



# CITY OF HOUSTON

**Sylvester Turner**

Mayor

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Monday, January 13, 2020

Mr. Jeff Walker  
Executive Administrator  
1700 N. Congress Avenue  
Austin, Texas 78701

Mr. Walker,

The 2019 Texas Legislature expanded the role of the Texas Water Development Board (TWDB) to include one of the biggest challenges faced in Texas water resources. The new state and regional flood planning program will allow the state to implement a more holistic approach to the management of our water that not only maintains the vitality of our natural resources, health, and economic development but further protects lives and property. The City of Houston appreciates the opportunity to provide comments to the TWDB Draft Flood Intended Use Plan for implementation of Senate Bill 7 (SB 7).

The City respectfully requests that the TWDB review and modify requirements related to applicant eligibility, Memorandum of Understanding, minimum standards, and prioritization criteria as detailed below.

- **Applicant Eligibility**

Special purpose districts within Harris County should not be considered as eligible applicants. SB 7 defines eligible political subdivisions as a municipality, county, or district or authority created under Section 52, Article III or Section 59, Article XVI of the Texas Constitution. However, in Section 1.02(f) the statute also directs the board to adopt rules establishing “criteria of eligibility for flood control planning money that considers... (2) the legal authority of the political subdivision to plan for and control flooding and (3) the effect of flood control planning by the political subdivision on overall flood control in the state and within the area in which the political subdivision is located.”

- Within Harris County, over 800 special purpose districts have been formed to provide water, sewage, drainage and other utility related services not otherwise available from the local municipality where the districts reside. However, unique to Harris County, once these districts have constructed and operated the drainage infrastructure (storm sewers, detention basins, channel improvements, etc.) for a performance period of one year, the drainage facilities are conveyed to the County for operation and maintenance in perpetuity.
- At a larger watershed scale, the responsibility for overseeing rivers, streams, tributaries and flood waters in Harris County "for domestic, municipal, flood control, irrigation and other useful purposes" lies with the Harris County Flood Control District (HCFCD).

Council Members: Amy Peck Jerry Davis Abbie Kamin Carolyn Evans-Shabazz Dave Martin Tiffany Thomas Greg Travis Karla Cisneros  
Robert Gallegos Edward Pollard Martha Castex-Tatum Mike Knox David W. Robinson Michael Kubosh Letitia Plummer Sallie Alcorn

Controller: Chris B. Brown

- Within Harris County, applicant eligibility should be specific to agencies that plan, design, implement, and/or operate and maintain flood control projects in perpetuity.

- Memorandum of Understanding

A Memorandum of Understanding (MOU) should not be required by all political subdivisions within a watershed when evidence of successful partnership for project implementation has been or is displayed.

- While the City finds the intent of establishing a process to ensure a collaborative approach is utilized across watersheds commendable, requiring an MOU between political subdivisions which are within a project watershed can create significant delays in project implementation.
- Currently the City, Harris County and Harris County Flood Control District have numerous joint projects and a long history of collaborating on multiple flood damage reduction projects. There are specific projects where an Intergovernmental Legal Agreement (ILA) has been executed outlining financial responsibilities of each agency. Because of the historical relationship, this effort has become relatively routine.
- However, within the boundaries of Harris County there exists 36 other municipalities and, as previously stated, over 800 special purpose districts. Many of the projects undertaken by the County are regional and have regional benefits. Should the TWDB determine the special purpose districts ineligible (as mentioned above), the requirement would be reduced to the municipalities.
- In the interest of timely project delivery, which is a priority for the general public that has been impacted by flooding, municipal staff acknowledgement of a project could be an alternate to a formal memorandum requiring a municipality's City Council action.

- Minimum Standards

Eligibility criteria for projects, as currently written, do not highlight or prioritize equity for the neighborhoods that are most vulnerable. There have been numerous studies highlighting the inequities associated with the federal guidelines for calculating a project's benefit to cost ratio. Historically, less dense, moderately priced neighborhoods do not yield competitive project ratios when property value is the primary criteria. The standards should clearly state specific qualifiable benefits to be utilized in the calculations other than only flood damage reduction cost savings.

- Prioritization Criteria

The proposed prioritization criteria for applications severely limits the eligibility of cities and urban areas, despite the fact that the majority of Texas residents are located in cities and urban areas with high risk of flooding. TWDB should revisit the Annual Median Household Income (AMHI) and Metropolitan Service Area (MSA) requirements for each category to allow for a greater number of applicants and align more consistently with the intent of Senate Bill 7.

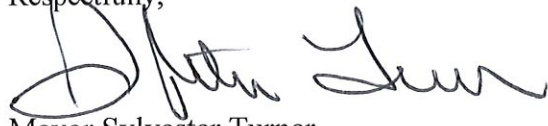
- TWDB should revise the income requirement to areas with average AMHI below 85% for the larger grants under Category 1.
- The 85% threshold should also be established for Category 3 and apply to all areas, not just those outside of an MSA.
- The limitations for grants or loans should not be implemented for the remaining categories.



- The current prioritization criteria compare projects across categories rather than ranking them against projects within the same category. The merits of a project should be judged against another project within the same category. It appears from the criteria, the rating system favors Category 2 and 5 over Categories 1,3 and 4. Annual funding can be distributed separately to each category, with additional funds available to projects classified as Category 2 and 5, assuming the State has a desire to prioritize these types of projects.
- The additional criteria for Construction projects within Category 3 require clarity on the which specific floodplain the project evaluators will consider for the projects (0.2%, 1%, 4%, 10%, 50%, etc). In 1981, the City entered the national flood insurance program and officially adopted the flood insurance rate maps. Upon adoption, nearly 70% of the regulatory 1% floodplain was already developed. Over time, new methods were developed enabling better definition of the limits and depth of flooding from the 1% flood. Neighborhoods constructed along the fringe of the 1981 floodplain were remapped within the regulatory floodplain and existing flood prone neighborhoods were potentially subject to a greater threat. Flood damage reduction projects designed to remove all developed areas from the regulatory floodplain became impracticable. Local agencies are now focusing on options to address the flood threat from the more frequently occurring floods.

The City of Houston appreciates the opportunity to comment and respectfully requests the changes and comments detailed in this letter to be addressed as the final draft of the Flood Intended Use Plan is drafted.

Respectfully,

A handwritten signature in dark ink, appearing to read "Sylvester Turner", written in a cursive style.

Mayor Sylvester Turner

TWDB – Statement for January 30<sup>th</sup> Public Hearing  
City of Houston

Good morning,

Thank you for providing me the opportunity to offer comments regarding the draft Flood Intended Use Plan on behalf of the City of Houston. My name is Laura Patiño, and I am Chief of Staff to the Mayor's Chief Recovery Officer. I will expand on the comments originally submitted to TWDB on January 13<sup>th</sup>, 2020 by Mayor Sylvester Turner. The Intended Use Plan, as currently drafted, seems to exclude the City of Houston from various funding Categories. Inclusion in such Categories could improve the City's eligibility for financial assistance programs and further opportunities for flood recovery and mitigation in vulnerable areas.

To reiterate the comments previously submitted to the TWDB, it was requested that the Board review and modify the following requirements related to:

1. Applicant eligibility, which should be specific to agencies that plan, design, implement, operate and/or maintain flood control projects in perpetuity.
2. MOUs, which should not be a requirement within watersheds that have evidence of successful partnerships for project implementation.
3. Minimum standards, which do not include equity for neighborhoods with the highest social vulnerabilities.
4. Prioritization criteria, which, as written, limits the eligibility of cities and urban areas to access financial assistance funding.

I offer additional changes to the Intended Use Plan, as follows:

1. While prioritizing funding for LMI communities is essential, the need for assistance should also be determined by the risk of flooding, specifically for repetitive extreme flood events. Current criteria exclude the City of Houston, which has an AMHI above 75% (specifically, 85.9%) while experiencing 6 federally-declared flooding disasters within 5 years. Inclusion of flood risk for applicant eligibility may be accomplished by:
  - a. Removing the Annual Median Household Income requirement for Categories 1, 3, and 5.
  - b. Include a prioritization criterion that awards points to political subdivisions identified in a federal disaster declaration related to flooding.
2. The current Plan precludes areas in MSAs, like Houston, from **specifically** accessing grant funding. Opportunities for large MSAs are limited to loans for various categories, according to the currently-drafted Intended Use Plan. All applicants should be allowed to seek grant funding opportunities **first**, with the opportunity to be considered for a low interest loan if the grant application is unsuccessful. This issue must be addressed in the rules or the statutory language to ensure areas with the highest population and largest risks to life and property are included.

3. Additional clarity is needed for defining the limits of a watershed. Regional boundaries vary greatly in size. Some watersheds are contained within single political subdivisions, while others encompass various entities. Further clarification on watershed delineation is suggested in Senate Bill 8 and in the Category 2 rules.
4. The City also proposes the following changes to the points system:
  - a. The existing points system gives preference to projects within Categories 2 and 5. Many communities that have been plagued by recurring disasters (i.e. Houston) expect to receive funding for project **implementation** that will mitigate the risk of future flood events. The points for priority projects for Categories 2 and 5 should be proportional to the other criteria in order to ensure all projects are evaluated to their full potential for flood mitigation.
  - b. Projects should be evaluated based on their capacity to mitigate risk. In the existing system, large construction projects could be penalized by scoring poorly in the estimated completion date criterion due to inherent complexities leading to a timeframe that exceeds 36-months.
  - c. Innovation in flood mitigation should be encouraged but not limited to water supply benefits. Other multi-functional design and integrated water resources principles should also be considered.

These changes are only a summary of an extensive list that will be shared with the Board and made available publicly. The City of Houston welcomes the opportunity to meet to discuss these proposed changes in detail to ensure that all communities in Texas, particularly those with the highest risk of flooding, have access to the various programs within the Intended Use Plan.

Thank you,

Laura Patiño

City of Houston – TWDB Flood Intended Use Plan Comments

Reference	Applicable to	Topic	Comment/Justification	Proposed Change/Recommendation
1	Pg. 6-9	Category 1, 3, and 5	<p>Preclusion of MSA for grant funding</p> <p>The language amendments to 15.405, Water Code, included in Senate Bill 7 includes a determination of need for funding for flood control projects that is based on annual median household income (AMHI) of the political subdivision seeking funding. While prioritizing funding for low- and moderate-income (LMI) communities is essential, the relative need of a political subdivision for funding should also be determined by the political subdivision's risk to flooding, specifically the risk to repetitive, extreme flood events. Retaining Social Vulnerability Index (SVI), which is developed using factors related to socioeconomic status, including poverty and housing, that incorporate considerations of household income, as a Prioritization Criterion will ensure that applications are ranked according to these factors.</p> <p>Additionally, all political subdivisions seeking funding should be allowed access to potential grant funding, the total amount of which is dependent on any limit of grant funding set by the TWDB and the success of which shall be subject to evaluation based on the final Prioritization Criteria. An applicant that was unsuccessful in obtaining funding through a grant should then be allowed to be submit the proposed project for funding through the option of a low-interest loan, pending the decision of the applicant to seek a low-interest loan as the funding source. This provides entities outside a MSA with opportunities for increased grant funding amounts while not precluding entities in a MSA from applying for grant funding. Entities outside a MSA with a higher SVI would also be prioritized higher, further increasing the potential success of an application for grant funding.</p>	<p>Revise Categories 1, 3, and 5 to remove the AMHI requirement. This applies to FIUP rules and statute in SB 7.</p> <p>Revise the grant funding amounts available under these categories: the amounts available to entities located outside a MSA should be increased, and grant funding should be made available to entities located in a MSA. This applies to FIUP rules and statute in SB 7.</p> <p>Include a Prioritization Criterion that awards and allocates points based on the political subdivision having been identified under a federal disaster declaration. Points should be allocated based on the number of disaster declarations under which the political subdivision was identified. This applies to FIUP rules.</p>

2	Pg. 7	Category 2	Definition of “regional planning” and “watershed”	Senate Bill 8, “Relating to state and regional flood planning,” assigns the responsibility to establish regional flood plans for each river basin in the state to flood planning groups to be designated by TWDB. The terms “watershed” and “regional planning” as used in FIUD Category 2 – Watershed Planning and Updates to Floodplain Maps are ambiguous under the rules and requirements as currently written.	Further define “regional planning” and “watershed” as they apply to the FIUP program, and coordinate with the requirements of SB 8.
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January 2020

3	Pg. 8-9	Prioritization Criteria	Completion Date	<p>The points allocation in the draft Prioritization Criteria will heavily prioritize funding for projects falling under Categories 2 and 5. While these projects are important, construction projects that will fall under Category 3 that reduce street flooding or alleviate the impacts of overland sheet flow are also effective in protecting life and property, though they may not be immediately effective as compared to projects that fall under Category 5. The Estimated Completion Date criterion further prioritizes projects that fall under Category 2 or 5, as these types of projects can be completed in a shorter term than construction projects. For applicants seeking funding for construction projects, this would require that final design be complete or nearly complete at the time of application. Larger construction projects, even those where design has already been completed, will take longer to complete when considering rules and requirements for procurement, permitting, and other compliance.</p>	<p>Revise the points assigned to Category 2 and 5 projects to be proportional to other criteria and remove the Estimated Completion Date criterion to ensure that projects are fully evaluated for their potential to mitigate against risk and protect life and property in both the near and long term, and ensure proper planning for future flood events.</p>
4	Pg. 7	Category 3	Innovative strategies: Water Supply	<p>One of the additional criteria used to score proposed construction projects will assign points based on the ability of the proposed project to have an additional water supply benefit. The feasibility and practicality of including the costs for design and construction necessary to collect, convey, and deliver flood water to a water user may place extra burden on planners and municipalities when developing project plans for submission to this program. Innovation like water supply benefit should be encouraged and rewarded, but innovation shouldn't be limited to only one strategy. Other innovation strategies for stormwater management and flood mitigation, including green infrastructure, Low Impact Development (LID), implementation, multi-functional design, and integrated water resources (One Water) principles should also be included for consideration.</p>	<p>Include an additional criterion for construction projects only that awards and allocates points for including other innovative strategies.</p>



5	Pg. 7	Category 3	Floodplain	<p>One of the additional criteria used to score proposed construction projects will assign points relative to responses of other construction project applications based on the number of structures removed from the floodplain due to the project's impact on floodplain characteristics. Changes in the characteristics of a floodplain may require changes to the waterbody itself, which may not be feasible for applicants as the body of water may fall under the jurisdiction of another government entity, specifically the US Army Corps of Engineers. Further, the proposed definitions to be added to 31 TAC §363.402 define drainage infrastructure as a type of flood control project covered under this program. A local drainage infrastructure project that rehabilitates, reconstructs, or improves local drainage that can include, but is not limited to, pipes, ditches, detention ponds, conduits, culverts, or flumes, will not have any impact on the characteristics of the floodplain but can decrease the number of structures that are flooded due to excessive ponding caused by overland sheet flow. Such projects should also be given consideration and evaluated against projects that remove structures from the floodplain.</p>	<p>Revise the Additional Criterion for Construction Projects Only: Floodplain Impacts and reclassify as the Additional Criterion for Construction Projects Only: Structural Flooding Risk Impacts. The criterion should evaluate projects and allocate points based on the number of structures that are anticipated to no longer be at risk to structural flooding.</p>
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