

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, General Counsel
Rebecca Trevino, Chief Financial Officer
Edna Jackson, Deputy Executive Administrator
John Dupnik, Deputy Executive Administrator
Jessica Zuba, Deputy Executive Administrator

FROM: James Bronikowski, Manager, Regional Flood Planning

DATE: November 21, 2019

SUBJECT: Proposed new Texas Administrative Code Chapters 361 and 362 relating to Regional and State Flood Planning

ACTION REQUESTED

Consider authorizing publication of Proposed Texas Administrative Code (TAC) Chapters 361 and 362 relating to Regional and State Flood Planning

BACKGROUND

Senate Bill 8 of the 86th Legislature, Regular Session establishes the framework for the Texas Water Development Board (Board) 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, provide technical and financial support for the regional flood planning groups, and adopt guidance principles for regional and state flood planning. In addition, Senate Bill 500 provides funding for both regional flood planning activities as well as flood science initiatives, including base level engineering, that will support development of the regional and state flood plans.

As a first step in the rulemaking process, TWDB staff went on a “listening tour” comprising workshops in 14 cities across Texas and two webinars to receive public input on how the TWDB should undertake its new responsibilities to best serve the needs of communities. In addition to the workshops and webinars, written public comments were accepted via email

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throughout the month of August. The input received during the public comment period was thoughtful and constructive and continues to serve as a helpful resource for staff.

KEY ISSUES

The Executive Administrator proposes new TAC Chapters 361 and 362 to implement regional and state flood planning. The first regional flood plans must be delivered to the Board by January 10, 2023. It is anticipated that a map of proposed flood planning region boundaries will be posted concurrently in the Texas Register for public comment.

Texas Water Code §16.062 also requires the Board to make a determination whether the regional flood plans, as adopted and submitted by the regional flood planning groups, satisfy the guidance principles, adequately provide for the preservation of life and property and affect a neighboring area.

If the Board determines that an element of a regional flood plan negatively affects a neighboring area, the Board is required to coordinate with the affected area to adjust the plan to ensure that no neighboring area is negatively affected by the plan.

The statute requires the Board to approve a regional flood plan once it satisfies the guidance principles, adequately provides for the preservation of life and property, and does not negatively affect a neighboring area.

The proposed rules include guidance principles that were developed in coordination with 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.

Chapter 361 proposes rules regarding regional flood planning groups and regional flood plans. Chapter 362 proposes rules regarding the development of the state flood plan.

Chapter 361 Subchapter A of these proposed rules provide the process for the Board to establish flood planning regions, the initial establishment of planning group memberships, and outlines the deliverables that are expected of each regional flood planning group.

Subchapter B of these proposed rules includes the guidance principles that regional flood planning groups 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 proposed general notice requirements, including the three different public notice timeframes, that are associated with certain Regional Flood Planning Group (RFPG) actions were drafted to be generally similar to existing regional water planning notice requirements for analogous water planning group actions although the proposed notice requirements are significantly less burdensome than those of regional water planning. The proposed notice requirements are intended to ensure adequate public participation opportunity for the public travelling significant distances to meetings and provide clear and easy to follow requirements for the RFPGs. The notice requirements are not

anticipated to be burdensome for the RFPGs or their political subdivisions. The proposed rules also give each RFPG the flexibility to add notice requirements, including print notices, within their own region.

Subchapter C of these proposed rules was developed and organized to correspond with sequential steps to evaluate flood risks and what can be done to manage flood risk that will also correspond to flood plan chapters required to develop meaningful regional flood plans. Subchapter C requires some basic background information about the region and major flooding risks and existing major flood infrastructure. It requires that each region then evaluate what could be harmed by floods both now and in the future if there are no new flood mitigation projects or changes to existing floodplain policies. It also requires RFPGs to evaluate its current floodplain management policies and consider recommending changes. Subchapter C further requires the RFPGs to identify solutions to address the flood risks to life and property and to identify flood-prone areas that do not yet have sufficient information to identify potential flood solutions and, accordingly, will require more detailed evaluations. This subchapter then requires that the RFPGs evaluate the impacts of its proposed flood management solutions and make recommendations.

Subchapter D of these proposed rules addresses the processes of adoption, submittal and amendments to regional flood plans. Statute requires the first regional flood plans to be submitted to the Board by January 10, 2023.

Subchapter E of these proposed rules addresses how negative affects on neighboring areas may be resolved by RFPGs and TWDB.

Subchapter F of these proposed rules addresses the process of administering regional flood planning grants including how those funds may be used by the RFPGs.

The Chapter 361 proposed rules refer repeatedly to guidance that is currently being developed by the Executive Administrator. Those guidelines, once developed, will be made available for public comment and will subsequently become part of the regional flood planning grant contracts.

Chapter 362 of these proposed rules addresses development of the state flood plan.

Without the benefit of previous regional and state flood planning experience in Texas and in light of the various ongoing flood management efforts already occurring across the state, these rules were intentionally drafted with a certain amount of flexibility. That flexibility is intended to accommodate incorporation of ongoing flood management efforts into the regional water plans, to allow both TWDB and the RFPGs to identify and accommodate unique ways of addressing the general requirements herein, and to accommodate new or updated flood models, methods, and datasets as they become available. The regional flood planning rules will be revisited, as necessary, including after the first regional flood planning cycle when everyone has had an opportunity to identify best practices. Those

best practices may, in turn, become the established standards by which future regional flood plans are developed.

The preamble also includes notes highlighting the proposed rule sections that the Executive Administrator is most interested in receiving public input on.

ANTICIPATED TIMELINE

December 2019	Draft rules published (followed by 45-day public comment period)
Spring 2020	Board considers adoption of final rules;

RECOMMENDATION

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

- Attachments
1. Preamble
 2. Proposed Rulemaking for publication in the Texas Register - TAC Chapters 361 and 362

The Texas Water Development Board (“TWDB” or “board”) proposes adding new 31 TAC §§ 361.1- 361.72 and §§ 362.1-362.4

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

The Texas Water Development Board (board) proposes new 31 TAC §361 concerning regional flood planning and new 31 TAC §362 concerning state flood planning. Senate Bill 8 of the 86th Legislature, Regular Session requires that the first regional flood plans be delivered to the Texas Water Development Board by January 10, 2023.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Chapter 361 Regional Flood Planning.

Subchapter A. General Information.

Section 361.10 Definitions and Acronyms.

Section 361.10 includes definitions and acronyms that are used throughout the Chapter. The proposed definitions are consistent with statutory definitions and usage. To the extent that the definitions are not statutorily defined terms, the TWDB endeavored to make the terms consistent with other TWDB rules, or where appropriate, consistent with language used by flood mitigation professionals. For example, rather than the term, “100-year floodplain,” professionals in the flood mitigation discipline are increasingly using the term “1% annual chance flood event.” The proposed rule defines 1% annual chance flood event as a, “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.”

Section 361.11 Designations and Governance of Flood Planning Regions.

Section 361.11 relates to the designation, future realignments of the flood planning region boundaries and the governance of the regional flood planning groups. Texas Water Code § 16.062 requires the board to designate flood planning regions corresponding to each river basin. The statute also permits the board to divide river basins to avoid having an impracticably large area for efficient planning within a flood planning region. It is anticipated that a proposed map of flood planning region boundaries will be posted concurrently in the Texas Register for public comment during the same period as these proposed rules.

The proposed rule affords the flood planning groups the flexibility to form subcommittees or subgroups.

The proposed rule states that in considering potential future boundary revisions, the board will consider factors such as river basin and sub-watershed delineations, hydrologic features of the river basins, coastal basins and features, development patterns, existing flood planning regions, public comment, and other factors that the board finds relevant.

This section of the proposed rule also includes the designation of initial members for each of the regional flood planning groups, which the board will name based on a member solicitation process to be initiated once the region boundaries are established by the Board.

This section also includes the requirements for each of the regional flood planning groups adoption of bylaws, including minimum elements of the regional flood planning groups' bylaws.

The statute permits the initial regional flood planning groups to designate additional representatives and categories to serve on the regional flood planning group and, requires as much to ensure adequate representation from the interests in its region. The interests are included in statute and in the proposed rule. The minimum required voting interests include: the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities.

Non-voting or ex officio members of each flood planning group are also designated by statute and incorporated into the proposed rule in Section 361.11. Those members include one member from the Texas Water Development Board, the Texas Commission on Environmental Quality, Texas General Land Office, Texas Parks and Wildlife Department, Texas Department of Agriculture, Texas State Soil and Water Conservation Board, and the Texas Division of Emergency Management.

The proposed rule contemplates the RFPG's discretion to designate sub-regional committees to address geographical issues within the regions when necessary and as directed by the full RFPG. This section requires the RFPGs to include in its bylaws, the method of formation and governance of any committee or subgroup. Further, the proposed rule provides discretion to the RFPGs that include contact with the Gulf Coast to appoint nonvoting-representatives to coordinate with the neighboring RFPGs along the coast.

Section 361.11, as proposed also provides authority to the RFPGs to enter into agreements with other RFGPs to coordinate, avoid affecting neighboring areas, share information, or for any other purpose that the RFPGs find will benefit the planning process.

Section 361.12 General Regional Flood Planning Group Responsibilities and Procedures.

Section 361.12 contains general RFPG responsibilities and procedures. In particular, this section requires that the RFPGs each designate a political subdivision to be responsible for submitting an application for planning funds on behalf of the RFPG. The designated political subdivision will also be responsible for managing the contracts with the Board and with the consultants supporting the RFPGs, however the designated political subdivision must have RFPG approval before entering into or amending any contract.

This proposed section includes the statutory requirement for the RFPGs to hold public meetings to gather from interested persons, including members of the public and other political subdivisions located in that county, suggestions and recommendations as to issues, provisions, projects, and strategies that should be considered for inclusion in a regional flood plan. The proposed rule further requires the RFPGs to meet annually, at a minimum, and to hold at least

one public meeting to establish additional public notice requirements, if any, that the RFPG determines are necessary to ensure adequate public notice and participation within their own regional flood planning area.

Additionally, as proposed, this section provides the RFPGs discretion to designate subcommittees or subgroups within its region. As stated, the proposed rule requires any subcommittee or subgroup that is related to a specific geographical area within the flood planning region (FPR), to define the geographic area based on boundaries that are coterminous with full Hydrologic Unit Code level 8 watersheds within the FPR, and further that those subcommittees include at least one voting member that represents each of the 12 interests outlined in 361.11(e).

The proposed rule requires that any subcommittees bring any information or recommendations to the full RFPG for consideration and it explicitly limits the subcommittees from taking certain actions.

Section 361.13 Regional Flood Planning Group Deliverables.

Section 361.13 includes the required deliverables for the RFPG to submit to the Board. These include a draft and final regional flood plan (RFP) and technical memoranda. The proposed section includes administrative guidelines for the RFPs, as well as requirements that the RFPs include geographic information system database deliverables and other information such as documentation of the public process and public comments received.

Section 361.13 requires the RFPGs to submit technical memoranda to the board prior to the submission of the draft RFPs. The technical memoranda must include a list of any political subdivisions or other governmental entities that have oversight or impact on development or political subdivisions that have flood related responsibilities or authority. The technical memoranda should also include a list of prior flood studies considered relevant by the RFPG to development of their plan, a geodatabase and maps that the RFPG considers the best representation of the region-wide floodplains for use in its flood hazard exposure analysis, a list of the flood-related models that the RFPG considers most valuable in developing its plan, a map of the areas that the RFPG finds most prone to flooding in the region, the goals adopted by the RFPG, the process used by the RFPG to identify potentially feasible flood management strategies and flood management projects, and any potential flood management evaluations that could identify potentially feasible strategies and projects.

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

Section 361.20 Guidance Principles for State and Regional Flood Planning.

Section 361.20 implements the requirement included in Texas Water Code §§16.061(c) and 16.062(a)(3) that the board adopt guidance principles for the state and regional flood plans. The board developed the guidance principles in coordination 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. The board met with the agencies on two

occasions to coordinate the development of the guidance principles included in the proposed rule. As proposed, 361.20 refers participants to the guidance principles in the state flood plan section of the rules at 362.3, which are the same as the regional flood plan guidance principles. The proposed rule includes 39 guidance principles that the RFGPs must use to inform their RFPs.

Additionally, Section 361.20 requires the RFGPs to include a statement in their RFPs related to the groups' conformance with the guidance principles and to explain how the RFP satisfies the requirements of each of the guidance principles. The RFGPs must also include a statement that the plan does not include strategies that will negatively affect neighboring areas. As required by Texas Water Code § 16.062(h) the board shall make a determination whether a regional flood plan affects a neighboring area, and the board may only approve a regional flood plan when it does not negatively affect a neighboring area.

Section 361.21 General Notice Requirements.

Section 361.21 includes the notice and public participation requirements for the RFGPs. As required in Texas Water Code § 16.062(l), each FPG and committee or subcommittee of a RFGP is subject to Chapters 551 and 552 of the Government Code. The proposed rule further requires each RFGP to create and maintain a website to be used for posting public notices of all its meetings, providing meeting materials, and accepting electronic comments. This section of the proposed rule further requires the RFGPs post notice of their meetings on their websites either thirty, fourteen, or seven days prior to the meetings, depending on the scope of the meeting. Additionally, the RFGPs must notify the voting and non-voting members of the RFGP through email.

Section 361.22 General Considerations for Development of Regional Flood Plans.

Section 361.22 includes a list of information and tools that the RFGPs are expected to consider when developing their RFPs.

Subchapter C Regional Flood Plan Requirements.

Subchapter C includes the various requirements and elements of an RFP. This subchapter incorporates the requirements included in Texas Water Code § 16.062(e)(2). In particular, Texas Water Code § 16.062(e)(2) requires each RFP to include a general description of the condition and functionality of flood control infrastructure in the flood planning region; flood control projects under construction or in the planning stage; information on land use changes and population growth in the flood planning region; an identification of the areas in the flood planning region that are prone to flood and flood control solutions for those areas; and an indication of whether a particular flood control solution meets and emergency need, uses federal money as a funding component, and may also serve as a water supply source. The sections are intended to generally align with chapters in each of the regional flood plans.

The board invites public comment regarding these Subchapter requirements including the specific steps and overall approach to developing the regional flood plans.

Section 361.30 Description of the Flood Planning Region.

Section 361.30 requires the RFPs to include a description of the region in general including social, economic, and geographic information. This should include a brief description of the types of historical flooding in the region, resources most at risk from flooding, the entities with a role in flood activities, and the extent of regulatory activities addressing flood risk.

Section 361.31 Description of the Existing Major Flood Infrastructure in the Region.

Section 361.31 requires the RFPs to include a description of existing major flood infrastructure in the FPR. This should include a general description of the location, condition, and adequacy of the major flood infrastructure in the region. The RFPs should also include a summary of major non-functional flood infrastructure in the FPR.

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

Section 361.32 requires the RFPs to include a description of major flood projects that are currently under development in the region.

Section 361.33 Regional Flood Hazard Exposure Analysis: Current and Future Floodplain Conditions.

Section 361.33 requires the RFPs to include a flood hazard exposure analysis. This analysis should be a region-wide and largely GIS-based, flood exposure analyses to identify who and what might be harmed within the region for, at a minimum, both 1.0% annual chance and the 0.2% annual chance of flood events. The analysis is to be performed for a minimum of two scenarios including once for existing conditions and another for projected conditions in 30 years based on ‘no-action’ and existing floodplain policies and anticipated development patterns.

The board invites public comment regarding Section 361.33 and how best to efficiently and meaningfully assess Texas’ flood hazard exposure.

Section 361.34 Existing Flood Risk Analyses in the Region.

Section 361.34 requires the RFPs to identify areas where flood risk analyses already exist in the FPR and summarize the information. This analysis should rely on existing hydrologic and hydraulic models. The information will be used by RFPs to identify areas that need flood management evaluations and to efficiently deploy its planning resources.

The board invites public comment regarding Section 361.34 and how best for RFPs to identify and consider existing flood risk analyses.

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

Section 361.35 requires the RFPs to include an evaluation of previous and current floodplain management approaches in the region and take into consideration future potential changes to the 100-year floodplain and to make recommendations for changes to forward-looking floodplain management.

Section 361.36 Flood Mitigation and Floodplain Management Goals.

Section 361.36 requires the RFPs to identify short-term and long-term flood mitigation and flood management goals of the RFPG for, at a minimum, addressing risks to life and property. The goals should be set after considering the resulting information from the flood hazard exposure analyses, available flood risk analyses, and input from the public.

Section 361.37 Flood Mitigation Need Analysis.

Section 361.37 requires the RFPs to include a flood mitigation need analysis. This should be based on the analyses and goals developed by the RFPGs.

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

Section 361.38 requires the RFPs to include an evaluation and assessment of potential flood management evaluations, potentially feasible flood management strategies, and potentially feasible flood management projects. Each evaluation of strategies and projects will require reporting information on benefits, costs, and impacts including whether it would negatively affect a neighboring area. Flood management evaluations will be identified for flood prone areas where there are not yet sufficient models and associated analyses to identify and recommend specific strategies and projects. Flood management evaluations will not require evaluations of effects on neighboring areas because these evaluations will, themselves, include such assessment of potential projects.

Section 361.39 Recommended Flood Management Evaluations, Flood Management Strategies, and Flood Management Projects.

Section 361.39 requires the RFPs to recommend specific flood management evaluations, flood management strategies, and flood management projects. Recommended strategies and projects will require a reporting that they will not negatively affect a neighboring area. Recommended flood management evaluations are studies that, once implemented, may lead to identification and recommendation of specific strategies and projects for inclusion in regional flood plans.

Section 361.40 Impacts of Regional Flood Plan.

Section 361.40 requires the RFPs to include a region-wide summary of reduction in flood risk that implementation of the RFP would achieve and a description of the type of socioeconomic or recreational impacts the flood management strategies and flood management projects would have. It also requires a description of the impacts the RFP would have on the environment, water

quality, and navigation. The RFPs must also include a statement that the flood management projects will not negatively affect neighboring areas located within or outside of the FPR.

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

Section 361.41 requires the RFPs to include a summary and description of the contributions to and impacts on water supply development that the RFP would have.

Section 361.42 Flood Response Information and Activities.

Section 361.42 requires the RFPs to include a summary of flood response preparations in the region. This proposed section limits the RFPs from performing additional analysis or other activities related to planning for disaster response and recovery.

Section 361.43 Administrative, Regulatory, and Legislative Recommendations.

Section 361.43 requires the RFPs to develop and include any legislative or regulatory recommendations that they find necessary to facilitate floodplain management and flood mitigation planning and implementation. The proposed section also requires RFPs to make recommendations regarding revenue-raising opportunities to fund flood management activities in the region.

Section 361.44 Flood Infrastructure Financing Analysis.

Section 361.44 requires the RFPs to include information related to financing the proposed flood management strategies and projects that are included in their plans.

Section 361.45 Implementation and Comparison to Previous Regional Flood Plan.

Section 361.45 requires the RFPs to include a section that compares the current RFP to previous RFP including the status of previously recommended flood mitigation strategies.

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

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

Section 361.50 includes procedural requirements for the adoption, submittal, and approval of the RFPs. To align with the statutory requirement that state flood plans be developed every five years, the RFPs must submit an RFP every five years. Draft RFPs are also required every five years. Statute requires the first regional flood plans to be submitted to the Board by January 10, 2023.

Section 361.51 Amendments to Regional Flood Plans.

Section 361.51 includes the procedural requirements for amending regional flood plans. In addition to the RFPG approving an amendment, the Board must approve amendments to the RFPs.

Subchapter E Negative Affects on Neighboring Areas and Failure to Meet Requirements.

Section 361.60 Addressing Negative Affects on Neighboring Areas Within Flood Planning Regions.

Section 361.60 provides that the board will support the RFPGs in facilitating resolution related to projects that will negatively affect neighboring areas within the same FPR. As required by Texas Water Code § 16.062(h) if the board does determine that an element of a regional flood plan negatively affects a neighboring area, the board must coordinate with the affected area to adjust the plan to ensure that not neighboring area is negatively affected by the plan.

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

Section 361.61 addresses negatively affected neighboring areas that are not in the same flood planning region as the project. The rule provides the executive administrator with the option to make a recommendation to the board for resolving a negatively affected neighboring area issue or allows the executive administrator to hold a public meeting prior to making a recommendation for the board to approve. The proposed section allows the board, at its discretion, to approve all portions of a regional flood plan with the exception of the specific element that causes the negative affect on neighboring areas.

Section 361.62 Failure of a Regional Flood Plan to Meet Regional Flood Planning Requirements.

Section 361.62 provides the board the ability to direct a RFPG to make changes to its RFP necessary to meet the requirements of this proposed rule and Texas Water Code 16.062.

Subchapter F Regional Flood Planning Grants.

Subchapter F provides the framework and requirements for the TWDB to provide grant funding to RFPGs and ensure efficient use of those funds.

Section 361.70 Notice of Funds and Submission and Review of Regional Flood Planning Applications.

Section 361.70 provides for grant application notice requirements and the process by which the board will provide funding to the regional flood planning groups for carrying out their duties.

Section 361.71 Board Consideration of Applications, Applicant's Responsibilities, and Contract.

Section 361.71 provides the process for the board to take action on and contract for funding assistance applications that have been submitted.

Section 361.72 Use of Funds.

Section 361.72 includes specific elements of regional flood planning that are eligible for reimbursement and those that are unallowed. In particular, the TWDB funding not be used for activities for which the Board determines existing information, data, or analyses are sufficient for the planning effort. It is proposed that funding not be used for analysis of activities related to disaster response or disaster recovery. This decision was made primarily because funding and planning for disaster response or recovery efforts exists from other state and federal resources. Additionally, TWDB funding will not be used for all administration expenses of the RFPG. Allowable administrative expenses are outlined in the rule.

Chapter 362 State Flood Planning Guidelines.

Subchapter A State Flood Plan Development.

Section 362.1 Applicability.

Section 362.1 clarifies that the subchapter provides guidelines for the TWDB's preparation, development, formulation, and the Board's adoption of the state flood plan.

Section 362.2 Definitions and Acronyms.

Section 362.2 includes definitions that apply to the Chapter.

Section 362.3 Guidance Principles.

Section 362.3 contains the guidance principles that are to be used in the development of the regional flood plans and the state flood plan. As noted above, Texas Water Code §§16.061(c) and 16.062(a)(3) requires the TWDB to adopt guidance principles for the regional flood plans and the state flood plan. The proposed rule includes 39 principles that must be used to guide the development of the RFPs and state flood plan.

Section 362.4 State Flood Plan Guidelines.

Section 362.4 provides the framework for the Executive Administrator to develop the state flood plan and make a recommendation to the Board. This section also includes information that should be derived from the regional flood plans and incorporated into the state flood plan.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that for each of the first five years that the rule will be in effect, there will be no fiscal implications for state or local governments beyond the fiscal implications associated with the enactment of Senate Bill 8, Act

of the 86th Texas Legislature, 2019. The estimated financial impact on state government from the implementation of the regional and state flood planning processes as mandated by Senate Bill 8 will be an estimated cost of \$173.6 million for the first five years. This estimate is based upon the costs of providing technical assistance by board staff and other board administrative costs of supporting the regional flood planning efforts.

The board estimated cost to local governments of developing regional flood plans as required by Senate Bill 8 and these rules to be \$82.1 million through September 1, 2024. An appropriation of \$20.8million has been made for the FY20-21 biennium by the 86th Texas Legislature. This agrees with the assumptions included in the board's fiscal note. The appropriation is sufficient to fund 100% of the estimated cost of regional flood planning for 2020 and 2021. Therefore, the resulting estimated cost to local governments for the years 2020 and 2021 is \$0.0 for each year in the required local contributions to the regional flood planning.

These rules are not expected to result in costs to either state or local governments. There no change in costs as the funding is provided. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. It should be noted that political subdivisions that chose to act on behalf of the RFPGs may incur costs such as staff time or de minimis administrative costs. Therefore, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are necessary to implement legislation.

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

PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated as a result of the administration of these new sections will be regional flood planning across the state, increased local and regional cooperation, and regional and state flood plans.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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

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 a standard set by 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 §§16.061 and 16.062. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

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

TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement a regional and state flood planning processes and develop state and regional flood plans. The proposed rule would substantially advance this stated purpose by establishing the regional flood planning groups and providing the framework for regional and state flood plans.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will: (1) create regional flood planning structure, a government program; (2) require the creation of new employee positions to administer and oversee the funding; and (3) may require an increase in future legislative appropriations to the agency.

SUBMISSION OF COMMENTS

In addition to any general comments, the Water Development Board requests interested stakeholders to provide specific comments on the following:

1. Subchapter C in general
2. Section 361.33 regarding the flood hazard exposure analyses
3. Section 361.34 related to existing flood risk analyses in the region

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. COMMENTS MUST REFER TO 31 TAC 361 OR 31 TAC 362 IN THE SUBJECT LINE.

Comments will be accepted until 5:00 p.m. of the 45th day following publication the Texas Register.

STATUTORY AUTHORITY

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.

Proposed Rulemaking for publication in the Texas Register - TAC Chapters 361 and 362

(Regional and State Flood Planning)

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CHAPTER 361 REGIONAL FLOOD PLANNING

Subchapter A General Information.

§361.10 (Definitions and Acronyms)

- (a) 1.0% annual chance flood event - Flood event having a 1.0% chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.
- (b) 0.2% annual chance flood event - 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) Eligible Applicant – A political subdivision designated by the Regional Flood Planning Group as authorized to receive funds for developing or revising regional flood plans.
- (e) Executive Administrator (EA) – The Executive Administrator of the TWDB or a designated representative.
- (f) FEMA – Federal Emergency Management Agency
- (g) FIRM – Flood Insurance Rate Map
- (h) 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.
- (i) Floodplain – That area of land subject to periodic inundation by floodwaters.
- (j) Floodplain management – The operation of an overall program of corrective and preventative measures for reducing flood damage.
- (k) Flood Mitigation – The implementation of actions, including both structural and non-structural solutions, to reduce flood risk to protect against the loss of life and property.
- (l) Flood Management Evaluation (FME) – A proposed flood study of a specific, flood-prone area that is needed in order to determine whether there are potentially feasible FMSs or FMPs.
- (m) Flood Management Strategy (FMS) – A proposed plan to reduce flood risk or mitigate flood hazards to life or property. A flood management strategy may or may not require associated Flood Management Projects to be implemented.
- (n) Flood Management Project (FMP) – A proposed flood project that has a non-zero capital costs and that when implemented will reduce flood risk or mitigate flood hazards to life or property.
- (o) Flood Planning Region (FPR) – A geographic area designated by the Board pursuant to Texas Water Code §16.062.
- (p) Flood Risk – Generally describes the hazard from flood events to life and property.
- (q) Flood Risk Analysis – An analysis that includes sufficient information to determine the economic efficiency of alternative flood management strategies to inform project decisions and requires the availability and the extensive use of one or more detailed hydrologic and hydraulic models. It is typically expressed as a combination of the likelihood and consequence of an entire range of possible hydrologic events for a given area and produces, among other things, estimates of expected annual damage.
- (r) GIS – Geographic Information System
- (s) GLO – General Land Office

- (t) HUC – Hydrologic Unit Code level (e.g., HUC8) as delineated by the United States Geological Survey.
- (u) Neighboring area - means any area, including but not limited to upstream and downstream areas, potentially affected by the proposed flood management project.
- (v) 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 Water Supply Corporation created and operating under Ch. 67.
- (w) 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.
- (x) Regional Flood Planning Group (RFPG) – A group designated by the Board that develops a Regional Flood Plan, pursuant to Texas Water Code §16.063.
- (y) 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).
- (z) 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.
- (aa) State Population Projections – Population projections contained in the most recently adopted State Water Plan as further assembled geographically based on HUC 8 watersheds or other appropriate flood-related geographic features determined by the TWDB.
- (bb) 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) Hydrologic features of river basins;
 - (3) Coastal basins and features;
 - (4) Existing FPRs;
 - (5) Public comment; and
 - (6) Other factors the Board deems relevant.
- (c) The Board shall designate the initial members of each RFPG.
- (d) After the Board names members of the initial RFPG, the EA will provide to each member of the initial RFPG a set of model bylaws. The initial RFPGs shall consider and adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter and Government Code Chapter 551 and 552. The RFPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RFPG shall at a minimum address the following elements:
 - (1) methods of formation and governance of executive committee, or subcommittees or subgroups;
 - (2) definition of a quorum necessary to conduct business;
 - (3) methods to approve items of business including adoption of RFPs or amendments thereto;
 - (4) methods to name additional voting and non-voting members;

- (5) terms, conditions, and limits of membership including the terms of member removal;
- (6) any additional notice provisions that the RFPG chooses to include;
- (7) methods to record and preserve minutes;
- (8) methods to resolve disputes between RFPG members on matters coming before the RFPG;
- (9) procedures for handling confidential information; and
- (10) other procedures deemed relevant by the RFPG.

(e) RFPGs shall maintain at least one representative of each of the following interest categories as voting members of the RFPG. However, if a FPR does not have an interest in the category below, then the RFPG shall so advise the Executive Administrator and no membership designation is 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;

(10) Water Districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with regional flood management responsibilities, including drainage districts, levee improvement districts, but does not include river authorities.

(11) 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

(12) At the discretion of the RFPG, additional representative categories to ensure adequate representation from the interests in the FPR.

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

(1) Staff member of the TWDB;

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

(3) Staff member of the General Land Office;

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

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

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

(7) Staff member of the Texas Division of Emergency Management;

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

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

(g) Each RFPG shall provide a current list of its voting and non-voting members to the EA; the list shall identify the interest represented by each member including interests required in subsection (e) of this section.

(h) Each RFPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RFPG for any new interest category in accordance with (e)(12), 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.

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

(j) 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

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

(1) Designate a political subdivision as a representative of the RFPG eligible to apply for financial assistance to be used by the RFPG for planning activities. The designated political subdivision 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 designated political subdivision will be responsible for the following:

(A) General management of the contract between the designated political subdivision and the TWDB;

(B) The general management of the contract between the designated political subdivision 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 designated political subdivision in (1) in accordance with the procurement requirements that apply to that political subdivision.

(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, 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 flood management strategies and projects 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.

(5) Approve the contract(s) and any subsequent amendments thereto between the designated political subdivision and the technical consultant or TWDB Scope(s) of Work or budgets in open meetings as necessary and in accordance with §361.21.

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

(7) 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.

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

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

It shall include at least one voting member representing each of the interests under 361.11(e)(1-11).

(10) 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.

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

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

(C) Directing the RFPG consultant's work or associated expenditure of funds; and

(D) 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.

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

§ 361.13 Regional Flood Planning Group Deliverables

(a) Each RFPG 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 - .45 in accordance with EA guidance and the TWDB grant contract;

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

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

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

(b) 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. At the discretion of the EA, the technical memorandums shall include:

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

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

(3) A geodatabase and associated maps in accordance with EA guidance that the RFPG considers to be best representation of the region-wide 1.0% annual chance flood event and 0.2% annual chance flood event inundation boundaries for use in its flood hazard exposure analysis including indications of locations where such boundaries remain undefined;

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

(5) A map of areas identified by the RFPG as the most prone to flooding, including the flooding type, and the existing conditions that most contribute to the flood prone nature of the area and geographical representation of flood prone areas that already have existing hydrologic and hydraulic models needed to evaluate flood management strategies and projects;

(6) The flood mitigation and floodplain management goals adopted by the RFPG per §361.36;

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

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

- (9) A list of FMSs and FMPs that were identified but determined by the RFPG to be infeasible.
- (f) The information provided by the RFPG will provide the basis for much of the development and content of the state flood plan.

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 (relating to Guidance Principles).
- (b) Each RFPG shall include a statement in their draft and final regional flood plans regarding the RFPG's conformance with §362.3 including how the RFP satisfies the requirements of each of the guidance principles including that 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 meetings and make available relevant meeting materials for the public, as applicable.
- (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 meetings.
- (d) Aside from any confidential materials associated with the Homeland Security Act, a copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall be made available online in accordance with the times listed below in paragraphs (h)(1) - (3).
- (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 paragraphs (h) (1) - (3) below, 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 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) above, and the notice requirements of Chapter 551, Government Code, the following requirements apply:

(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 changes to RFPG membership; and
- (F) any other RFPG approvals required by TWDB contract or EA guidance not specifically addressed under (2) or (3).
- (2) at a minimum, notice must be provided at least 14 days prior to the meeting, written comments must be accepted for 14 days prior to the meeting, and meeting materials must be made available online for a minimum of 7 days prior to and 14 days following the meeting, when the planning group will take the following actions:
 - (A) holding pre-planning public meetings to obtain input on development of the next RFP per Texas Water Code (TWC) 16.062(d);
 - (B) determining flood mitigation and floodplain management goals per §361.36;
 - (C) approving process for identifying potential FMEs and potentially feasible FMSs and FMPs per §361.38;
 - (D) adoption of the final RFP per TWC 16.062(h); and
 - (E) approval of amendments to RFPs per §361.51.
- (3) for meetings at which the planning group will take action related to the RFPG's draft RFP per TWC 16.062(f) - (g), the following additional notice provisions must be met:
 - (A) The draft RFP must be made available for public inspection online for 30 days prior to the meeting and 30 days following the meeting;
 - (B) At a minimum, notice must be provided at least 30 days prior to the 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) The draft RFP must be made available for public inspection in at least three publicly accessible locations within the FPR for at least thirty days prior to the meeting; and
 - (G) Written comments must be accepted for consideration for at least 30 days prior to the meeting and at least 30 days following the meeting and oral comments must be accepted during the meeting.
 - (i) All notice periods given are based on calendar days.
 - (j) RFPGs shall also provide additional public notice, if any, in accordance with their decision under §361.21(j), 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 §361.21.

§ 361.22 General Considerations for Development of Regional Flood Plans

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

- (1) Historic flood data including stream flows, and storm surge;
- (2) Historic rainfall, including Atlas 14;
- (3) NFIP claims, repetitive loss properties, and severe repetitive loss properties;
- (4) Topographic data including subsidence trends;
- (5) Bathymetric data, including relative sea level change;
- (6) Existing and projected population;

- (7) Land use planning and regulation as it may affect flood risk;
- (8) Infrastructure, critical facility, and property data;
- (9) Models including hydrologic, hydraulic, or any available screening-level models;
- (10) Flood risk maps;
- (11) Flood hazard exposure analyses;
- (12) Flood risk analyses;
- (13) Historic losses due to floods;
- (14) Flood disaster reports;
- (15) Other regional and local flood planning studies;
- (16) Other regional and local flood hazard mitigation plans;
- (17) State of Texas hazard mitigation plan;
- (18) Coastal resiliency master plan;
- (19) Critical transportation corridors;
- (20) Floodplain management practices;
- (21) Large scale development and its potential impacts on the plan;
- (22) Flood management and mitigation best management practices;
- (23) Watershed protection plans;
- (24) Flood risk screening tools;
- (25) Flood-related federal agency information; and
- (26) Any other information deemed relevant by the RFPG.

SUBCHAPTER C REGIONAL FLOOD PLAN REQUIREMENTS

Regional flood plans shall be based on the best available science, data, models, and flood mapping and shall perform various analyses related to flood risks to make recommendations regarding flood mitigation and floodplain management goals and flood management solutions in developing its RFP.

§ 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 and population, economic activity and economic sectors most at risk of flood impacts;
- (2) the areas in the FPR that are generally prone to flood and the types of major flood risks to life and property in the region;
- (3) key historical flood events within the region including associated fatalities and loss of property;
- (4) political subdivisions with flood-related authority and that are currently actively engaged in flood planning and flood management 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 Major Flood Infrastructure in the Region

Regional flood plans shall include a general description of the location, condition, and functionality of major flood infrastructure in the FPR including:

- (1) natural hydrologic and hydraulic features, including but not limited to:
 - (A) rivers, tributaries, and surrounding floodplains
 - (B) wetlands;
 - (C) playa lakes;
 - (D) sinkholes; and
 - (E) alluvial fans.
- (2) functional flood infrastructure that exists within the FPR including but not limited to:
 - (A) levees
 - (B) sea barriers, walls, and revetments;
 - (C) stormwater tunnels;
 - (D) tidal barriers and gates;
 - (E) stormwater canals;
 - (F) dams that provide flood protection;
 - (G) detention and retention ponds;
 - (H) weirs; and
 - (I) any other flood-related infrastructure.
- (3) for non-functional major flood infrastructure, explain, in general, the reasons for the infrastructure being non-functional, provide a description of the condition and functionality of the infrastructure and whether and when the infrastructure may become functional, and provide the name of the owner and operator of the infrastructure.

§ 361.32 Description of the Major Flood Projects Currently Under Development

Regional flood plans shall include a general description of the location, source of funding, and adequacy of major flood infrastructure in the FPR including

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

§ 391.33 Regional Flood Hazard Exposure Analysis: Current and Future Floodplain Conditions

(a) RFPGs shall develop underlying maps, including identifying best available information and gaps in inundation boundary mapping, and perform high-level, region-wide and largely GIS-based, flood exposure analyses to identify who and what might be harmed within the region for, at a minimum, both 1.0% annual chance and 0.2% annual chance flood events as follows:

- (1) analyses of existing development within the current floodplain and the associated flood hazard exposure
 - (A) for the floodplain as defined by FEMA or as defined by an alternative analysis if the FEMA-defined floodplain is not considered best available; and
 - (B) to include only those flood mitigation projects with already-dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan.
- (2) analysis of potential future development and associated flood hazard exposure within the watershed 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 based on

(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 30 years as determined by the EA;

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

(C) anticipated relative sea level change and subsidence;

(D) anticipated sedimentation in flood control structures and major geomorphic changes in riverine, playa, or coastal systems;

(E) assumed completion of flood mitigation projects currently under construction or that already have dedicated construction funding, and

(F) other factors deemed relevant by the RFPG.

(b) All analyses in (a) shall consider the population and property located in areas where existing levees or dams do not meet FEMA accreditation shall be considered to be inundated when flooding without those structures is predicted. Provisionally accredited structures may be allowed to provide flood protection, unless best available information demonstrates otherwise.

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

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

(2) Available hydraulic flood modeling results;

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

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

(d) In accordance with guidance to be provided by the EA, the analyses in (b) and (c) shall consider available datasets to estimate the potential flood hazard exposure including, but not limited to:

(1) number of residential properties and associated population;

(2) number of non-residential properties;

(3) other public infrastructure;

(4) major industrial and power generation facilities;

(5) number and types of critical facilities;

(6) number of roadways interruptions; and

(7) agricultural area and value of crops exposed.

(e) Analyses in (a) 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.

(f) All data produced as part of the analyses under (a) - (f) shall be summarized in the RFP in accordance with guidance provided by the EA and shall be provided in a format determined by the EA and including, but not limited to:

(1) current or future scenario;

(2) underlying flood event return frequency;

(3) type of flood risk;

(4) county;

(5) HUC8;

- (6) existing flood authority boundaries; and
- (7) other categories to be designated by the EA.
- (g) RFPGs may choose to consider additional scenarios and other factors such as fully built-out conditions (i.e., greater than 30-year future scenario using zoning or other means).
- (h) This analysis will rely primarily on existing data and GIS tools and does not rely on detailed hydrologic or hydraulic modeling efforts.
- (i) Analyses under §361.33 shall be performed in accordance with guidance requirements to be provided by the EA, and the RFPG shall organize, provide, and present the associated data in a manner determined by the EA.
- (j) Population associated with living units shall be based on the most recent US Census and future population projections are to be based on the most recently adopted state water plan population projections as provided by the EA. RFPGs may request redistributions of TWDB-provided population projections between HUC8s within a single county if the request demonstrates that the sub-county HUC8 population projections no longer represent a reasonable estimate of anticipated conditions based on changed conditions and or new information.
- (k) RFPGs shall use screening-level tools and or datasets developed by or made available by the TWDB in conformance with guidance to be provided by the EA.
- (l) The information developed by the RFPG under this section shall be used to assist the RFPG in establishing priorities in subsequent planning tasks and to efficiently deploy its resources.

§ 361.34 Existing Flood Risk Analyses in the Region

To identify areas within each FPR where hydrologic and hydraulic model results are already available and summarize the information. To prepare this information, the RFPGs shall:

- (1) collect and summarize information from existing flood risk analyses associated, at a minimum, with 1.0% annual chance flood events including the date of existing analyses;
- (2) summarize, by location, the existing, available information in terms of hazard, performance, exposure, vulnerability, and consequences and shall include estimates of potential lives threatened, estimates of expected annual damage, and whether projects to address the flood risk were identified and evaluated;
- (3) to the greatest extent practicable, organize the information in (1) - (2) geographically and otherwise in accordance with guidance to be provided by the EA;
- (4) present associated maps and characterize the degree to which areas identified as potentially prone to flooding under §361.33 also have associated hydrologic and hydraulic flood risk modeling to support the evaluation of risks to life and property; and
- (5) the information developed under this section shall be used to assist the RFPG to identify areas that need flood management evaluations and to efficiently deploy its resources.

§ 361.35 Evaluation of Previous and Current Floodplain Management Approaches 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 approaches that will avoid increasing flood risks, the RFPG shall:

- (1) consider the extent to which a lack of, insufficient, or ineffective current floodplain management 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 §361.33, consider the extent to which the 1.0% annual chance floodplain, along with associated flood risks, may change over time in response to anticipated development and associated population growth and other relevant man-made causes, and assess how to best address these potential changes.

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

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

§ 361.36 Flood Mitigation and Floodplain Management Goals

Considering the Guidance Principles under §362.3, the flood hazard exposure analyses performed under §361.33, existing flood risk analyses identified under §361.34, and past and the consideration of current floodplain management practices under §361.35, 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 (1) 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 - .39.

(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).

§ 361.37 Flood Mitigation Need Analysis

(a) Based on the analyses and goals developed by the RFPG under §§361.33 - .36 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 flood management policies and infrastructure located within the FPR, particularly within the locations described in (1);

(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 management and/or mitigation projects already identified and evaluated by other flood mitigation plans and studies;
 - (8) documentation of historic flooding events;
 - (9) flood management projects already being implemented; and
 - any other factors that the RFPG deems relevant to identifying the geographic locations where
 - (10) potential FMEs and potentially feasible FMSs and FMPs shall be identified and evaluated under §361.38.
- (b)The RFPG shall conduct the analysis in (a) in a manner that will ensure the most effective and efficient use of the resources available to the RFPG.

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

- (a) Based on analyses and decisions under §361.33-.37 the RFPG shall identify and evaluate potential FMEs and potentially feasible FMSs and FMPs, some of which may have already been identified by previous evaluations and analyses by others, and that focus, at a minimum, on providing flood mitigation associated a with 1.0% annual chance flood event. An FME is a proposed flood study of a specific, flood-prone area, that may include a flood risk analysis, that is needed in order to determine whether there are potentially feasible FMSs or FMPs. An FME may eventually result in detailed hydrologic and hydraulic analyses and identification of projects or strategies that could be amended into a RFP as FMSs or FMPs.
- (b) A summary of the RFPG process for identifying potential FMEs and potentially feasible FMSs and FMPs shall be established and included in the draft and final adopted RFP.
- (c) The RFPG shall then identify potentially feasible FMSs and FMPs in accordance with the RFPG process established under (b).
- (d) For areas within the FPR that the RFPG does not yet have sufficient information or resources to identify potentially feasible FMSs and FMPs, the RFPG shall identify areas for potential FMEs that may eventually result in projects as set forth under (b).
- (e) The RFPG shall evaluate potentially feasible FMSs and FMPs understanding that, upon evaluation and further inspection, some FMSs or FMPs initially identified as potentially feasible may, after further inspection, be reclassified as infeasible.
- (f) FMPs will be ranked in the state flood plan and
- (1) shall represent discrete, independent projects;
 - (2) shall not entail an entire capital program or drainage masterplan; and
 - (3) may rely on other flood-related projects.
- (g) Evaluations of potentially feasible FMSs and FMPs will require associated, detailed hydrologic and hydraulic modeling results that quantify the reduced impacts from flood and the associated benefits and costs. Information may be based on previously performed evaluations of projects and related information. Evaluations of potentially feasible FMS and FMPs shall include the following information and be based on the following analyses:
- (1) A reference to the specific flood mitigation or floodplain management goal addressed by the feasible FMS or FMP;
 - (2) A determination of whether FMS or FMP meets an emergency need;

- (3) An indication regarding the potential use of federal funds as a component of the total funding mechanism;
- (4) An equitable comparison between and consistent assessment of all FMSs and FMPs that the RFPGs determine to be potentially feasible;
- (5) A demonstration that the FMS or FMP will not negatively affect a neighboring area;
- (6) A quantitative reporting of the estimated benefits, including reductions of flood impacts to include, but not limited to:
- (A) Associated flood events that must, at a minimum, include the 1.0% annual chance flood event;
- (B) Reduction in habitable, equivalent living units flood risk;
- (C) Reduction in residential population flood risk;
- (D) Reduction in critical facilities flood risk;
- (E) Reduction in road closure occurrences;
- (F) Reduction in acres of active farmland and ranchland flood risk;
- (G) Estimated reduction in fatalities, when available;
- (H) Estimated reduction in injuries, when available;
- (I) Reduction in expected annual damages from residential, commercial, and public property; and
- (J) Other benefits as deemed relevant by the RFPG.
- (7) A quantitative reporting of the estimated capital cost of projects in accordance with guidance provided by the EA;
- (8) Calculated benefit-cost ratio in accordance with guidance to be provided by the EA and based on current, observed conditions;
- (9) For projects that will contribute to water supply, all relevant evaluations required under §357.34(e), 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 from the FMS or FMP to environmental, agricultural, recreational resources, navigation, 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, utilities and transportation; and
- (13) Funding sources and options that exist or will be developed to pay for development, operation, and maintenance of the FMS or FMP.
- (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 FMSs or FMPs for recommendation in the RFP. These FMEs shall be based on recognition of the need to develop detailed hydrologic models or to perform associated hydraulic analyses and associated project evaluations in certain areas identified by the RFPG. Evaluations of potential FMEs shall include the following analyses:
- (1) A reference to the specific flood mitigation or floodplain management goal to be addressed by the potential FME.
- (2) A determination of whether FME may meet an emergency need.

- (3) An indication regarding the potential use of federal funds as a component of the total funding mechanism.
- (4) An equitable comparison between and consistent assessment of 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 benefits, including reductions of flood risks, to include:
 - (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;
 - (D) Estimated acres of active farmland and rangeland 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) RFPGs shall evaluate and present potential FMEs and potentially feasible FMSs and FMPs with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RFP.
 - (j) Analyses under §361.38 shall be performed in accordance with guidance requirements to be provided by the EA.
 - (k) All data produced as part of the analyses under §361.38 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.
 - (l) Analyses shall clearly designate a representative location of the FME and beneficiaries including a map and designation of HUC8 and county location.

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

- (a) RFPGs shall recommend FMSs and FMPs to reduce the potential impacts of flood based on the evaluations under §361.38 of this title and RFPG goals and that must, at a minimum, mitigate for flood events associated with at 1.0 percent annual chance (100-yr flood). Recommendations shall be based upon the identification, analysis, and comparison of alternatives that the RFPG determines will provide measurable reductions in flood impacts in support of the RFPG's specific flood mitigation and/or floodplain management goals.
- (b) RFPGs shall provide additional information in conformance with guidance to be provided by the EA which will be used to prioritize recommended FMPs in the state flood plan.
- (c) RFPGs shall recommend FMEs that the RFPG determines are most likely to result in identification of potentially feasible FMSs and FMPs that would, at a minimum, mitigate for flood events associated with a 1.0% annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.
- (d) Recommended FMSs or FMPs may not negatively impact a neighboring area or an entity's water supply.
- (e) Recommended FMSs or FMPs that will contribute to water supply may not result in an overallocation of a water source based on the water availability allocations in the most recently adopted State Water Plan.

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

§ 361.40 Impacts of Regional Flood Plan

Regional flood plans shall include:

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

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

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

(4) a general description of the overall impacts of the recommended FMPs and FMSs in the RFP on the environment, water quality, and navigation.

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

(1) 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 strategies and/or projects that would contribute to water supply; and

(2) 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

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

§ 361.43 Administrative, Regulatory, and Legislative Recommendations

RFPs 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

RFPs 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 FMSs, FMPs, and FMEs. As projects are

implemented, those improvements and associated benefits shall be incorporated into and reflected in the subsequent RFPs.

§ 361.45 Implementation and Comparison to Previous Regional Flood Plan

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

(1) collect information from local sponsors of FMPs on implementation of previously recommended FMPs and provide to the EA; and

(2) 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.

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

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

(c) Prior to adopting a final RFP, the RFPGs shall consider the following comments in accordance with §361.21 to include:

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

(2) the EA's written comments 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, FMSs, and FMPs with accompanying data to be used by the EA to rank each associated one-time capital cost 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) Summaries of all written and oral comments 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 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;

(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 Guidelines).

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

§ 361.51 Amendments to Regional Flood Plans

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

(b) If the Political Subdivision is not satisfied with the RFPG's decision on the issue, it may file a petition with the EA to request review of the RFPG's decision and consider the amendment to the approved RFP. The Political Subdivision shall send the petition to the EA and the chair of the affected RFPG.

(1) The petition must include:

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

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

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

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

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

EA may present the issue to the Board for consideration at a public meeting. The Board may then direct the RFPG to amend its RFP.

(b) Amendments to RFPs and State Flood Plan. An RFPG may amend an adopted RFP at a regular RFPG meeting, after giving notice for an amendment and providing notice in accordance with §361.21 (relating to Notice). 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 (1) RFP. An RFPG's consideration for action to initiate an amendment may occur at a regular RFPG meeting.

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

(3) The RFPG may adopt the amendment at a regularly scheduled RFPG meeting held in accordance with §361.21. The 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

(B) demonstrate that the amended RFP complies with statute and rules including that it satisfies the requirements in the guidance principles §362.3 and does not negatively impact a neighboring area.

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

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

(d) 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.

SUBCHAPTER E NEGATIVE AFFECTS ON NEIGHBORING AREAS, AND FAILURE TO MEET REQUIREMENTS

§ 361.60 Addressing Negative Affects 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 Affects 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.

SUBCHAPTER F REGIONAL FLOOD PLANNING GRANTS

§ 361.70 Notice of Funds and Submission and Review of Regional Flood Planning Applications

- (a) The EA will notify the RFPGs that funds are available and that applications will be accepted from eligible applicants for grants to develop or negotiate a scope of work or to develop or revise regional flood plans. A RFPG may not receive grant funds unless the RFPG has provided the EA with a copy of the RFPG's adopted by-laws.
- (b) The RFPG shall provide a written designation to the EA naming the political subdivision that is authorized to apply for grant funds on behalf of the RFPG. The RFPG shall ensure that the designated political subdivision has the legal authority to conduct the procurement of professional services and enter into the contracts necessary for regional flood planning.
- (c) The RFPG meeting to consider its additional, region-specific, public notice requirements in accordance with §361.12(3) 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 political subdivision shall provide notice that an application for funding is being submitted in accordance with §361.21.
- (e) The EA may request clarification from the political subdivision, if necessary, to evaluate the application. Incomplete applications may be rejected and returned to the applicant.
- (f) The applications will be evaluated on the following criteria:
 - (1) degree to which proposed flood planning does not duplicate previous or ongoing flood or water planning;
 - (2) application organization, responsiveness, and reasonableness of budget;
 - (3) scope of work;
 - (4) eligibility of tasks for funding under this subchapter;

- (5) the relative need of the political subdivision for the funding based upon an assessment of the necessary scope of work, amount of work, and cost to develop the regional flood plan as compared to statewide needs for development of all regional flood plans;
- (6) the degree to which the scope of work associated with the funding and to be performed by the RFPG will address the flood risks in the FPR; and
- (7) Conformance with the requirements in the Board request for applications including other information as may be required in the application.

§ 361.71 Board Consideration of Applications, Applicant's Responsibilities, and Contract

- (a) The EA will provide a summary of regional flood planning funding applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicants and other persons who have provided comments of the time and place of such meeting.
- (b) The Board may approve, deny, amend, or continue consideration of an application. If the Board approves an application for funding, the eligible applicant will be notified of the amount of funds available and the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The applicant may request an extension of time for good cause shown prior to the contract execution deadline.
- (c) The eligible applicant 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.
- (d) the contracts and sub-contracts for regional flood planning funds shall include:
 - (1) a detailed statement of the purpose for which the money is to be used;
 - (2) a scope of work;
 - (3) the total amount of money to be paid under the contract and, as determined by the EA, subdivided into budget tasks;
 - (4) the time for completion; and
 - (5) any other terms and conditions required by the EA or agreed to by the contracting parties.

§ 361.72 Use of Funds

- (a) Limitations of funding. The Board has sole discretion in determining which activities are necessary for the development or revision of RFPs. However, no funds provided by the Board may be expended by RFPGs for the following:
 - (1) activities for which the Board determines existing information, data, or analyses are sufficient for the planning effort including but not limited to:
 - (A) model development, modeling, or collection of data describing flood hazard exposure or flood risks where information for evaluation of flood hazard exposure or flood risks is currently available from other sources or that will be made available by TWDB or others in sufficient time to be utilized by the RFPG in development of their RFP;
 - (B) detailed technical evaluations of FMEs or FMSs or FMPs, including regarding feasibility, cost, or impacts, where recent, sufficient information for planning is available, including from the Board or other entity, to evaluate the FMEs or FMSs or FMPs;
 - (C) evaluations of topics not directly related to the regional flood planning contract scope of work or related flood planning rules for development of regional flood plans; and
 - (D) revision of the Board-adopted state population projections.

- (2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;
- (3) costs associated with administration of the plan's development by the political subdivision 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;
- (C) staff or overhead costs for time spent providing public notice and meetings, including time and expenses for attendance at such meetings;
- (D) costs for training;
- (E) costs of developing an application for funding or reviewing materials developed due to this grant; and
- (F) costs of administering the regional flood planning grant and associated contracts;
- (4) analysis or other activities related to planning for disaster response or recovery activities; and
- (5) analyses of benefits and costs of flood management strategies 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 certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:
- (1) travel expenses, as authorized by the General Appropriations Act are available only for attendance at a posted meeting of the RFPG unless the travel is specifically authorized by the RFPG and EA;
- (2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RFPGs and certified by the chairperson;
- (3) direct costs, excluding personnel-related costs of the political subdivision 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; and
- (4) the cost of public notice postings including a website and for postage for mailing notices of public meetings.
- (c) Subcontracting. A RFPG through the eligible applicant'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.

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) 1.0% annual chance flood event - Flood event having a 1.0% chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.
- (b) 0.2% annual chance flood event - 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) Neighboring area - means any area, including but not limited to upstream and downstream areas, potentially affected by the proposed flood management project.
- (g) 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.
- (h) 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.
- (i) 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).
- (j) 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 mapping.
 - (3) shall focus on: identifying both current and future flood hazard exposure and flood risks, including 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 0.2 percent annual chance flood event (the 500-year 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 1.0 percent annual chance flood event (the 100-year flood) and address, through recommended strategies and projects, the flood mitigation goals of the RFPG (per item 2 above) to address flood events associated with a 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 miles except in instances of flooding of critical facilities or transportation routes or for other reasons, including levels of risk or project size, determined by the RFPG.

(10) shall consider the potential upstream and downstream effects, including environmental, of potential flood management strategies (and associated projects) on neighboring areas. In recommending 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 management projects to understand project benefits and, when applicable, compare the relative benefits and costs, including environmental 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 (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 work 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 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 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 strategies will be conducted and funded.
- (39) Shall include 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 flood control infrastructure on a regional basis.
 - (3) Summary of existing flood risk hazards associated with 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, FMSs, and FMPs that have associated one-time capital costs derived from the Board-approved RFPs.
 - (6) An analysis of completed, ongoing, and proposed FMEs, FMSs, and FMPs included in previous state flood plans including projects funded by the TWDB.
 - (7) A discussion of how the recommended FMEs, FMSs, and FMPs will reduce flood risk and mitigate flood hazards.
 - (8) Legislative recommendations the Board considers necessary to facilitate flood mitigation planning and FME, FMS, and FMP implementation.