

The Texas Natural Resource Conservation Commission (commission) proposes new §§7.111-7.116, concerning Memoranda of Understanding (MOU) between the commission and the following six state agencies: the Texas Department of Mental Health and Mental Retardation (MHMR), the Texas Department of Criminal Justice (TDCJ), the Texas Parks and Wildlife Department (TPWD), the Texas A&M University System (TAMU), the Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA), and the General Services Commission (GSC).

EXPLANATION OF PROPOSED RULE

Each MOU will set forth the coordination of program responsibility and procedural mechanisms relating to National Flood Insurance Program (NFIP) minimum regulations, and requires the state agencies to observe Federal Emergency Management Agency minimum floodplain management standards.

FISCAL NOTE

Steve Minick, Budget and Planning Division, has determined that for each of the first five years the section is in effect, there will be no fiscal implications for state and local units of government as a result of administering the section.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule there will be efficient coordination between the commission and each state agency for the purpose of meeting NFIP minimum regulations. There will

be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to adopt an MOU between the commission and each state agency. This MOU will define the jurisdictional authority of both agencies and will provide for procedural mechanisms for meeting NFIP minimum regulations. The MOU will not burden private real property as it does not propose any substantive regulations impacting private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program. The proposed rule does not govern any of the actions that must be subject to the goals and policies of the Program, pursuant to 31 TAC §505.11.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log No. 97126-007-AD and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, fax (512) 239-5687. Written comments must be received by 5:00 p.m. 30 days from the date of publication

of this proposal in the *Texas Register*. For further information concerning this proposal, please contact James Mirabal, Water Quantity Division, (512) 239-4771.

LEGAL AUTHORITY

The new section is proposed under the Water Code, §5.103, which authorizes the commission to adopt rules as necessary for the performance of its functions, and Water Code, §16.318, which provides authorization for the adoption and promulgation of rules which are necessary for the state's participation in the NFIP.

There are no other rules, codes, or statutes that will be affected by this proposal.

CHAPTER 7

MEMORANDA OF UNDERSTANDING

§§7.111-7.116

§7.111. Adoption of Memoranda of Understanding between The Texas Department of Mental Health and Mental Retardation and The Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas Department of Mental Health and Mental Retardation and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas Department of Mental Health and Mental Retardation, here within called the MHMR, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which may be in the floodplains of the state; and

(6) Whereas, the MHMR shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the MHMR's structures and activities in the floodplains of the state; and

(7) Whereas, the MHMR shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the MHMR is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, §16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP; and

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the MHMR and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the MHMR and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the MHMR floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the MHMR.

(4) Provide to the MHMR all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the MHMR those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the MHMR with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas Department of Mental Health and Mental Retardation agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the MHMR may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the MHMR's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to MHMR's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The MHMR will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the state's implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

- (1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.
- (2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.
- (3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of MHMR activities/projects in the floodplains of the state.
- (4) Meet semi-annually to review and discuss the state's floodplain management program.
- (5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.
- (6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.
- (7) Cooperate on activities related to the implementation of the "Texas State Floodplain Management Plan for State Agencies."

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas Department of Mental Health and Mental Retardation, Attn: _____, P.O. Box 12668 Austin, TX 78711-2668.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

§7.112. Adoption of Memoranda of Understanding between The Texas Department of Criminal Justice and The Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas Department of Criminal Justice and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas Department of Criminal Justice, here within called the TDCJ, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which may be in the floodplains of the state; and

(6) Whereas, the TDCJ shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the TDCJ's structures and activities in the floodplains of the state; and

(7) Whereas, the TDCJ shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the TDCJ is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, Section 16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP.

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the TDCJ and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the TDCJ and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, Therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the TDCJ floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the TDCJ.

(4) Provide to the TDCJ all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the TDCJ those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the TDCJ with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas Department of Criminal Justice agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location

of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the TDCJ may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the TDCJ's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to TDCJ's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The TDCJ will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of TDCJ activities/projects in the floodplains of the state.

(4) Meet semi-annually to review and discuss the state's floodplain management program.

(5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the “Texas State Floodplain Management Plan for State Agencies.”

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or

be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas Department of Criminal Justice, Attn: _____, P.O. Box 99, Huntsville, TX 77340.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

§7.113. Adoption of Memoranda of Understanding between The Texas Parks and Wildlife Department and The Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas Parks and Wildlife Department, here within called the TPWD, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which maybe in the floodplains of the state; and

(6) Whereas, the TPWD shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the TPWD's structures and activities in the floodplains of the state; and

(7) Whereas, the TPWD shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the TPWD is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, Section 16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP; and

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the TPWD and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the TPWD and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the TPWD floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the TPWD.

(4) Provide to the TPWD all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the TPWD those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the TPWD with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas Parks and Wildlife Department agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the TPWD may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the TPWD's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to TPWD's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The TPWD will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of TPWD activities/projects in the floodplains of the state.

(4) Meet semi-annually to review and discuss the state's floodplain management program.

(5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the “Texas State Floodplain Management Plan for State Agencies.”

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination. of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age

Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas Parks and Wildlife Department, Attn: _____, 4200 Smith School Road Austin, TX 78744.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

§7.114. Adoption of Memoranda of Understanding between The Texas A&M University System and The Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas A&M University System and the Texas Natural Resource Conservation Commission, which sets forth the

coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas A&M University System, here within called the TAMU, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which maybe in the floodplains of the state; and

(6) Whereas, the TAMU shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the TAMU's structures and activities in the floodplains of the state; and

(7) Whereas, the TAMU shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the TAMU is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, §16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP; and

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the TAMU and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the TAMU and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the TAMU floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the TAMU.

(4) Provide to the TAMU all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the TAMU those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the TAMU with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas A&M University System agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the TAMU may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the TAMU's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to TAMU's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The TAMU will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of TAMU activities/projects in the floodplains of the state.

(4) Meet semi-annually to review and discuss the state's floodplain management program.

(5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the “Texas State Floodplain Management Plan for State Agencies.”

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas A&M University System, Attn: _____, USMS 1586 College Station, TX 77843.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

§7.115. Adoption of Memoranda of Understanding between The Texas Low-Level Radioactive Waste Disposal Authority and The Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas Low-Level Radioactive Waste Disposal Authority and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply, with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas Low-Level Radioactive Waste Disposal Authority, here within called the TLLRWDA, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which maybe in the floodplains of the state; and

(6) Whereas, the TLLRWDA shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the TLLRWDA's structures and activities in the floodplains of the state; and

(7) Whereas, the TLLRWDA shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the TLLRWDA is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, Section 16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP; and

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the TLLRWDA and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the TLLRWDA and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the State's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the TLLRWDA floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the TLLRWDA.

(4) Provide to the TLLRWDA all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the TLLRWDA those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the TLLRWDA with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas Low-Level Radioactive Waste Disposal Authority agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the

exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the TLLRWDA may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the TLLRWDA's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to TLLRWDA's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The TLLRWDA will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of TLLRWDA activities/projects in the floodplains of the state.

(4) Meet semi-annually to review and discuss the state's floodplain management program.

(5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the "Texas State Floodplain Management Plan for State Agencies."

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination. of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas Low-Level Radioactive Waste Disposal Authority, Attn: _____, 7701 North Lamar Blvd, Austin, TX 78752.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

§7.116. Adoption of Memoranda of Understanding between The General Services Commission and The Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the General Services Commission and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply, with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the General Services Commission, here within called the GSC, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which maybe in the floodplains of the state; and

(6) Whereas, the GSC may represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the GSC's structures and activities in the floodplains of the state; and

(7) Whereas, the GSC will cooperate with other state agencies to establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the GSC in conjunction with other state agencies is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, Section 16.311 et seq.; and

(11) Whereas, under Section 16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP;

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the GSC and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the GSC and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the floodplain management plan developed by the GSC and other state agencies, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the GSC in cooperation with other state agencies.

(4) Provide to the GSC all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the GSC and other state agencies those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the GSC and other state agencies with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The General Services Commission agrees to:

(1) Cooperate with other state agencies to seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Cooperate with other state agencies to consider flood hazards in state appropriations request for construction or modification of buildings, roads, or other facilities transmitted to the

Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Cooperate with other state agencies to consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Cooperate with other state agencies to evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the GSC may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Cooperate with other state agencies to take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Cooperate with other state agencies to prepare, maintain, and update an inventory of the GSC's respective state-owned structures and their contents which are located in identified 100--year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) Cooperate with other state agencies to maintain a permanent record system which shows the date, location, and amount of flood losses to GSC's state-owned properties and structures.

(8) Cooperate with other state agencies to evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Cooperate with other state agencies to provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The GSC will work with the community to resolve any floodplain management issues.

(10) Cooperate with other state agencies to provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Cooperate with other state agencies to provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together and with other state agencies to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts with other state agencies in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate and with other state agencies and FEMA on matters relating to program/project planning and implementation of activities/projects in the floodplains of the state.

(4) Meet and with other state agencies semi-annually to review and discuss the state's floodplain management program.

(5) Work and with other state agencies together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the “Texas State Floodplain Management Plan for State Agencies.”

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination. of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the General Services Commission, Attn: _____, P.O. Box 13047, Capitol Station, Austin, TX 78711-3047.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on