

CHAPTER 735 - FLOOD DAMAGE PREVENTION

Sub-Chapter 1 - Applicability

§1.01. General Requirements

This Chapter shall govern activities associated with development in Hays County, Texas.

§1.02. Legal Authority

The Legislature of the State of Texas has, in TEXAS WATER CODE ANNOTATED, Sections 16.313, 16.315, and 16.318, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Legal Authority for adopting and enforcing the regulations in this Chapter is granted to the County under Texas Local Government Code (TLGC) in Chapter 232 and under the Texas Water Code in Chapters 26 and 35. Therefore, the Commissioners Court of Hays County, Texas, does hereby adopt the following flood management regulations.

§1.03. Findings of Fact

- (A) The flood hazard areas of Hays County are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.
- (B) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses which are vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed, or otherwise protected from flood damage.

§1.04. Statement of Purpose

- (A) It is the purpose of this Chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to: Protect human life, health, safety, and welfare;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges and culverts located in floodplains;
- (F) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and,
- (G) Ensure that potential buyers are notified that property is in a flood hazard area.
- (H) Protect the beneficial functions of floodplains.

§1.05. Approval Required Prior to Development

Approval of the County is required prior to conducting development activities in Flood Hazard Areas, unless excluded or exempted under State law or as exempted below.

§1.06. Methods of Reducing Flood Losses

In order to accomplish its purposes, this Chapter authorizes the use of the following methods:

- (A) Restrict or prohibit uses that are dangerous to health, safety or property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage throughout their intended lifespan;
- (C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation or channeling of flood waters;
- (D) Control filling, grading, dredging and other development which may increase flood damage; and,
- (E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sub-Chapter 2 - Definitions Specific to This Chapter

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

- (1) Alluvial Fan Flooding - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.
- (2) Apex - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.
- (3) Appeal Board - means the Hays County Commissioners Court.
- (4) Appurtenant Structure – means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.
- (5) Area of Future Conditions Flood Hazard – means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.
- (6) Area of Shallow Flooding - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (7) Area of Special Flood Hazard - means the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO,

AR/AH, AR/A, VO, V1-30, VE, or V. The term “special flood hazard area,” for purposes of these regulations, is synonymous with the phrase “area of special flood hazard.”

- (8) Base Flood - means the flood having a 1 percent chance of being equaled or exceeded in any given year (also called the “regulatory flood”).
- (9) Base Flood Elevation (BFE) - means the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.
- (10) Basement - means any area of the building having its floor subgrade (below ground level) on all sides.
- (11) Breakaway Wall – means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.
- (12) Building – see “Structure.”
- (13) Certification – means a certification by a Texas registered professional engineer or other party that does not constitute a warranty or guarantee of performance, expressed or implied. Certification of data is a statement that the data is accurate to the best of the certifier’s knowledge. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices to provide protection from the base flood. Certification of “as built” conditions is a statement that the structure(s) has been built according to the plans being certified, is in place, and is fully functioning.
- (14) Critical Facility – means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.
- (15) Critical Feature - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.
- (16) Development - means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.
- (17) Elevated Building – means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.
- (18) Existing Construction - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before

January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

- (19) Existing Manufactured Home Park or Subdivision - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
- (20) Expansion to an Existing Manufactured Home Park or Subdivision - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
- (21) Fill, also known as Earthen fill – means fill that is sometimes placed in a Special Flood Hazard Area (SFHA) to reduce flood risk to the filled area. The placement of fill is considered development and will require a permit under applicable Federal, state and local laws, ordinances, and regulations. Fill is prohibited within the floodway unless it has been demonstrated that it will not result in any increase in flood levels. Some communities limit the use of fill in the flood fringe to protect storage capacity or require compensatory storage. The use of fill is prohibited for structural support of buildings in V Zones.
- (22) Flood or Flooding - means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) the overflow of inland or tidal waters.
 - (2) the unusual and rapid accumulation or runoff of surface waters from any source.
- (23) Flood Boundary and Floodway Map (FBFM) – means the official map of a community on which FEMA has delineated the areas of flood hazards and regulatory floodway.
- (24) Flood Elevation Study – means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.
- (25) Flood Hazard Boundary Map (FHBM) – means an official map of a community, issued by FEMA, where the boundaries of the special flood hazard areas have been identified in Zone A.
- (26) Flood Insurance Rate Map (FIRM) - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.
- (27) Flood Insurance Study (FIS) – see “Flood Elevation Study.”
- (28) Floodplain or Flood-Prone Area - means any land area susceptible to being inundated by water from any source (see definition of flooding).

- (29) Floodplain Management - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.
- (30) Floodplain Management Regulations - means this Chapter, along with such other subdivision and development regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
- (31) Flood Proofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- (32) Flood Protection System - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.
- (33) Floodway – see “Regulatory Floodway.”
- (34) Freeboard – means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effects of urbanization of the watershed.
- (35) Functionally Dependent Use - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
- (36) Habitable Structure – means a structure suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purpose. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartment, then the entire building, not the individual apartment, is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.
- (37) Highest Adjacent Grade - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- (38) Historic Structure - means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
 - (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior; or,
 - (b) Directly by the Secretary of the Interior in states without approved programs.
- (39) Increased Cost of Compliance (ICC) – means the coverage by a standard flood insurance policy under the NFIP that provides for the payment of a claim for the cost to comply with the State of Texas and Hays County floodplain management laws or ordinances after a direct physical loss by flood, when Hays County declares the structure to be “substantially” or “repetitively” flood-damaged. ICC coverage is provided for in every standard NFIP flood insurance policy and will help pay for the cost to floodproof, relocate, elevate, or demolish the structure.
- (40) Levee - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
- (41) Levee System - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.
- (42) Lowest Floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.
- (43) Manufactured Home - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."
- (44) Manufactured Home Rental Community or Subdivision - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

- (45) Map – means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by FEMA.
- (46) Mean Sea Level - means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
- (47) New Construction - means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- (48) New Manufactured Home ~~Park~~ Rental Community or Subdivision - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.
- (49) Non-habitable Structure - means a structure that is not suitable or intended for human habitation.
- (50) Participating Community – means a community in which FEMA has authorized the sale of flood insurance. Also known as an eligible community.
- (51) Principally Above Ground – mean that at least 51 percent of the actual cash value of the structure is above ground.
- (52) Recreational Vehicle - means a vehicle which is:
 - (1) built on a single chassis;
 - (2) 400 square feet or less when measured at the largest horizontal projections;
 - (3) designed to be self-propelled or permanently towable by a light duty truck; and,
 - (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
 - (5) Does not exceed the legal size or weight limits required for an oversize/overweight(OS/OW) permit and route from the TxDMV to travel on Texas roads.
- (53) Reasonably safe from flooding – means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
- (54) Repetitive Loss – means flood-related damages sustained by a structure on two separate occasions during a 10-year period ending on the date of the event for which the second claim is made, for which the cost of repairs at the time of each such flood event, on the

- average, equaled or exceeded 25% of the market value of the structure before the damages occurred.
- (55) Regulatory Floodway - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
- (56) Riverine – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- (57) Special Flood Hazard Area – see “Area of Special Flood Hazard” – means an area having special flood hazard and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AH, A99, or AR,.
- (58) Start of Construction - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (59) Structure – means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
- (60) Substantial Damage - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (61) Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

- (62) Variance – means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)
- (63) Violation - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
- (64) Water Surface Elevation - means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Sub-Chapter 3 - General Provisions

§3.01. Lands to Which This Chapter Applies

This Chapter shall apply to all areas of special flood hazard within the jurisdiction of Hays County, Texas.

§3.02. Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, “The Flood Insurance Study for Hays County, Texas,” dated February 18, 1998, with accompanying effective Flood Insurance Rate Maps and/or Flood Boundary- Floodway Maps (FIRM and/or FBFM) dated September 2, 2005, and any revisions thereto, are hereby adopted by reference and declared to be part of this Chapter.

§3.03. Establishment of Development Permit System

A Flood Hazard Area Permit System is hereby established to ensure compliance with the provisions of this Chapter. This system shall require an Application for a Development Authorization by the Applicant or the Permittee seeking the Development Authorization.

A county-wide application system is a necessary and reasonable action to insure that all permits for development in flood hazard areas have been obtained. The Commissioners Court through the Floodplain Administrator will develop and promulgate any and all forms as may be necessary for the implementation of this court order.

Additional floodplain data may be generated which will improve the accuracy of floodplain boundary identification. Since the County will constantly be aware of map changes and additional data, the responsibility for determining whether a property or development is within a flood hazard area must rest with the Hays County Floodplain Administrator. Flood Hazard Boundary Maps published by the Federal Insurance Administration delineate only the major flood prone areas within the County. With a County-wide review procedure, the Floodplain Administrator will be able to make recommendations for construction standards which will minimize or eliminate the possibility of damage from localized drainage problems.

§3.04. Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Chapter and other applicable regulations.

§3.05. Abrogation and Greater Restrictions

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

§3.06. Interpretation

In the interpretation and application of this Chapter, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

§3.07. Warning and Disclaimer of Liability

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

§3.08. Establishment of Fees

The Commissioners Court, upon the recommendation of the Floodplain Administrator, shall establish application fees commensurate with the service rendered by the County. Development fees are payable at the time of application.

Sub-Chapter 4 – Administration

§4.01. Designation of the Floodplain Administrator

The Commissioners Court shall appoint the Floodplain Administrator to administer and implement the provisions of this Chapter and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management. If no other individual has been appointed by the Commissioners Court, the Director of the Department, or his designee, shall serve as the Floodplain Administrator.

§4.02. Duties and Responsibilities of the Floodplain Administrator

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (A) Maintain and hold open for public inspection all records pertaining to the provisions of this Chapter.
- (B) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

- (C) Review, approve, or deny all applications for development permits required by adoption of this Chapter.
- (D) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor of all new construction and substantial improvements, in accordance with Sec. 735.04.04(A)(2).
- (E) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved non-residential structures in A-Zones have been flood proofed, in accordance with Sec. 735.04.04(A)(2).
- (F) Review permits for proposed development within a special flood hazard area to assure that all necessary permits have been obtained from those Federal, State, or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) or by area-wide agencies from which prior approval is required prior to issuing a development permit. Such documentation is to be maintained on file with the development permit.
- (E) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
- (F) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (G) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (H) When base flood elevation data has not been provided in accordance with Section §735.3.02, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Subchapter 5 of this Chapter.
- (I) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required by Section 65.12.
- (J) Participate actively in evaluating the variance requests and provide input and recommendations in variance hearings/proceedings.

- (K) Coordinate all change requests to the FIS and FIRM or FHBM, or both, with the requester, State, and FEMA.

§4.03. Classification of Flood Hazard Area Permits

Development Authorizations issued as Flood Hazard Area Permits (FHAP) shall be classified as follows:

- (A) Development located on real property for which there is no Flood Hazard area delineated shall qualify for a Class A (Exemption Certificate) FHAP. The FHAP shall state that the proposed development is located on real property that does not lie within an identified Flood Hazard Area and that the construction standards contained in this Chapter are not applicable to the proposed development. Class A FHAPs (Exemption Certificates) shall be issued by the Floodplain Administrator.
- (B) Habitable structures located on real property in flood hazard areas shall require a Class B FHAP. Class B FHAPs that comply with the terms of this Chapter may be issued by the Floodplain Administrator. Variances requested in conjunction with a Class B FHAP shall require approval of the Commissioners Court.
- (C) Non-habitable structures or development located on real property in flood hazard areas shall require a Class C FHAP.

The Floodplain Administrator shall issue FHAPs that comply with the terms of this Chapter, including specifically authorized variances.

§4.04. Permit Procedures

- (A) Applications for an FHAP will be processed in accordance with Chapter 701 of the Hays County Development Regulations.
- (B) Application for a Flood Hazard Area Permit shall be presented, prior to undertaking any development activities, to the Floodplain Administrator on forms furnished by him/her and must include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area under consideration for development, proposed landscape alterations, existing and proposed structures and other features, including the placement of manufactured homes, earthen fill, storage of materials or equipment, drainage facilities, perimeter setbacks, environmental features such as base floodplain areas, wetlands, and other protected areas, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information, certified by a Texas professional who is authorized to certify such information, is required:
 - (1) Application Stage:
 - (a) Elevation (in relation to mean sea level) of the area of development for both existing and proposed development.
 - (b) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - (c) Elevation (in relation to mean sea level) to which any nonresidential structure shall be flood proofed;

- (d) A certificate from a Texas ~~licensed~~ registered professional engineer or Texas licensed architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of Subchapter 5 of this Chapter;
- (e) Existing and proposed infrastructure;
- (f) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and,
- (g) Maintain a record of all such information in accordance with Subchapter 4 of this Chapter.

(2) Construction Stage:

Upon placement of the lowest floor, or flood proofing by whatever construction means, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the lowest floor or flood proofed elevation, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a Texas registered land surveyor or Texas licensed professional engineer who is authorized to certify such information, and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk.

The Floodplain Administrator shall review the lowest floor elevation and flood proofing certificate. Should these documents be found not in conformance with the requirements of these rules, the permit holder shall immediately cease further work, and shall correct any deficiencies. Failure of the permit holder to submit the surveyed lowest floor elevation and flood proofing certificate, and failure to correct said deficiencies required hereby, shall be the cause to issue a stop-work order for the project.

- (C) Approval or denial of a Flood Hazard Area Permit by the Floodplain Administrator shall be based on all of the provisions of this Chapter and the following relevant factors:
- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (3) The danger that materials may be swept onto other lands to the injury of others;
 - (4) The compatibility of the proposed use with existing and anticipated development;
 - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;
 - (7) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
 - (8) The necessity to the facility of a waterfront location, where applicable; and,

- (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
- (D) It shall be unlawful to use, occupy or permit the use or occupancy of any building, development, or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a Flood Hazard Area Permit has been issued by the Floodplain Administrator stating that the use of the development conforms to the requirements of this Chapter.

§4.05. Expiration of Flood Hazard Area Permits

Approval of a Flood Hazard Area Permit shall expire and be of no further force and effect in the event that:

- (A) None of the activities authorized in the permit are commenced within one (1) year from the date of issuance; or,
- (B) All of the activities authorized in the permit are not completed within two (2) years from the date of issuance.

§4.06. Variance Procedures

- (A) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this Chapter.
- (B) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.
- (C) Any person(s) aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (D) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (E) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Chapter.
- (F) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section §735.4.03(B) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- (G) Upon consideration of the factors noted above and the intent of this Chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Chapter.
- (H) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

- (I) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (J) Prerequisites for granting variances:
 - (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (2) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (3) Any applicant to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, ~~and~~ that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation, and that such construction below the base flood level increases risks to life and property.
- (K) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Section §735.04.04(B) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (L) A request for variance is not an after-the-fact request and should be made prior to the commencement of any development activities sought under an FHAP.

Sub-Chapter 5 - Provisions for Flood Hazard Reduction

§5.01. General Standards

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (A) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (C) All new construction or substantial improvements shall be constructed with materials and utility elements resistant to flood damage;
- (D) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

- (E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (G) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (H) When located in multiple flood zones with varying base flood elevations or in the same flood zone with multiple base flood elevations, the requirements for the flood zone with the most stringent requirements and the highest base flood elevation shall apply.
- (I) Base flood elevation data and floodway boundaries shall be generated by a detailed engineering study for development purposes in Zone A and within 100 feet of the contour lines of Zone A, as indicated on the community's FIRM, if the Floodplain Administrator requires this based on proximity to channel, or obvious inaccuracy of the FIRM in area of the proposed development, or historical records of flooding. The Applicant shall bear the cost of the engineering studies.

§5.02. Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Subchapter 3, (ii) Subchapter 4, or (iii) Subchapter 5, the following provisions are required:

- (A) Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation. A Texas registered professional engineer, Texas licensed architect, or Texas licensed land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section §735.04.03 is satisfied.
- (B) Nonresidential Construction - new construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to at least one (1) foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A Texas registered professional engineer or Texas licensed architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.
- (C) Enclosures - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this

requirement must either be certified by a Texas registered professional engineer or Texas licensed architect or meet or exceed the following minimum criteria:

- (1) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (2) The bottom of all openings shall be no higher than 1 foot above the floor or bottom of the interior of the enclosed structure
 - (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (D) Manufactured Homes -
- (1) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated such that the lowest floor of the manufactured home is elevated to at least one (1) foot above the base flood elevation and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
 - (2) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one (1) foot above the base flood elevation, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement,;
- (E) Recreational Vehicles - Require that recreational vehicles placed on sites within Zones A, A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section §735.4.03, and the elevation and anchoring requirements for "manufactured homes" in Section §735.5.02(D)(2). A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
- (F) Fences in Special Flood Hazard Area
- (1) Exempted Fencing -- No Flood Hazard Area Permit is required for open pipe, rail, or wire fencing that is 90% "open" and that have posts less than 14" diameter placed no closer than 8-feet apart.
 - (2) Non Exempt Fencing-- any proposed fence in a 100-year floodplain that is not an exempt fence is considered to be development and requires issuance of a Flood Hazard Area Permit.
 - (3) Any fencing that crosses a stream channel must be designed and constructed so that it will break away or collapse to allow discharge of flood waters.

- (4) On a navigable stream or river a property owner must comply with the Texas Parks and Wildlife Code so that public recreational use is not limited, obstructed, restricted, or interfered with.

§5.03. Standards for Subdivision Proposals

- (A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with this Chapter and shall be approved by the County Floodplain Administrator prior to issuance of the Development Authorization by the County. Plat specifications and details for submission will be governed by Chapter 705 and other applicable provisions of these Regulations.
- (B) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet the requirements this Chapter.
- (C) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is are greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to this Chapter.
- (D) All subdivision plats shall have the Floodplain and Floodway clearly delineated on the plat and, where appropriate, shall have the lowest floor elevations for all lots located within Flood Hazard Areas. Finish floor elevations and floodway will not be required if Floodplain is contained within a drainage easement prohibiting development.
- (E) All subdivision Applications including the placement of manufactured home parks and subdivisions shall include provisions for adequate drainage as required under Chapter 725, to reduce exposure to flood hazards.
- (F) All subdivision Applications including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
- (G) All subdivision Applications which include land which is encroached by areas of special flood hazard, must include the placement of a permanent benchmark indicating the elevation relative to mean sea level. The benchmark must be located within the platted property, and must be indicated on the subdivision plat. If all floodplain is contained within a drainage easement, a benchmark is not required.

§5.04. Standards for Areas of Shallow Flooding (AO/AH Zones)

Located within the areas of special flood hazard as defined above are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (A) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified).

- (B) All new construction and substantial improvements of non-residential structures:
 - (1) have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified); or,
 - (2) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- (C) A Texas registered professional engineer, Texas licensed architect, or, for purposes of satisfying the requirements of 5.04(B)(1) above, a Texas registered professional land surveyor, shall submit a certification to the Floodplain Administrator that the standards of this Section are satisfied.
- (D) Require within Zones AH or AO adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

§5.05. Floodways

Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

- (A) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (B) If Section §735.5.05(A) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of the remainder of this Chapter.
- (C) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

§5.06. Critical Facilities

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA, preferably outside the 0.2% annual chance floodplain. Construction of new critical facilities may be permissible within the SFHA if feasible alternative sites are unavailable. Critical facilities constructed within the SFHA shall have the lowest floor elevated at least one (1) foot above the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.

Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the maximum extent possible.

§5.06. Severability

If any section, clause, sentence, or phrase of this Chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Chapter.

§5.07. Penalties for Non-Compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and other applicable regulations. Violation of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements is subject to the following penalties:

- (A) CIVIL PENALTY: A person who violates this Chapter is subject to a civil penalty of not more than \$100 for each act of violation and for each day of violation.
- (B) CRIMINAL PENALTY:
 - (1) A person commits an offense if the person violates this Chapter.
 - (2) An offense under this Chapter is a Class C misdemeanor.

Each violation of this Chapter and each day of continuing violation is a separate offense. Any person shall, upon conviction, pay the related fine as specified above for each violation, along with all costs and expenses involved in the case.

§5.08. ENFORCEMENT BY POLITICAL SUBDIVISION:

- (A) If it appears that a person has violated, is violating, or is threatening to violate this Chapter or a rule adopted by order issued under this Chapter, a political subdivision may institute a civil suit in the appropriate court for:
 - (1) Injunctive relief to restrain the person from continuing the violation or threat of violation, including an order directing the person to remove illegal improvements and restore preexisting conditions;
 - (2) The assessment and recovery of the civil penalty; or
 - (3) Both the injunctive relief and the civil penalty.
- (B) On application for injunctive relief and a finding that a person has violated, is violating, or is threatening to violate this Chapter or rule adopted, or order issued under this Chapter, the court shall grant the injunctive relief that the facts warrant.

Nothing herein contained shall prevent Hays County from taking such other lawful action as is necessary to prevent or remedy any violation.