Permitting in the Floodplain
Presented by the Texas Water Development Board’s (TWDB)-Flood Outreach Staff

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Community Outreach Contacts

Provide technical assistance
- Floodplain management regulations, permitting, general inquiries

Promote and maintain enrollment in the NFIP
- 1,258 participating communities

Provide training
- Trainings will be posted to: https://www.twdb.texas.gov/flood/workshop/index.asp

Assist with local and federal coordination

Promotes the Community Rating System

Assist with disaster preparation and recovery
- Training and informational resources
Objectives
This presentation will answer many of the questions floodplain administrators, local officials, consultants and residents may have about what agencies, at the State and Federal levels, need to be involved in the permitting process.

WE WILL ADDRESS:
• Basic National Flood Insurance Program (NFIP) requirements
• Floodplain Administrator’s responsibilities in permitting development
• Ordinance/ Court Order requirements for permitting
• Local permitting procedures
• State and Federal permitting for community-owned projects

NFIP background
Participation in the NFIP allows communities to:
• protect life and property through ordinances;
• identify areas at risk through mapping;
• prohibit or restrict new development through permitting;
• enable citizens to purchase flood insurance through the federal government.

NFIP background
According to FEMA:
• A permit is required before construction or development begins within any Special Flood Hazard Area (SFHA).
  If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and the community’s floodplain management ordinance.
• A community must also review all proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law.
Special Flood Hazard Area (SFHA)

- The SFHA is the area where the National Flood Insurance Program’s (NFIP’s) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.
- 1% annual chance of flooding.

Floodplain Administrator Responsibilities

Understand
Understand the regulations and building requirements

Ensure
Ensure that permits are applied for and kept in record

Correct
Correct violations

Process
Process permit applications

Coordinate
Coordinate with other programs

Flood Prevention Ordinance/Court Order

- Floodplain Ordinances/Orders – required for all NFIP communities
- This is your lifeline to the community, along with your FIRM panels and FIS study (if you have one)
- Read it, know it, love it
Permitting
Development that requires a permit, including but not limited to:
- new construction or substantial improvements;
- placement of a manufactured home;
- mining, dredging, filling, grading, or excavating;
- altering or relocating stream channels;
- recreational vehicles on site for more than 180 days and not road ready;
- storage of materials including gas or liquid storage tanks.

Constituent-owned Project Permitting
Other permitting agencies may also be involved, including but not limited to:
- TX Commission on Environmental Quality
- TX Parks and Wildlife Department
- General Land Office
- TX Department of Transportation

If permits are required from any of these agencies, a copy of the approved permit must be included in the permit application.

Community-owned Project Permitting
Other permitting agencies may also be involved, including but not limited to:
- U.S. Army Corp of Engineers
- U.S. Fish and Wildlife Service
- U.S. Environmental Protection Agency
- U.S. Coast Guard
- TX Commission on Environmental Quality
- TX Parks and Wildlife Department
- General Land Office
- TX Department of Transportation
- International Boundary and Water Commission

If permits are required from any of these agencies, a copy of the approved permit must be included in the permit application.
Why do floodplain administrators need to verify all permits are obtained?

- Established by 44 CFR 60.3 (a)(2)
  “Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334”

USACE – United States Army Corps of Engineers

- USACE issues nationwide permits (NWPs) to authorize activities such as the discharge of dredged or fill material into waters of the United States, including wetlands.

What is Section 404 of the Clean Water Act?

- Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands.
- Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects.
- Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).
**USACE – Additional Information**

- USACE annually tracks Flood Risk Management programmatic benefits in its Annual Flood Damage Report to Congress. Each Annual Flood Damage Report includes assessments of flood damages, acres inundated, property damages, loss of life, and damages prevented by previously completed flood risk management projects (not including reductions in damages from coastal storm surge impacts).

  Source: USACE Flood Risk Management Fast Facts

**USACE – Types of Projects**

- Reservoirs
- Dams
- Levees

  Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands.

**USFWS – United States Fish and Wildlife Service**

- USFWS issues multiple types of permits such as Endangered Species Act permits, International Affairs permits, Law Enforcement permits, and Migratory Birds permits.
- They manage systems that protect everything from Monarch butterflies, pollinators, the Mexican Wolf and even the Lesser Prairie Chicken!
USFWS – The Endangered Species Act and floodplain permitting

- One such set of permits relates to the Endangered Species Act (ESA).
- The ESA prohibits anyone from “taking” or harming an endangered species. If an action might harm an endangered species, a permit must be obtained from the US Fish and Wildlife Services.
- FEMA also requires documentation of ESA compliance for proposed projects before it will process Conditional Letters of Map Revision or Conditional Letters of Map Revision based on Fill.

USFWS – Additional Information

Texas is part of the USFWS Southwest Region, which spans over four states (Texas, Oklahoma, New Mexico and Arizona) 47 refuges, 8 fish hatcheries, 84 Native American Tribes and 19 Law Enforcement Offices.

USFWS – Types of Projects

- Culvert Replacement
- Dam Removal
- Water Diversion
- Natural Rockramps
- By-pass channels
- Low water crossings
- Fish Passage Training
- Levee breach
USIBWC – U.S. International Boundary & Water Commission

- USIBWC prepares, circulates for comment, and files a description of the potential environmental impacts of a project along the US/Mexico border, land or water.
- The agency applies the boundary and water treaties of the United States and Mexico and settles differences that may arise in their application.

USIBWC – Additional Information

How to apply for a USIBWC Permit: Components
- Letter of Application
- General Maps and Drawings
- Vicinity Map
- Location Map
- Plans and Specifications
- Land ownership Other than Federal
- Resource Agency Statements: General
- Resources Agency Statements: Water Line/Pumps

USIBWC – Types of Projects

- Flood Control Levee Systems
- Diversion Dams and Related Structures
- Storage Dams
- Power Plants
- Wastewater Treatment Plants

Source: IWBC.gov/Mission_Operations
TPWD – Texas Parks and Wildlife
• TPWD issues Marl, Sand, Gravel, Shell, or Mudshell permits in addition to floating cabin permits.
• TPWD is also involved in Endangered Species Act permitting.
• Wildlife Habitat Assessment Program

TPWD – Additional Information
• In Texas, animal or plant species of conservation concern may be listed as threatened or endangered under the authority of state law and/or under the U.S. Endangered Species Act (ESA).
• Species may be listed as state threatened or endangered and not federally listed.

TPWD – Types of Projects
• Reservoirs
• Highway Projects
• Pipelines
• Urban Infrastructure
• Utility Construction
• Renewable Energy
• Residential and Commercial Construction
TCEQ – Texas Commission on Environmental Quality

- TCEQ conducts Section 401 certification reviews of USACE Section 404 permit applications. TCEQ permits:
  - Petroleum Storage Tanks
  - Wastewater
  - Septic System (OSSF)
  - Stormwater
  - Water Wells

TCEQ – Additional Information

- TCEQ has resources specifically tailored to help small business and local governments comply with environmental regulations.

- In addition, they have multiple compliance assistance videos on YouTube: TCEQ Compliance Assistance

TCEQ – Types of Projects

- On-site Waste Sewage Facilities
- Landfills
- Septic Systems
- Petroleum Storage Tanks
- Auto Repair, Body, or Salvage
- Public Water Systems
• The Railroad Commission of Texas (Commission) is the state agency with primary regulatory jurisdiction over:
  – Oil and natural gas industry
  – Pipeline transporters
  – Natural gas and hazardous liquid pipeline industry
  – Natural gas utilities
  – LP-gas industry
  – Coal and uranium surface mining operations

Source: RCC.texas.gov

• The Commission exists under provisions of the Texas Constitution and exercises its statutory responsibilities under state and federal laws for regulation and enforcement of the state’s energy industries.
• The Commission also has regulatory and enforcement responsibilities under federal law, which include:
  – Surface Coal Mining Control and Reclamation Act
  – Safe Drinking Water Act
  – Pipeline Safety Acts
  – Resource Conservation Recovery Act
  – Clean Water Act

• Oil Wells
• Gas Wells
• Coal Mines
• Oil and Gas Waste Disposal
GLO – General Land Office

• GLO monitors development on state-owned land. This includes permits such as sand dunes and coastal construction.

GLO – Additional Information

• GLO Office provide free permitting assistance to all small businesses, private individuals and local government organizations with the Texas Coast.
• They have the Permit Service Center (PSC) which provide the following:
  – Application forms
  – Helpful information
  – Respond to applicants’ questions
  – Conflict resolution between permitting agencies

GLO – Types of Projects

• Living Shorelines
• Bulk Heads
• Pile-Supported Cabins in bays
• Land Leasing and Easements
TxDOT – Texas Department of Transportation

• TxDOT issues permits for right of way such as driveways or side walks. In addition, it also regulates commercial signs and junkyards.

TxDOT – Additional Information

• TxDOT additionally houses maps of hurricane evacuation routes in the state. As well as advocates for the “Turn Around, Don’t Drown” roadway warning signed.

TxDOT – Types of Projects

• Highways
• Junkyards
• Driveway
• Culverts
How to keep track of all this information?

• Coordinate with other departments in your city/county
• Reach out to state and federal agencies if you have questions
• Ensure your permitting system is comprehensive and records are being kept in an organized manner.

Best Permitting Practices

• Ensure your floodplain development permit covers the basics:
  ✓ Contact information (first and last name/company name and phone number)
  ✓ Project type and address (Coordinates)
  ✓ Flood Zone and FIRM panel
  ✓ Base Flood Elevation
  ✓ Checklist of additional requirements (plans, Elevation Certificates, FIRMette, other permits)

Scenario 1:

• Tadd Pole Engineering will be developing a living shoreline in South Padre Island. This development is entirely on a V zone.
• Along with getting a permit for development from the city of South Padre Island, what other permits would the floodplain administrator should have on record?
Scenario 2:

- South Padre Island floodplain administrator is unsure on the permits that Tadd Pole engineering has submitted for the living shoreline.
- Who would be the best point of contact to double check everything is following regulations?

Scenario 3:

- Fuel Co. is wanting to develop a natural gas plant with subterranean pipelines. The project area partially crosses an AE zone.
- What type of permits should Fuel Co. have to submit to the floodplain administrator?

Scenario 4:

- A big developer is looking to build a 60-lot subdivision that falls partially on an AO zone. The development area happens to be close to a natural reserve area and is home to a variety of plant and animal species.
- Apart from the development, and floodplain permit, what should the floodplain administrator request from the developer?
When in doubt, reach out!

Community Assistance Program:
่อ flood@twdb.texas.gov

Website:
่อ http://www.twdb.texas.gov/flood/staff.asp

Questions?