Chapter 8: Legislative, Administrative, and Regulatory Recommendations

Part of the regional flood planning effort includes proposing changes to existing statutes to make floodplain management and flood mitigation planning and implementation throughout the State of Texas more efficient or logical. Recommendations can include alterations to the legislature associated with flood planning throughout the state, as well as regulatory or administrative features associated with flood-related activities. Recommendations may also be proposed to further the flood planning process itself, such as desired support or data from the Texas Water Development Board (TWDB) or from other entities. Lastly, the planning process includes recommendations regarding new funding or revenue-raising opportunities for stormwater and floodplain management

Legislative Recommendations

Being a part of the state flood planning effort has allowed the Regional Flood Planning Groups (RFPGs) and sponsors to communicate and interact with a wide variety of entities. The RFPGs have been able to identify trends and occurrences throughout a large portion of the state. Some of these practices are positive and should be encouraged, while others may be detrimental to the floodplain and stormwater management of the entity, region, and/or state as a whole. Throughout the flood planning process, the RFPG teams, surveyed entities, and members of the public provided input on the functionality and usefulness of existing legislature as it relates to floodplain and stormwater management. ***Table 8.1*** identifies the Trinity RFPG's legislative recommendations for consideration in relation to floodplain and stormwater management.

Regulatory or Administrative Recommendations

Some of the suggestions that the Trinity RFPGs proposed are not directly controlled by the Texas Legislature. Rather, some recommendations are of a regulatory or administrative nature, concerning existing procedures, state entities, or state/regional regulations. Alterations to these procedures could also be proposed to the TWDB for consideration.

Confusion and uncertainty exist regarding current floodplain management regulations and responsibilities that are applicable to counties. Counties would benefit from clarification and guidance on their current flood-related authorities within their jurisdictions. The lack of guidance has hindered several recommendations from being included in this section for the Trinity Region. Recommendation ID 8.2.2 in ***Table 8.2*** addresses this concern. ***Table 8.2*** provides suggested changes to the implementation of existing standards and procedures by state-controlled entities.

Table 8.1: Legislative Recommendations for the Trinity Region

ID	Recommendation Statements	Reason for Recommendation
8.1.1	Increase state funding to help counties maintain drainage and stormwater infrastructure in unincorporated areas.	Counties in the State of Texas have floodplain and drainage related responsibilities without a current way to fund projects.
8.1.2	Develop state strategies to aid in acquiring federal funds.	Entities in Texas do not qualify for some federal funding programs due to minimal or no state participation, such as Federal Emergency Management Agency (FEMA) Building Resilient Infrastructure and Communities (BRIC) grants.
8.1.3	Provide funding and/or technical assistance to develop regulatory floodplain maps.	Several entities who have outdated maps or no mapping at all are not able to fund the projects necessary to update or create regulatory floodplain maps.
8.1.4	Develop and allocate state funding to assist dam owners with the costs associated with repairing, maintaining, and upgrading dam structures, as well as decommissioning studies, where applicable.	A number of dams that were originally constructed in rural areas are now surrounded by developments. Therefore, the potential impact of flood damages resulting from dam failure has increased significantly. Often, the cost of maintenance is far too high for a private entity to take on.
8.1.5	Provide additional grant funding to the RFPGs to enable them to continue to function during the interim timeframe between planning cycles	Between planning cycles, RFPGs could continue adding FMEs, FMPs, and/or FMSs to the regional flood plan, as well as implement RFPG-sponsored flood management activities, perform public outreach, and stay informed on regional flood-related occurrences.
8.1.6	Establish a state levee safety program and/or ensure that state and local interests are represented in any national level levee safety programs. The program should solicit input from a broad range of levee sponsors to leverage the owner's and operator's expertise in the development of the program.	Levees need to be properly maintained to provide their design level of flood protection. A program that includes periodic inspections would promote maintenance of levees in the state. Guidelines for inspection and maintenance should be based on sound engineering principles, and not a direct duplication of federal guidelines, as not all levees are federal. It should be acknowledged that any program without funding will struggle to meet its goals; therefore, a funding source should be established as well.
8.1.7	Extend Local Government Code, Title 13, Subtitle A, Chapter 552 to allow counties the opportunity to establish and collect drainage utility fees in unincorporated areas.	Counties in the State of Texas have floodplain- and drainage-related responsibilities. Currently, counties do not have the ability to establish and collect stormwater utility fees, thus limiting their ability to fund stormwater or drainage projects, despite having the responsibility to do so.
8.1.8	Provide for alternative sources of funding. Expand eligibility for, and use of funding for stormwater and flood mitigation solutions (local, state, federal, public/private partnerships, etc.)	Flood mitigation studies/projects are intended to protect property and the health and safety of the public but are challenging to fund at the local level. Furthermore, flood mitigation activities are not intended to generate revenue. FMPs impact the property tax base.

Table 8.2: Regulatory and Administrative Recommendations for the Trinity Region

ID	Recommendation Statements	Reason for Recommendation
8.2.1	Review and revise, as necessary, all state infrastructure entities' standards and practices for legislative and regulatory compliance with stormwater best practices.	State entities should be cognizant of the drainage and stormwater standards in the areas where they are active. State entities should be held to consistent standards that the local entities uphold.
8.2.2	Provide guidance on the extent of county authority related to the regulation of floodplain management under existing state law, including potential best management practices.	Some county officials are unclear on the responsibilities, restrictions, and regulations current state law allows them to establish and enforce. Continued confusion of this matter prevents the counties from setting beneficial regulations for their jurisdictions and hinders the RFPG from being able to provide recommendations that would be of further use to the counties in the region.
8.2.3	Develop resources for and educate city and county officials regarding the respective entities' ability/authorization to establish and enforce higher development standards.	City and county officials are often unaware of their authority to establish and enforce stormwater regulations. (Texas Local Government Code Title 7, Subtitle B.; Texas Water Code Chapter 16, Section 16.315) City and county officials often have inadequate flooding and drainage training for their level of responsibility.
8.2.4	Provide measures to encourage and allow jurisdictions to work together towards regional flood mitigation solutions.	Flooding does not recognize jurisdictional boundaries. Encouraging entities to work together towards common flood mitigation goals would be beneficial to all involved.
8.2.5	Develop a publicly available, statewide database and tracking system to document flood-related fatalities.	In order to more accurately address the health, safety, and welfare of the public, high flood-risk areas should be tracked and reported. Doing so would increase awareness of the area, both so the public could be cognizant of the risks, and so elected officials and decision-makers could institute solutions to reduce the risk in those areas. Information gathered could include presence/absence of flashers, barricades, and/or signs.
8.2.6	Revise the scoring criteria for funding associated with stormwater and flood-related projects that benefit agricultural activities.	The traditional benefit-cost analysis tools prevent agricultural projects from competing with municipal benefit-cost ratios.
8.2.7	Provide financial or technical assistance to smaller/rural jurisdictions.	The former Office of Rural Affairs/Texas Department of Rural Affairs was intended to assist and work with rural entities; however, the department was disbanded. Actions such as maintaining a department specifically for smaller/rural entities, incentivizing consultants to pursue work for smaller or rural entities or adjusting BCAs to rank small/rural entities equally are all ideas towards this goal.
8.2.8	Simplify all funding application processes.	Current funding applications require significant time and resources to prepare a project for consideration, as well as complete the application itself, especially for jurisdictions with limited resources. Thus, jurisdictions that need the funding the most typically do not apply for current opportunities, despite having needs.
8.2.9	Allow for more frequent inspection of high-hazard dams in poor condition.	TAC Rule 299.42(a)(2)(A) states, "High-hazard dams shall be inspected once every five years." Five years is an adequate inspection frequency for well-maintained high-hazard dams. However, TCEQ should be allowed to inspect high-hazard dams found to be in poor condition more frequently until said condition is improved.

Flood Planning Recommendations

Having been part of the first-ever state flood planning effort, the Trinity Region offers the recommendations in ***Table 8.3*** to improve the regional flood planning process for future planning cycles.

Funding Recommendations

The RFPG is responsible for providing funding recommendations to the TWDB. These ideas could include new, revenue-raising opportunities, as well as "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."

In ***Chapter 1,*** responders to the data collection survey indicated the use of stormwater utility fees, bond programs, ad valorem taxes, and the general fund to sponsor projects in their regions. Non-local funding sources included the Hazard Mitigation Grant Program (HMGP) through FEMA and Texas Department of Emergency Management (TDEM), Pre-Disaster Mitigation through FEMA, Cooperating Technical Partner (CTP) funds through FEMA, Flood Protection Planning Grants through TWDB, United States Department of Agriculture - Natural Resources Conservation Service (USDA-NRCS), and Flood Mitigation Assistance through FEMA.

No additional funding sources were identified in the Trinity Region during this planning cycle.

Table 8.3: State Flood Planning Recommendations for the Trinity Region

ID	Recommendation Statements	Reason for Recommendation
8.3.1	Update the scope of work, guidance documents, rules, checklists, etc. based on the adjustments made to these planning documents during the first cycle of planning.	During the first cycle of the State Flood Plan, multiple amendments and additions to the TWDB documents and the TWDB's interpretation of its documents occurred. Moving forward, the TWDB documents provided at the onset of each new planning cycle should reflect what is ultimately required of the RFPGs.
8.3.2	Develop a fact sheet and/or other publicity measures to encourage entities to participate in the regional flood planning effort.	Many entities were unaware of the regional and state flood planning efforts despite the RFPG's outreach efforts. Some entities are still requesting information regarding the flood planning process and do not understand the benefits of participating.
8.3.3	Host "lessons learned" discussions with RFPG members, sponsors, and technical consultants following the submittal of the final regional flood plans.	Opening dialogue among these participants to discuss proposed improvements to the regional planning process will streamline and improve future regional flood planning cycles.
8.3.4	Develop an amendment process similar to the regional water planning process to efficiently amend RFPG-approved regional flood plans to incorporate additional recommended FMEs, FMPs, and FMSs. Include language to allow the RFPG to advance the recommended FMEs to FMPs based on the results provided at the conclusion of an FME.	Amending the regional flood plan, as seen with the Technical Memorandum Addendum, can be an extensive process. Amendments to move FMEs to FMPs and incorporate new flood management solutions should have a quicker turn-around time to efficiently include them in the regional flood plan. Recommend utilizing the regional water planning amendment process as a go-by.
8.3.5	Implement an invoice review and advancement request process that provides for timely reimbursements.	Several regions experienced extensive delays in their billing cycles which can delay planning efforts.
8.3.6	Include the reimbursement of costs for audio and visual (A/V) equipment expenses required to support hybrid and/or virtual meetings for the RFPG grants	Many RFPGs have had to rent or purchase A/V equipment in order to uphold the Texas Open Meetings Act guidelines while supporting hybrid meetings. Given the area spanned by the regions and today's technology, RFPG members prefer to offer hybrid meetings to reduce travel time and to increase the opportunity for public participation in the regional flood planning process. Expenses accrued to maintain Texas Open Meetings Act standards – set in place by the state – should be eligible for reimbursement.
8.3.7	Remove information requirements regarding the condition of Homeland Security protected infrastructure, such as dams, from the TWDB-required tables.	The requested information is purposefully not publicly available. Structural conditions of certain critical infrastructure are protected to minimize the risk of the information being used to cause negative consequences.
8.3.8	Reduce the amount of information required to escalate potentially feasible FMEs to FMPs.	Some data currently requested for FMPs is more detailed than traditional planning level data. TWDB recommended leaving those cells blank in ***TWDB-Required Table 13***, which would likely result in lower scoring for the project, and a lower probability to garner funding. Thus, certain FMPs were submitted as FMEs or FMSs despite having sufficient data to produce a project.
8.3.9	Revise the criteria for the "No Adverse Impact" Certification required for FMPs.	The current criteria provide thresholds for increases in flow, water surface elevation, and inundation extents. The current criteria do not allow for projects that exceed these thresholds, even if the impact is accounted for in the design or by other accommodations.
8.3.10	Provide clarification for the phrase "flood-related authorities or entities", who that includes, and what that entails.	The phrase is used in the TWDB planning documents multiple times and is a central part of multiple tasks. TWDB originally provided the RFPG with a list of entities that were thought to have flood-related responsibilities. During outreach efforts, many of those entities informed the Trinity Region that they did not have flood responsibilities and did not believe they should be part of the flood planning effort. Therefore, the Trinity Region removed these entities from the plan. Clarification is requested regarding the intent of this phrase.
8.3.11	Streamline the data collection requirements, specifically those identified in Task 1. Focus on collecting the data that was most useful to the regional flood plan development.	This first round of planning proved that very few entities have the data requested as part of the flood planning process readily available in a geographical information system (GIS) format. Of those entities who did have GIS data, most were unable to share that information. Furthermore, some of this data was not used or was used minimally to develop potentially feasible and recommended FMEs, FMPs, and FMSs.

ID	Recommendation Statements	Reason for Recommendation
8.3.12	Provide applicable data sources and a methodology to determine infrastructure functionality and deficiencies in the next cycle of the flood planning process. Consider the lack of readily available local data when developing the methodology.	Most entities do not have information regarding the functionality and deficiency of their infrastructure. Some fields required by the TWDB-required tables in the regional flood plans are based on data that is not available to entities without extensive field work.
8.3.13	Review and revise the geodatabase submittal attributes and elements.	Normalizing the geodatabase with relationships would allow for cross-referencing of data elements and attributes. More domains for attributes need to be developed.
8.3.14	Use FEMA's Social Vulnerability Index (SVI) when available instead of the Center for Disease Control's (CDC's) SVI in future planning cycles.	FEMA's SVI is reasoned to be more relevant to flood resiliency and risk than the CDC's SVI. SVI should not be the primary component considered when allocating funding.
8.3.15	Use consistent Hydrologic Unit Code (HUC) reporting requirements throughout the TWDB-required tables.	The RFPG guidance requires HUC-8 in some tables, HUC-10 in other tables, and HUC-12 in yet other tables. Some tables require multiple HUCs to be provided. The Trinity RFPG recommends that the TWDB require HUC-8 in all TWDB-required tables for consistency, and to correspond to FEMA's base level watershed planning granularity.
8.3.16	Develop a statewide bridge inventory with bridge deck elevations.	The availability of statewide LiDAR provides the opportunity to more accurately describe the risk at riverine crossings (i.e. overtopping elevation). The creation of a statewide database would further simplify this data.
8.3.17	Improve upon the flood risk identification and exposure process with regards to building footprints and population at risk.	While the building footprints are helpful, without the first-floor elevations of each structure, it is difficult to determine the actual extent of flood risk per structure. For example, if a structure is sufficiently elevated above the base flood elevation (BFE), the footprint still shows the structure in the floodplain and the corresponding population is considered "at risk" although the structure meets NFIP standards. This overestimates the population at risk quantification.