodatabase and associated maps of existing hydrologic and hydraulic models available, continue to be a requirement in the technical memo, 361.13(e)(5). The American Flood Coalition stated that the availability of existing hydrologic and hydraulic models should be considered a best practice.

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that significant preliminary input was received from stakeholders recommending the removal of this requirement due to models not yet being identified during the Technical Memorandum stage of the planning process. Additionally, TWDB notes that while the requirement will be removed in rule, it will remain as a requirement in Exhibit C: Technical Guidelines for Regional Flood Planning and in the Scope of Work. No change has been made in response to this comment.*

Freese and Nichols requested that the TWDB consider revising language in 361.13(e)(5) to specify alignment with RFP task requirements. Freese and Nichols requested clarification whether the list is intended to be a list of models that could be used to evaluate FMPs or generally identify model availability throughout the region.

*Response: TWDB acknowledges and appreciates the comment. This recommendation will be considered for elaboration in guidance documents. No change has been made in response to this comment.*

Freese and Nichols requested that since the TWDB moved the needs analysis ahead of goal setting in the rules (361.36 and 361.37), the TWDB consider replacing this technical memorandum deliverable with the results (geodatabase and mapping) of the needs analysis performed. Freese and Nichols also requested that the TWDB clarify how the needs analysis should inform goal setting and whether the TWDB expects for flood planning regions to have completed both the needs analysis and goal setting ahead of submitting the technical memorandum.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to add a new technical memorandum deliverable requiring a summary and associated maps of locations within the FPR that the RFPG considers to have the greatest flood risk study and flood mitigation needs.*

American Flood Coalition suggested 361.13(e)(10) not be deleted. The Coalition stated that by maintaining a record of infeasible FMSs and FMPs, TWDB might be better positioned to make future adjustments to FMS and FMP criteria and understand opportunities for technical assistance.

*Response: TWDB acknowledges and appreciates the comment. TWDB received significant preliminary input from stakeholders recommending the removal of this requirement. Note that removal of this requirement does not prevent RFPGs from maintaining related records that they consider beneficial. No change has been made in response to this comment.*

Halff stated its support for the removal of the lists of flood management strategies and plans that were identified and found to be infeasible as these lists do not add value to the overall flood plan.

*Response: The TWDB acknowledges and appreciates the comment. No change has been made to 361.13 in response to this comment.*

## **SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS**

### **Section 361.21. General Notice Requirements**

Halff expressed its support for the proposed removal of the 14-day notice for some RFPG actions. Halff stated that the requirement was often complicated to meet for Regional Flood Planning Groups that met on a monthly basis. Halff commended TWDB for developing the public notification summary spreadsheet for the first cycle of regional flood planning. Halff found it to be very useful in planning and preparing for RFPG meetings.

*Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.*

Halff requested that the TWDB consider reducing the number of hard copies of the draft plan that are required to be printed and made available for public review. Halff stated that the number of hard copies of the draft and final plans required to be submitted to the TWDB, including the appendices, should be clarified.

*Response: TWDB acknowledges and appreciates the comment. The number of required hard copies of the draft Regional Flood Plan was reduced from three to one. No further change has been made in response to this comment.*

## **SUBCHAPTER C. REGIONAL FLOOD PLAN REQUIREMENTS**

### **Section 361.30 Description of the Flood Planning Region**

The American Flood Coalition suggested that the TWDB consider maintaining several specific descriptors in future regional flood plans that were proposed to be deleted from 361.30. The American Flood Coalition stated that the factors may change over the years, and having a strong understanding of these regional factors could significantly alter regional and state decision making.

*Response: TWDB appreciates and partially agrees with the comment. The original descriptions, in general, aside from the “economic sectors most at risk of flood impacts,” have been restored in the rule.*

Halff supported the reduction in required information describing the region in 361.30. Halff recommended that the region description requirements be made more consistent with those used in the regional water plans.

*Response: TWDB acknowledges and appreciates the comment. The rule was modified in response to public comments received.*

Halff suggested removal of the requirement for a description of the areas in the region that are flood-prone and the types of major flood risks to life and property in the region. Alternatively, Halff requested that the TWDB consider combining that with the requirement to describe the types of historical flood risks and key historical flood events within the region.

*Response: TWDB acknowledges and appreciates the comment. The requirement of this section is intended to be much more general in comparison to that of the flood risk analyses in Scope of Work Task 2. No change has been made in response to this comment.*

Freese and Nichols suggested a revision to clarify information on fatalities should be included only if available. Freese and Nichols stated that fatality data was not readily available in all regions or for all historical flood events.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to add “when the information is available.”*

Freese and Nichols requested that the TWDB consider incorporating a definition for, “flood-related authority,” or add clarification in guidance. Freese and Nichols stated that this was a subject of debate for many regions and caused confusion regarding what was required. Further, Freese and Nichols requested that the TWDB consider whether the term, “flood-related authority,” could be replaced with something that incorporated more explanation.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to read: “...flood-related regulatory authority....”*

Harris County Engineering Department recommended keeping the language in Section 361.30 (5) in order to capture a comprehensive understanding of each regions’ needs for regulations as to not cause upstream or downstream impacts.

*Response: TWDB acknowledges and agrees with the comment. The rule has been restored to its original wording.*

Harris County Engineering Department recommended keeping the language in Section 361.30 (6) related to agricultural and natural resources most impacted by flooding to capture a comprehensive understanding of each region’s natural and agricultural resources.

*Response: TWDB acknowledges and agrees with the comment. The rule has been restored to its original wording.*



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

The San Jacinto River Authority questioned the removal of infrastructure examples in Section 361.31.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore a longer list of examples and guidance documents will be enhanced.*

Great Edwards Aquifer Alliance proposed a definition for “functioning floodplain” in Section 361.31(a)(1)(A).

*Response: TWDB acknowledges and appreciates the comment. The rule has been modified to remove the overly broad and undefined term “functioning floodplains.” The change does not prevent RFPGs from describing them or proposing restoration projects or strategies to address more specific features to improve the functionality of the floodplains within their regions.*

The National Wildlife Federation and the Great Edwards Aquifer Alliance recommended against removing wetlands from items that need to be described in the “Description of the Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region” in Section 361.31.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore wetlands to the list of identified natural flood mitigation features.*

Halff Associates noted that the phrase “stormwater management systems” is vague in 361.31(a)(2)(E) and requested clarification.

*Response: TWDB acknowledges and appreciates the comment. The rule has been modified to include the following: stormwater management systems including storm drains, inlets, tunnels and pump stations.*

Freese and Nichols stated that in 361.31(b), a feature-by-feature analysis and description in the plan is not aligned with the goal of this process to be planning-level. Freese and Nichols suggested removing this requirement or revising to require the plan to include a general description by feature type in the regional flood plan. Freese and Nichols also stated that the TWDB could consider including general descriptions of infrastructure by feature type within a certain boundary such as political jurisdiction (city, county) or within a watershed (HUC-8, HUC- 12) to simplify this task, but provide geospatial value. Freese and Nichols went on to propose that if feature-by-feature information is mandatory, only including that data in the GDB should be required and not in the regional flood plan text. Freese and Nichols suggested that the TWDB consider changes to data requirements recommended by Freese and Nichols as part of the Infrastructure Assessment Methodologies and Toolkit for Assessment of Community Flood Infrastructure to Support Statewide and Regional Flood Planning project.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to require analysis by feature type rather than individual feature and to allow for descriptions based on geographic groupings.*

### **Section 361.32 Description of the Major Infrastructure and Flood Mitigation Projects Currently Under Development**

The American Flood Coalition suggested “when available” not be added to 361.32(3). The American Flood Coalition state that projects with already dedicated funding should have an available expected year of completion and by adding, “when available,” the due diligence required of the RFPs would be limited.

*Response: TWDB acknowledges and appreciates the comment. TWDB received significant preliminary input from regional planning stakeholders indicating the lack of availability of data reflecting the difficulty of obtaining this data for existing projects. No change has been made in response to this comment.*

### **Section 361.33 Existing Condition Flood Risk Analyses in the Region**

The San Jacinto River Authority noted that section 361.33(b)(6) regarding FEMA accreditation reads oddly.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to improve the language. Other minor changes have been made including the removal of ‘dams’, in accordance with a different comment.*

Halff Associates noted that dams should be removed from 361.33(b)(6) because they are not accredited by FEMA. Halff Associates explained that dam hazard classification and condition assessment reports are protected information that are not publicly available and should not be included or required in the regional flood plans.

Halff Associates also explained that the concept of adding levee accreditation is more complex than it may appear. Halff Associates stated that levee accreditation information is publicly available and FEMA typically requires maps with areas protected by levees to show the potential flood-prone area if the levee was not in place. Halff Associates stated that while the information may be valuable, it will require significant effort to develop with limited data and will likely receive significant political pushback.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to remove the requirement regarding dams not meeting FEMA accreditation. However, TWDB maintains the importance of levee accreditation information and thus, it remains a requirement in the rule.*

Freese and Nichols suggested that 361.33(a)(7) be revised to change the terminology of inundation.

Response: TWDB appreciates and agrees with the comment. TWDB notes that 361.33(a)(7) does not exist and believes Freese and Nichols intended this comment to apply to 361.33(b)(7). TAC Section 361.33(b)(7) language has been modified in accordance with the comment.

The American Flood Coalition requested an explanation of why high-level, region-wide and floodplain level, largely GIS-based analyses would no longer be required in 361.33(c) and (c)(2).

*Response: TWDB acknowledges and appreciates the comment. The regions are required to perform detailed exposure analysis to identify who might be harmed in the region and within the floodplain. The in-depth exposure analysis already achieves the underlying aim thereby making a high-level GIS analysis unnecessary. No change has been made in response to this comment.*

Freese and Nichols suggested removing requirement of 361.33(c)(2) due to impracticality of implementing this at a regional scale. Freese and Nichols stated that if there are existing maps available that show these areas as inundated, this can be included, but the generation of new maps should not be required of the RFPs. Additionally, Freese and Nichols suggested moving this to the hazard analysis section, as these changes would be made in the hazard layer, not the exposure layer.

*Response: TWDB acknowledges and appreciates the comment. The rule has been modified to add the suggested language to the hazard analysis section. In the exposure section it simply implies that exposure analyses are done by intersecting the buildings and other layers with hazard layer that was generated by considering the location of existing levees that do not meet FEMA accreditation as inundated by flooding without those structures in place.*

San Jacinto River Authority requested clarification related to the removal of HUC from 361.33(e)(4).

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that although certain HUC references in rules have been removed, certain HUC data remains required in the geodatabase submission. It was determined that the data produced as part of the existing condition flood exposure analysis and vulnerability analysis in Section 361.33(e)(4) does not need to be summarized by HUC. TWDB plans to elaborate on HUC requirements in guidance materials, which stakeholders will have an opportunity to review. No change has been made in response to this comment.*

### **Section 361.34 Future Condition Flood Risk Analyses in the Region**

The American Flood Coalition asked TWDB to explain why there would be inconsistencies between the requirements in analyzing existing conditions for 361.33 with future conditions for 361.34.

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that the future condition flood risk analysis and the existing condition flood risk analysis were not intended to be identical. Available level of information and details for future condition is fairly limited compared to currently available existing condition flood hazard information. While their*

*underlying frameworks in requiring analyses of hazard, exposure, and vulnerability are fundamentally the same, variances in data availability, and differences in assumptions, including related to future changes in factors such as future sea level, require there to be differences. No change has been made in response to this comment.*

Halff Associates agreed with the proposed removal of the future 0.2% future flood condition from 361.34. Halff Associates explained that to comply with this requirement RFPGs had to make assumptions on top of assumptions to estimate the future 0.2% flood event and the associated risk and exposure. Halff Associates noted the uncertainty associated with such analyses provides an outcome with little value that resulted in concern among planning group members.

San Jacinto River Authority questioned why the rules would not require analyses for 0.2% for future conditions to get the most comprehensive analysis possible.

Similarly, the National Wildlife Federation, Harris County Engineering Department and the American Flood Coalition requested that the future conditions analysis for 0.2% annual chance of flooding remain a requirement in 361.34.

*Response: TWDB acknowledges and appreciates the comment. The requirement to analyze the 0.2% annual chance flood event in the future condition flood hazard analysis has been restored based on public comments. TWDB notes the removal of the future 0.2% future flood condition risk analysis was proposed due to preliminary input from RFPG stakeholders indicating the difficulty and uncertainty in its estimation. To address stakeholder concerns, the TWDB is developing an applicable cursory floodplain dataset providing consistent statewide future condition flood hazard information that is expected to be available to RFPGs during the second planning cycle. To further address the concerns about implementing this requirement, TWDB guidance documents will be enhanced to simplify the requirement. No change has been made in response to this comment.*

San Jacinto River Authority wondered if “major” project should be defined in 361.34(b)(1)(F).

*Response: TWDB acknowledges and appreciates the comment. Since the relative significant of certain projects or infrastructure sizes may differ between flood planning regions, the rule defers to each RFPG to determine what it considers “major”. However, in accordance with the comment, guidance documents will be enhanced to offer examples. No change has been made in response to this comment.*

Freese and Nichols suggested removal of 361.34(b)(4). Freese and Nichols stated that simplified desktop analysis in GIS is feasible for performing this analysis; however, obtaining, running, and producing new future condition model results is not feasible with the scope and budget of this regional-scale, planning-level analysis.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to provide flexibility in accordance with the comment. Note that, to address stakeholder concerns, the TWDB is developing an applicable cursory floodplain dataset providing consistent statewide future condition flood hazard information that is expected to be available to RFPGs during the second planning cycle. To further address the concerns about implementing this requirement, TWDB guidance documents will be enhanced to simplify the requirement.*

San Jacinto River Authority suggested that “potential” be added at the beginning of 361.34(c) to match Section 361.34(a).

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to include “potential” in response to the comment.*

San Jacinto River Authority questioned whether 361.34(c) and 361.33(c) should match and both include the term, largely GIS-based.

*Response: TWDB acknowledges and appreciates the comment. The rule has been modified so that the language is consistent in both places.*

San Jacinto River Authority stated that 361.34(c) reads oddly.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to read better in response to the comment.*

Freese and Nichols suggested only including general language regarding the vulnerability analysis and removing specific details.

*Response: TWDB acknowledges and agrees with the comment. The rule has been modified to be more general in response to the comment. TWDB notes that guidance documents will be modified to provide more specific details.*

National Wildlife Federation requested that the requirement to summarize HUC 8 data from the existing and future condition flood risk analysis in Section 361.34[(e)(4))] not be removed. National Wildlife Federation stated that the HUC datasets provide a comprehensive aggregated collection of hydrological changes that can help RFPGs to be consistent in their flood mitigation mapping. National Wildlife Federation explained that removing the HUC 8 data can also impede the need for standardized flood risk datasets across the state. Instead, National Wildlife Federation suggested that if a region does not have complete data, they can request a waiver from this requirement but if the region has complete HUC 8 data, it should be required to be used by the region.

*Response: TWDB acknowledges and appreciates the comment. However, the rules refer to what is presented in the plan, not the data collected. HUC-level data is still required to be submitted in the regional datasets. TWDB determined that while HUC-level data in this section may not be the most useful information for members of the public who are reading the text of the plan, it remains useful as part of the data submission. Since HUC8 level information is part of data*

*submission and TWDB intends to make all state flood plan data available for public dissemination, NWF will be able to download and summarize the data set on HUC-8 as needed once the state flood plan is published. No change has been made in response to this comment.*

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

Halff Associates stated that the RFPGs have the authority to recommend and/or require specific floodplain management policies for a flood mitigation action to be recommended in regional flood plans, and that RFPGs may also identify gaps in current policies and suggest improvements for consideration by local entities. Halff Associates asserted that RFPGs can also develop and provide model ordinances as a guide for local implementation of floodplain regulations and standards. Halff Associates explained that the RFPGs do not have the authority or capability to implement or enforce compliance with such recommendations.

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that it is indeed an important distinction to highlight that RFPGs do not have the authority to enforce floodplain management policies or regulations. No change has been made in response to this comment.*

### **Section 361.36 Flood Mitigation Need Analysis**

Halff Associates stated its support for the proposed additions to 361.36.

*Response: The TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.*

### **361.37 Flood Mitigation and Floodplain Management Goals**

San Jacinto River Authority asked if 361.37 should be changed from “input from the public” to “public comments” to be consistent with previous changes?

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that “public comment” should be reserved for formal public comment periods. No change has been made in response to this comment.*

Freese and Nichols suggested referencing the needs analysis (Section 361.36) in this paragraph to indicate how the needs analysis informs goals.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified in response to this comment.*

Freese and Nichols suggested adding clarity regarding how progress towards achieving goals will be evaluated in future cycles.

*Response: TWDB appreciates and agrees with the comment. TWDB will consider how measurement of progress towards goals should be captured in flood planning cycles and include*

*measurement methods for RFPGs to consider in guidance documents. No change was made in response to this comment.*

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

Halff Associates requested clarification as to which entities can serve as an FME, FMP or FMS sponsor. Halff Associates stated that RFPGs received many requests for potentially feasible solutions to be included in the plan but were not provided insight as to whether or not the proposed sponsor would be eligible to pursue future TWDB funding. Halff Associates requested clarification whether or not a RFPG can serve as a sponsor for a recommended FME, FMP or FMS as the RFPG does not appear to have the authority to implement a recommended FMP without a local jurisdiction's approval and participation.

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that flexibility in rule regarding who might support or fund a flood mitigation solution is being preserved so that eligibility for funding from a variety of sources is not restricted. TWDB is not the only source of funding for flood mitigation solutions. However, detailed, additional guidance was provided to RFPGs throughout the first planning cycle on this matter and additional guidance will be incorporated into guidance documents. No change has been made in response to this comment.*

Harris County Engineering Department noted that the proposed changes to Section 361.38 disadvantages local drainage and small-scale projects because often the level of service for storm sewer systems are much smaller than the 1% annual chance flood event. Additionally, Harris County Engineering Department explained that Region 6 is data rich meaning best available data results in more stringent criteria than other neighboring regions and with the adoption of MAAPNext, the future 1% will take tremendous effort and skyrocket project costs.

*Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.*

San Jacinto River Authority pointed out a drafting error in the deletion of "FMS and" from 361.38(b).

*Response: TWDB acknowledges and agrees with the comment. The rule has been revised to restore the inclusion of FMSs.*

San Jacinto River Authority and Freese and Nichols requested clarification whether FMSs and FMEs should also be ranked in 361.38(g).

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that FMEs, FMPs, and FMSs will all be ranked in the State Flood Plan. However, this section in rule is intended to establish specific requirements that FMPs must meet, including in order to be ranked. It is not intended to list or restrict what will be ranked. No change has been made in response to this comment.*

Freese and Nichols suggested separating out FMSs and FMPs in 361.38(h) considering the new guidance given to RFPGs regarding what qualified as an FMS. Freese and Nichols noted that FMSs such as education campaigns or regulatory enhancements will not be evaluated with models, BCRs, etc., as is required for FMPs.

*Response: TWDB acknowledges and appreciates the comment. A minor modification was made to the rules.*

Halff Associates stated that the RFPGs currently consider potential water supply impacts and benefits in the flood planning process and their focus should remain on flood control as water supply is tangential and is addressed by the regional water planning groups.

*Response: TWDB acknowledges and appreciates the comment and notes that indication of whether flood control solutions serve as water supply sources is statutorily required by Texas Water Code Section 16.062(e)(2)(E)(iii) and is therefore included in the rules. No change has been made in response to this comment.*

Great Edwards Aquifer Alliance recommended modifying Section 361.36(4) to add groundwater recharge to types of water supply source benefits.

*Response: TWDB acknowledges and appreciates the comment, which will be considered as a potential enhancement to guidance documents. No change has been made in response to this comment.*

The American Flood Coalition suggested maintaining the equitable comparison requirements in 361.38(h)(4) and (i)(4) in order for the RFPGs to be able to equitably make recommendations on FMSs, FMPs, and FMEs to be included, evaluated, and considered within the State Flood Plan.

*Response: TWDB acknowledges and generally agrees with the comment. Sections 361.38(h)(4) and 361.38(i)(4) have been restored.*

Harris County Engineering Department recommended providing a baseline for FMEs and FMPs comparison for Flood Infrastructure Funding. Harris County Engineering Department stated that equity is a goal that Harris County upholds and it would like to understand what the comparison baseline will be to maintain fairness and equitable distribution of grant funds.

*Response: TWDB acknowledges the comment. Section 361.38(h)(4) and Section 361.38(i)(4) have been restored and modified for clarity. It is important to note, however, that funding opportunities are separate from the regional flood planning process. TWDB also notes that the intent of the rule is not for the FME, FMP, and FMS categories to be compared amongst each other. Instead, FMEs, FMPs, and FMSs should be compared within each category and only when comparable (e.g., by location). For example, a comparison of all FMPs addressing a common flood risk within a certain area is required to understand which may be the best solution.*



Halff Associates stated its support for providing the RFPGs with more flexibility in the identification of potential flood mitigation actions. Halff agreed that the equitable comparison of potentially feasible actions was overly burdensome without readily available and consistent data throughout a region. Halff noted the RFPGs struggled with providing equitable comparisons of potentially feasible actions.

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that Sections 361.38(h)(4) and (i)(4), which had been removed in the draft proposed changes, have been restored and modified for clarity based on public comments received. TWDB notes that the intent of the rule is not for the FME, FMP, and FMS categories to be compared amongst each other. Instead, FMEs, FMPs, and FMSs should be compared within each category and only when comparable (e.g., by location). For example, a comparison of all FMPs addressing a common flood risk within a certain area is required to understand which may be the best solution. No change has been made in response to this comment.*

Freese and Nichols suggested removing specifics from 361.38(h)(6) and allowing flexibility to determine specific benefits to be reported.

*Response: TWDB acknowledges and appreciates the comment. TWDB considers the listed items to be important enough to include in rule. However, conditional language had already been included in the proposed rule “where applicable” to provide some flexibility and will remain in the final rule. No change has been made in response to this comment.*

In reference to Section 361.38(b), Great Edwards Aquifer Alliance recommended using “avoidance” data for FMPs such as land conservation for justification and to document such impact to the 1% annual chance flood event.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to include quantitative reporting of avoidance of future flood risk and preventing the creation of future flood risk.*

Based on the updated definition of emergency need provided in Section 361.10, Freese and Nichols requested the removal of the requirement that FMEs be evaluated for emergency need as required in 361.38(i)(2).

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that consideration of emergency need is statutorily required by Texas Water Code Section 16.062(e)(2)(E)(i) and TWDB considers it relevant to all recommended flood mitigation solutions. No change has been made in response to this comment.*

Freese and Nichols suggested revising language in 361.38(i)(5) to remove reference to estimated benefits of an FME and change to, “quantitative reporting of estimated flood risk within the FME area.” Freese and Nichols stated that reporting known flood risk within an FME area is reasonable, however, that flood risk does not equate to estimated benefits. Further, Freese and Nichols stated that many types of FMEs, such as mapping efforts, may not result in a reduction in known flood risk as they do not directly develop flood risk reduction solutions.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified.*

### **Section 361.39 Recommended Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies**

San Jacinto River Authority made the observation that there is not much discussion of FMEs in 361.39.

*Response: TWDB acknowledges and appreciates the comment. FMEs generally require less information compared to FMPs and FMSs. Enhanced discussion of FMEs will be considered for guidance documents, as appropriate. No change has been made in response to this comment.*

Harris County Engineering Department noted that the language in Section 361.39(a) disadvantages local drainage and small-scale projects because often the level of service for storm sewer systems are much smaller than the 1% annual chance flood event. Harris County Engineering Department added that Region 6 is data rich meaning best available data results in more stringent criteria than other neighboring regions. Harris County Engineering Department further explained that with the adoption of MAAPNext, the future 1% will take tremendous effort and skyrocket project costs.

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that the existing “where feasible” rule language remains in the rules. Smaller storm events will be considered for inclusion in guidance documents. For statewide level, there are many communities who may not have information on the smaller storm events. However, RFPGs can always choose to include more information than minimum requirement. No change has been made in response to this comment.*

Freese and Nichols requested clarification in 361.39(b) as to whether FMEs and FMSs are intended to be ranked in the state flood plan.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to provide clarity.*

### **Section 361.40. Impacts of Regional Flood Plan**

In relation to the requirement added in 361.40(3), San Jacinto River Authority stated the Regional Flood Plan should not require duplicate work of developing water supply sources, if this is done in the Regional Water Plan. San Jacinto River Authority further stated that fundamentally water planning and flood planning are very different, and as such would place a burden on regional flood planning groups when trying to incorporate flood resiliency projects. San Jacinto River Authority also stated that proving water supply benefits would impose additional financial expenses on project sponsors.

*Response: TWDB acknowledges and appreciates the comment. Consideration of potential contributions to water supply from flood projects is statutorily required as part of Texas’ regional flood planning process. It is required that the Board find that regional flood plans have*

*adequately provided for the development of water supply sources where applicable per Texas Water Code Section 16.062(h)(2) and therefore this requirement has been included in rule. No change has been made in response to this comment.*

Freese and Nichols suggested that Section 361.40 include a requirement for RFPGs to summarize how recommended actions meet the needs identified during the needs analysis task as well as adopted goals.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to include this requirement.*

### **Section 361.42 Flood Response Information and Activities**

Freese and Nichols stated that the language in 361.42 was somewhat confusing and did not seem to support or tie into the other elements of the plan.

*Response: TWDB acknowledges and appreciates the comment. This comment will be considered for guidance enhancement and future rulemaking. No change has been made in response to this comment.*

### **Section 361.45 Implementation and Comparison to Previous Regional Flood Plan**

Freese and Nichols requested clarification in 361.45(1) as to whether FMEs and FMSs are included.

*Response: TWDB appreciates and agrees with the comment. The rule has been modified to include all types.*

### **Section 361.50 Adoption, Submittal, Notifications, and Approval of Regional Flood Plans**

Freese and Nichols suggested removing "separate vote" which required additional clarification by the TWDB during the first cycle because some interpreted to mean that groups needed to vote on each action individually.

Similarly, Harris County Engineering Department noted that the RFPGs should vote on groups of FMEs, FMPs, and FMSs rather than individually.

*Response: TWDB acknowledges and agrees with the comments. The rule has been revised.*

### **Section 361.51 Amendments to Regional Flood Plans**

Harris County Engineering Department noted that the 90-day requirement in 361.51(b)(2) is a very aggressive turnaround time to amend a full regional flood plan. HCED recommended re-evaluating this turnaround time, especially if the amendment is requested during a very active planning period.

*Response: TWDB acknowledges and appreciates the comment. The 90-day requirement in Section 361.51(b)(2) applies when a political subdivision files a petition with the EA to request review of an RFPG decision and the EA agrees, requesting the RFPG to consider making the change. TWDB notes that in addition to this being a very specific scenario, the current rules allow significant flexibility and opportunity for communication by only requiring a written explanation if the RFP has not yet been amended within 90 days. This timeframe is also in line with a similar requirement in the TWDB water planning process. No change has been made in response to this comment.*

### **Section 361.70 Planning Group Sponsor Request for Funding**

Freese and Nichols noted its appreciation for the TWDB's efforts to simplify 361.70 and 361.71 to reduce the administrative burden on TWDB and Sponsors as much as possible, given that recipients of the grant funds (Sponsors) are pre-determined by the RFPG.

*Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.*

### **Section 361.72 Use of Funds**

Freese and Nichols suggested the addition of language that clarifies that not only should there be considerations for spatial overlap and timing in obtaining existing model data, but also whether the level of detail or model methodologies are appropriate to be utilized to address the RFPG's Needs in 361.72(a)(1)(A).

*Response: TWDB appreciates and agrees with the comment. The rule has been modified in accordance with the comment. TWDB notes that the intention of this language is to avoid duplication of work.*

San Jacinto River Authority requested clarification of 361.72(a)(3)(C) related to reimbursement for Planning Group Sponsor staff time. Additionally, Freese and Nichols suggested the removal of 361.72(a)(3)(C) and stated the subsection prohibits Sponsors from obtaining reimbursement for time and expenses attending RFPG meetings which is in conflict with allowances in 361.72(b)(5).

*Response: TWDB appreciates and agrees with the comment. Section 361.72(a)(3)(C) has been removed.*

Freese and Nichols stated that 361.72(a)(3)(F) prohibits Sponsors from obtaining reimbursement for time spent administering the grant and associated contracts. Freese and Nichols explained that in the first cycle of planning, some Sponsors observed that these activities, such as efforts to amend contracts, execute budget memorandums, prepare invoices, etc., ended up being a considerable time commitment and were critical components of the work required for Sponsors.

*Response: TWDB appreciates and agrees with the comment. Section 361.72(a)(3)(F) has been removed in accordance with the comment.*

Freese and Nichols suggested removing the certification requirement in 361.72(b). Freese and Nichols stated that it is inconsistent to require RFPG approval of Sponsor expenses but not for consultant invoices. Freese and Nichols suggested that if removing certification is not possible, the TWDB should consider removing the requirement that certification be during a public meeting and allow Chair to certify expenses in writing outside of a public meeting.

*Response: TWDB acknowledges and appreciates the comment. TWDB notes that the published proposed changes had already replaced the certification requirement with an approval requirement by the RFPG or chairperson. No change has been made in response to this comment.*

#### STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

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 - Flood event having a 1% 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 - 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) Executive Administrator (EA) - The Executive Administrator of the TWDB or a designated representative.
- (g) FEMA - Federal Emergency Management Agency
- (h) FIRM - Flood Insurance Rate Map
- (i) 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) 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) Floodplain - That area of land subject to periodic inundation by floodwaters.
- (l) Floodplain Management - The operation of an overall program of corrective and preventative measures for reducing risk and impact of flooding.
- (m) 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) Flood Management Evaluation (FME) – A proposed study to identify and assess and quantify flood risk or identify, evaluate, and recommend flood risk reduction solutions.
- (o) Flood Management Strategy (FMS) – Flood risk reduction solution ideas and strategies that do not belong in FME or FMP categories. Examples may include regulatory enhancements, development of entity-wide buyout programs, and public outreach and education.
- (p) 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) Flood Planning Region (FPR) - A geographic area designated by the Board pursuant to Texas Water Code §16.062.
- (r) 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 and resilience of the people and properties exposed to the hazard.

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

(t) GIS - Geographic Information System

(u) GLO - General Land Office

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

(w) 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) Nature-based Flood Mitigation – Mitigation approaches involving the use of natural features, materials, and processes to reduce the risk and impacts of flooding.

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

(z) 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) 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) 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 and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Chapter 67.

(cc) Potentially Feasible Flood Mitigation Project or Potentially Feasible Flood Management Strategy – An FMP or FMS that is assessed or considered to be permissible, constructible, economically viable, and implementable.

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

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

(jj) TWC - Texas Water Code

(kk) 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 basin and sub-watershed delineations;

(2) hydraulic features of river basins;

(3) coastal basins and features;

(4) existing FPRs;

(5) development patterns;

(6) public comment; and

(7) other factors the Board deems relevant.

(c) RFPGs shall consider and adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter, Texas Water Code §16.062, and Government Code Chapters 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) RFPGs shall at all times maintain each of the required positions listed below. However, if an 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 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) The RFPG shall include the following non-voting members, as designated by the head of their agencies for paragraphs (1) - (7) of this subsection, and 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) 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) 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 consider including a non-voting position 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 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, 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 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 sub-regional committee, subcommittee or subgroup to address issues related to a specific geographical area smaller than the full RFPG, it shall include at least one voting member representing each of the interests under §361.11(d)(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 of 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 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) 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) standardized tables that include lists of all recommended FMEs, FMPs, and FMSs and certain key information associated with each FMP, in accordance with guidance and template 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;

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

(5) documentation of the public process in the plan development, including public comments 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 and ongoing 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% annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the type 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 list of available flood-related models that the RFPG considers of most value in developing its plan;

(6) A summary and associated maps of locations within the FPR that the RFPG considers to have the greatest flood risk and flood risk reduction needs;

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

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

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

(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 prior to and after meetings. The RFPGs must also allow oral public comments 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 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 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;

(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 days prior to the meeting, written comments must be accepted for seven 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 days prior to and 14 days following the meeting, when the planning group will take the following actions:

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

(B) approval of amendments to RFPs per §361.51 of this title (relating to Amendments to Regional Flood Plans); and

(C) 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 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;

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

(G) written 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 must be accepted during the meeting; and

(H) after the RFPG has prepared a draft RFP, the RFPG shall hold at least one public meeting in a central location in the FPR to accept comments on the draft RFP.

(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.

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.

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## **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;

(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, when the information is available;

(4) key political subdivisions with flood-related regulatory authority or political subdivisions that perform flood planning, floodplain management, or flood mitigation activities;

(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

(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 major flood related infrastructure within the FPR including, but not limited to:

(1) natural features, including:

(A) rivers and tributaries;

(B) wetlands;

(C) playa lakes;

(D) parks and preserves; and

(E) natural coastal features.

(2) constructed flood infrastructure, including:

(A) dams and reservoirs that provide flood protection;

(B) levees;

(C) low water crossings;

(D) bridges;

(E) stormwater management systems including storm drains, inlets, tunnels, and pump stations;

- (F) detention and retention ponds;
- (G) constructed coastal infrastructure; and
- (H) any other flood-related infrastructure.

(b) Please provide a general description by general geographic location (e.g., within political subdivisions) of the condition and functionality of key natural flood mitigation features or major flood infrastructure by feature type and provide the name of the owner and operator of the flood infrastructure. 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 by feature type.

### **§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 RFPs shall perform existing condition flood risk analyses for the region comprised of:

- (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) RFPs shall perform existing condition flood hazard analyses to determine the location and magnitude of both 1% 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) identification of known flood-prone areas based on location of hydrologic features, historic flooding, and local knowledge obtained from outreach activities and public meetings;

(5) 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 analyses shall consider the location of existing levees that 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) the analyses shall consider existing dams, when data is available;

(8) a map showing areas as having an annual likelihood of inundation greater than or equal to 1% and 0.2%, the areal extent of this inundation, and the types of flooding for each area; and

(9) 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 existing condition flood exposure analyses, using the information identified in the flood hazard analyses to identify who and what might be harmed within the region for, at a minimum, both 1% annual chance and 0.2% annual chance flood events. The analyses must include:

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

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

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

(1) use relevant data and tools to identify the resilience of communities located in flood-prone areas.

(2) consider and identify factors such as proximity to a floodplain to identify vulnerability of critical facilities, in accordance with EA guidance.

(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 shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

(4) existing flood authority boundaries;

(5) social vulnerability indices for counties and census tracts; and

(6) 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:

- (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 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:

(A) current land use and development trends and practices and associated projected population based on the most recently adopted 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 may modify hydraulic models or existing condition flood hazard boundary to identify future conditions flood risk for 1% and 0.2% annual chance storms based on simplified assumptions in accordance with EA guidance.

(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 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) The RFPGs shall use the information identified in the potential future condition flood hazard analysis to develop and perform future condition flood exposure analyses to identify who and what might be harmed within the region for the potential future condition 1% annual chance and future condition 0.2% annual chance flood event. At the RFPGs' discretion, the future condition flood exposure analysis may include an analysis of existing and future developments within the future condition floodplain and the associated flood hazard exposure.

(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 and other factors as included in the EA guidance.

(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) existing flood authority boundaries;

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

(6) 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% 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 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) RFPGs may also choose to adopt region-specific, 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 that are sponsored by or that will otherwise be implemented by that entity.

### **§361.36 Flood Mitigation Need Analysis**

(a) Based on the analyses developed by the RFPG under §§361.33 - 361.35 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), 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), and needs identified under 361.35 of this title (relating to Flood Mitigation Need Analysis), 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, including nature-based solutions, some of which may have already been identified by previous evaluations and analyses by others. An FME may eventually result in detailed hydrologic and hydraulic analyses and identification of projects or strategies that could be amended into an RFP as FMPs or FMSs.

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

(c) A summary of the RFPG process for identifying potential FMEs and potentially feasible FMPs and FMSs 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 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, the RFPG shall identify areas for potential FMEs that may eventually result in FMPs.

(f) The RFPG shall evaluate potentially feasible FMPs and FMSs understanding that, upon evaluation and further inspection, some FMPs or FMSs 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 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 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 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 and assessment among all FMEs;

(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;

(6) a quantitative reporting of the estimated flood risk within the FME area, 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.

(7) For FMEs, RFPGs do not need to demonstrate that an FME will not negatively affect a neighboring area.

(i) Evaluations of potentially feasible FMPs and FMSs, as applicable, 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 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;

(2) a determination of whether FMP or FMS 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;

(5) an equitable comparison and assessment among all FMSs and an equitable comparison and assessment among all FMPs that the RFPGs determine to be potentially feasible;

(6) a demonstration that the FMP or FMS will not negatively affect a neighboring area;

(7) a quantitative reporting of the estimated benefits of the FMP or FMS, as applicable. This includes reductions of flood impacts of the 1% 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% 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;

(J) other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits;

(K) avoidance of future flood risk; and

(L) prevention of creation of future flood risk.

(8) a quantitative reporting of the estimated capital cost of projects in accordance with guidance provided by the EA;

(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;

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

(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;

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

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

(j) RFPGs shall evaluate and present potential FMEs and potentially feasible FMPs and FMSs 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 and county location.

### **§361.39 Recommended Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies**

(a) RFPGs shall recommend FMPs and FMSs 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 RFPG goals and that must, at a minimum, mitigate for flood events associated with a 1% annual chance (100-yr flood), where feasible. In instances where mitigating for 100-year events are not feasible, FMPs and FMSs 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 provided by the EA which may be used to rank recommended FMEs, FMPs, and FMSs with non-recurring, non-capital costs in the state flood plan.

(c) RFPGs shall provide the benefit-cost ratio for recommended FMPs in accordance with guidance provided by the EA.

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

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

(f) 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) Specific types of FMEs, FMPs, or FMSs that should be included and that should not be included in RFPs must be in accordance with guidance 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 RFP would achieve with regard to life, injuries, property, and other factors such as environment and agriculture;

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

(5) 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; and

(6) a summary describing how RFPG recommendations in the RFP meet the needs identified

during the needs analysis task as well as adopted goals.

#### **§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 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.

#### **§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 FMEs, FMPs and FMSs on implementation of previously recommended FMPs and provide to the EA;
- (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) 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.

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## **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 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 RFPGs must submit their adopted RFPs to the Board every five years on a date determined by the EA for approval and inclusion in the State Flood Plan.

### **§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. 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) 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) The RFPG amendment materials shall be submitted to the EA and shall:

(A) include the RFPG responses to all comments 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) After adoption of the amendment, the RFPG shall submit the amendment and its response to 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.

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## **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 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.

\*n

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**

(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 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 grant funds on behalf of the RFPG.

(c) The RFPG meeting to consider its additional, region-specific, public notice requirements in

accordance with §361.12(a)(3) of this title (relating to General Regional Flood Planning Group Responsibilities and 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 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.

### **§361.71 Board Consideration of Funding Requests, Applicant's Responsibilities, and Contract**

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

(b) If the Board approves the funding allocation, the Planning Group Sponsor will be notified of the deadline for executing a contract with the Board. If the Planning Group Sponsor 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) 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) 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 EA 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, with appropriate methodologies and details 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) costs for training;

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

(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 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, 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;

(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 of rental space to hold RFPG meetings.

(c) Subcontracting. An 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) adopts 31 Texas Administrative Code (TAC) §§ 362.2-362.4. The proposal is adopted with changes as published in the April 21, 2023, issue of the *Texas Register* (48 *Texas Register* 2060).

## BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The amendment to Chapter 362 includes minor revisions to include consideration of flood management strategies and relevant updated guidance in the guidance principles. Additionally, changes that were made in 361 are made in 362, as applicable, to ensure uniformity of terms.

## SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Several changes were made to Chapter 362 in response to comments received. Other changes include revisions to bring 362 and 361 into alignment.

Section 362.4(c) includes a change to the ranking that will be included in the State Flood Plan. Previously, any FME, FMS, or FMP would need to have a one-time capital cost or other non-recurring cost to be included in the ranking. With this amendment, the ranking will include FMSs that have a non-recurring, non-capital costs.

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

The TWDB reviewed the 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, these rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated these rules and performed an analysis of whether they constitute 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 rules 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 these rules because these are actions 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 these rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject rules do 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 rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The San Jacinto River Authority pointed out the need to change "solution" to "solutions" to match previous definition in 362.2(f).

*TWDB acknowledges and agrees with the comment. The definition has been revised accordingly.*

Freese and Nichols suggested revising the definition for (n) Flood Management Evaluation (FME) to be a proposed study to define or quantify flood risk or flood risk reduction solutions. Freese and Nichols explained that in many cases, flood risk and a potential flood risk reduction solution have already been identified and FMEs have been recommended to further define the solution or satisfy requirements to be considered an FMP.

*TWDB acknowledges and agrees with the comment. The definition for FME has been revised.*

Freese and Nichols suggested revising the definition for (o) Flood Management Strategy (FMS) to better differentiate between FMEs and FMPs as well as clarify the types of actions that are eligible for funding within the FMS category. Freese and Nichols suggested removing the phrase, "ideas that still need to be formulated," in exchange for, "that result in flood risk reduction benefits that cannot be directly quantified through standard practices." Freese and Nichols stated that incorporating examples of types of actions that would qualify as an FMS and

whose non-recurring, non-capital cost would be eligible for funding under the FMS category, would help to clarify the purpose of this category.

*TWDB appreciates and agrees with the comment. The definition for Flood Management Strategy (FMS) has been modified.*

Halff Associates explained that the drainage area size described in 362.3(b)(9) was not applied consistently throughout the 16 regions. Halff stated that the inconsistent application resulted in varying degrees of localized projects being included in the RFPs. Halff Associates requested that the purpose or intent of the one square mile drainage area be clarified.

*TWDB acknowledges and appreciates the comment. Guidance documents will be enhanced to provide further clarifications. TWDB considers it important to provide a starting point for RFPs but also retain flexibility. No change has been made in response to the comment.*

The San Jacinto River Authority requested clarification as to whether strategies should be considered in guidance principles related to water quality, fish and wildlife, ecosystem function, and recreation, and how long-term maintenance and operation of flood strategies will be conducted and funded, in accordance with 362(b)(36) and (b)(38).

*TWDB acknowledges and appreciates the comment. Both Section 362.3 (b)(36) and (b)(38) have been revised in accordance with the comment.*

Freese and Nichols requested that 362.4(c)(5) be revised to be consistent with guidance.

*TWDB appreciates and agrees with the comment. Section 362.4(c)(5) has been revised in accordance with the comment.*

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

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.

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.

TEXAS ADMINISTRATIVE CODE: As in effect on 02/16/2023.

<rule>

## **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--Flood event having a 1% 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 --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, assess, and quantify flood risk or identify, evaluate, and recommend flood risk reduction solutions.
- (g) Flood Management Strategy (FMS)— Flood risk reduction solution ideas and strategies that do not belong in FME or FMP categories. Examples may include regulatory enhancements, development of entity-wide buyout programs, and public outreach and education.
- (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 RFPGs 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 RFPGs that are based upon identification, analysis, and comparison of all flood management strategies the RFPGs 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 and flood 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 and flood management 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 and FMPs that have associated one-time capital costs or other non-recurring costs, and FMSs with non-recurring non-capital costs derived from the Board-approved RFPs;
- (6) an analysis of completed, ongoing, and proposed FMEs, FMPs, and FMSs included in previous state flood plans including projects funded by the TWDB;
- (7) a discussion of how the recommended FMEs, FMPs, and FMSs 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 implementation.

The Texas Water Development Board (TWDB or “board”) adopts 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 adopts the repeal to these sections of the rules. New rules 31 TAC §§ 361.36-.37 are being adopted elsewhere in this issue of the Texas Register.

#### EFFECTIVE DATE.

These repeals will become effective on October 30, 2023

#### 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 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 repeal does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this 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 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 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 rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this repeal would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject 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 repeal does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.024(a)(7))

No comments were received on the repeal.

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

This rulemaking is adopted 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.

<rule>

## CHAPTER 361 REGIONAL FLOOD PLANNING

### SUBCHAPTER B GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

#### §361.22 General Considerations for Development of Regional Flood Plans

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

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

<rule>

## SUBCHAPTER C REGIONAL FLOOD PLAN REQUIREMENTS

§361.36 Flood Mitigation and Floodplain Management Goals

§361.37 Flood Mitigation Need Analysis