

BACKGROUND INFORMATION

Purpose and Intent

The Hays County, Texas, Commissioners Court is proposing to amend certain existing development regulations and to adopt certain new development regulations (hereafter “Proposed Regulations”). The purpose of this document is to provide a formal response to public comments received subsequent to the initial publication of the draft.

Proposal Notice and Availability

Notice of the Proposed Regulations was published in several newspapers of general circulation in Hays County. Publications occurred in the following specific newspapers on the following dates:

- Dripping Springs News-Dispatch, Thursday, July 17th, 2008
- Hays Free Press, Wednesday, July 16th, and Wednesday, July 23rd, 2008
- San Marcos Daily Record, Sunday, July 13th, Wednesday, July 16th, Friday, July 18th and Sunday, July 20th, 2008
- Wimberley View, Saturday, July 12th, Wednesday, July 16th, Saturday, July 19th, and Wednesday, July 23rd, 2008

Copies of the Proposed Regulations were also made available during regular business hours for viewing and copying at the following locations:

- The Hays County Courthouse, Office of the Special Counsel, 111 E. San Antonio Street, Suite 301, San Marcos, Texas 78666
- Hays County Precinct 2 Office, 111 North Front Street, Kyle, Texas 78640
- Hays County Precinct 3 Office, 950 Ranch Road 2325, Wimberley, Texas 78676
- Hays County Precinct 4 Office, 101 Old Fitzhugh Road, Dripping Springs, Texas 78620
- The Hays County Resource Protection and Transportation Planning Department, 1251 Civic Center Loop, San Marcos, Texas 78666

Copies of the Proposed Regulations were also posted for viewing and download (at no charge) from the project website (<http://www.neionline.com/Haysco.htm>).

Stakeholder Committee

When the process of updating the development regulations was initiated in 2006, the Commissioners Court appointed a committee of local stakeholders to work with the consulting team (Naismith Engineering, Inc. and Kelly, Hart & Hallman, P.C.) hired to develop the initial draft of the Proposed Regulations. This stakeholder committee reviewed the existing regulations, and offered recommendations and guidance to the consulting team, the Commissioners Court, and County staff. The stakeholder committee was comprised of an equal number of individuals representing the following interests

- Concerned Citizens
- Municipalities
- Other Governmental Entities
- Utility Providers
- Neighborhood Interests

- Local Environmental and Public Interest Organizations
- Development and Economic Interests
- Property Owners and Agricultural Interests

The recommendations and guidance provided by the stakeholder committee addressed administrative, technical and policy issues associated with the Proposed Regulations. The County has relied on many of these recommendations in making the technical and policy decisions associated with the Proposed Regulations and in addressing some of the comments received.

Public Meetings

The County also hosted two informational public meetings, held at the following locations and times:

- Monday, July 21, 2008, at 6:30 pm at the City of Kyle City Council Chambers
- Wednesday, July 23, 2008 at 6:30 pm at the Village of Wimberley Community Center

Evaluation Charrette

The County also hosted an evaluation charrette of invited participants, the consulting team and members of the County staff. This meeting was held at the AgriLife Extension Center, on Civic Center Drive, in San Marcos, on Saturday, August 23, 2008.

Opportunities for Public Comment

The County provided several means by which the public could submit comment on the Proposed Regulations. An opportunity for verbal public comment was provided at both of the public meetings and the public hearings (described below). All of the published and posted notices indicated that written comments would be accepted through regular mail at the office of the County Judge. The County also set up a dedicated address to allow comments to be submitted through electronic mail (devregs.comments@co.hays.tx.us).

Formal Public Hearings

The County also conducted several public hearings during which the Commissioners Court accepted verbal public comment on the Proposed Regulations. The following public hearings were held at the County Courthouse during the process:

- Tuesday, September 9, 2008, at 1:30 pm
- Tuesday, March 24, 2009 at 1:30 pm

Regulatory Takings Impact Assessment (TIA) and Other Public Notice

In conjunction with the development of the Proposed Regulations, the County prepared and made available to the public a Takings Impact Assessment (TIA) for the Proposed Regulations, prepared in accordance with guidance from the Texas State Office of the Attorney General. Notice of the availability of the TIA was provided in accordance with Texas Government Code (TGC) Chapter 2007, also known as the Texas Real Property Rights Preservation Act

(TRPRPA)¹. In addition to the notice of the availability of the TIA, additional notice was provided to satisfy the requirements of Texas Local Government Code Chapters 232 and 233 regarding changes to roadway classification and design requirements, changes to the infrastructure requirements for manufactured home rental communities and the adoption of setbacks from roadways. These statutes require notice up to twenty (20) calendar days prior to action by the Commissioners Court to adopt or change the referenced items. TRPRPA indicates that the Proposed Regulations may not be considered for adoption sooner than the expiration of thirty (30) calendar days from the publication of the notice of the availability of the TIA. A combined notice of the availability of the TIA and of the Commissioners Courts intent to adopt and revise the referenced items was first published on Sunday, January 11, 2009. Based on this initial publication date, the thirty (30) calendar day requirement was satisfied as of February 11, 2009.

Workshops with Recognized Experts

In response to the technical and policy issues raised through public comment, the Commissioners Court conducted a number of workshops with recognized experts to obtain additional information on certain subject matters. These workshops were noticed as a part of the routine Commissioners Court agenda and were conducted in open session in accordance with the Texas Open Meetings Act, as codified in Chapter 551 of the TGC.² These subjects included storm water management, geology, hydrology, and groundwater availability. The recognized experts provided technical advice to the Commissioners Court on technical and policy issues associated with the Proposed Regulations. The County has relied on this technical advice in making some of the technical and policy decisions associated with the Proposed Regulations and in addressing some of the comments received.

¹ Texas Government Code, Title 10, “General Government”, Chapter 2007, “Governmental Action Affecting Private Property Rights”, as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

² Texas Government Code, Title 5, “Open Government; Ethics”, Chapter 551, “Open Meetings”, as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

COMMENTS RECEIVED

Methods of Receiving Public Comment

Recorded verbal public comment was accepted at the public meetings and public hearings. Written public comment was received via regular mail at the office of the County Judge. Written public comment was also submitted through e-mail to a designated e-mail address, the office of the County Judge, the Hays County Resource Protection and Transportation Planning Department, and to the project consulting team.

Commenters

The County received public comment from the following:

- Susan Meckel, Hays County, Texas
- Jerry Calagny, Kyle, Texas
- Andy Sevilla, San Marcos, Texas
- Jeff Maddux, Hays County, Texas
- Craig Payne, Wimberley, Texas
- Hank B. Smith, P.E., Austin, Texas
- David T. Smith, P.E., Bee Cave, Texas
- Joe K. Wells, Jr., P.E., Austin, Texas
- John and Mary Evelyn Kight, Boerne, Texas
- Brandon, Neal, Hays County, Texas
- Citizens Alliance for Responsible Development (CARD), Wimberley, Texas
- Curtis D. Wilson, P.E., R.P.L.S., Hays County, Texas
- Andrew Hawkins, SOS Alliance, Austin, Texas
- Dianne Wassenich, San Marcos River Foundation, San Marcos, Texas
- Tracy Bratton, P.E., Austin, Texas
- Russell C. Cain, R.S., San Marcos, Texas
- David H. Glenn, Wimberley, Texas
- Terry Tull, Hays County, Texas
- Winton Porterfield, San Marcos, Texas
- Henry Brooks, Hays County, Texas
- Charles O'Dell, Hays County, Texas
- John Dupnik, Barton Spring/Edwards Aquifer Conservation District, Austin, Texas
- Kyle Behar, Hays County, Texas
- Bill Gebhard, Wimberley, Texas
- Mark Key, Dripping Springs, Texas
- Jimmy Skipton, Dripping Springs/Henley, Texas

In addition, the County received additional comment from the Hays County staff.

Characterization and Consolidation of Public Comment

A number of the comments received expressed general support for or opposition to all or parts of the Proposed Regulations. These general comments have been summarized. Some comments expressed general concern over certain elements within the Proposed Regulations, but did not take a position of support or opposition, or provide specific recommendations. Other comments

conveyed broad policy positions or statements, with some including broad policy recommendations. These concerns and policy positions have been summarized, and where relevant items in the Proposed Regulations touch on these concerns or policy positions, a response has been included. Some comments expressed support or opposition, or recommended changes to specific provisions within the Proposed Regulations. Responses have been included to each of these items.

Organization and Summary

For the purpose of preparing a response, the comments received have been organized as either general or as pertaining to specific chapter. The commenter's names have not been identified in connection with specific comments. However, copies of transcripts of the verbal public comment and copies of the written public comment are available from the office of the County Judge. The information presented in this response to comments document uses the following format:

- *Italicized text: summary of comment*
- Normal text: response to comment
- **Bold Text: changes to the text of the July 2008 publication version, with additions underlined and ~~deletions shown in strikeout~~.**

RESPONSE TO COMMENTS ON THE PROPOSED REGULATIONS

General Comments

Timeframe of Adoption

Several individuals offering verbal comment at the public meetings and in submitted written comment requested that the County extend the consideration for adoption beyond the proposed September 10, 2008 timeframe to allow additional time for the public to understand and evaluate the Proposed Regulations.

The County has elected to extend the original timeframe for consideration of adoption from September 2008 to February 2009, a period in excess of five months. The County has also provided additional opportunities for public comment on the Proposed Regulations. Although the County has changed the timeframe for adoption, no changes have been made to the Proposed Regulations in response to this comment.

Comments by Chapter

Chapter 701 – Development Regulations in General

Section 1.02 - Purpose

One individual referred to the stated purpose of the Proposed Regulations in Section 1.02 and stated that adopting 250 pages of regulations with 83 Chapters reserved for additional new regulations does not inspire confidence that the authors have any commitment to the expressed purpose. This individual further commented that the regulations as published are not simple, will cause delays and will be very expensive for applicants to comply with.

While it is certainly the intent of the County simplify procedures, avoid delays and save expense in the process of regulating development, it is also the intent to have effective regulation of development activity by the County. The regulation of development activities is a complex process that involves many different subject areas and many different interests. While it is the intent of the County to encourage responsible development in the County where possible, it is also the intent of the County to protect the public from adverse impacts of that development where possible. Unfortunately, the regulations necessary to address complex issues, of necessity must be adequately thorough to implement public policy governing those issues. In general, the Proposed Regulations have been structured to provide more specific direction to the regulated community and to County staff to minimize areas of uncertainty and result in a more consistent process. No changes to the Proposed Regulations have been made in response to this comment.

Two individuals commented that the costs of compliance with the Proposed Regulations are unquantified and will, at a minimum, require additional engineering and planning staff with expertise in numerous technical areas.

The County acknowledges that the costs of compliance with the Proposed Regulations are unquantified, however, the County also believes it is not within the ability of the County to quantify the cost of compliance with the Proposed Regulations. The actual costs of compliance have several different components, including both public and private costs. Public costs include the cost burden on the County and other public entities to administer the Proposed Regulations.

Private costs include the costs incurred by those persons and entities engaging in projects other and members of the public affected by projects governed by the Proposed Regulations. The quantification of these public and private costs is also dependent on many factors, including market factors, timing and the number and location of property owners that will choose to develop projects under the Proposed Regulations. However, the fact that the County cannot quantify these costs does not mean that the County is not required to look at the impacts of implementing the Proposed Regulations.

The Texas Private Real Property Rights Preservation Act (the “Act” or PRPRPA), requires governmental entities, such as the County, that take certain actions to do a Takings Impact Assessment (a “TIA”) to determine whether those actions result in a regulatory taking of private real property. The County has prepared and made available to the public a TIA for the Proposed Regulations. Issues regarding the potential for a regulatory taking under the Proposed Regulations are addressed in the TIA.

The County does not disagree that additional engineering and planning staff, with expertise in numerous technical areas, will be required to implement some portions of the Proposed Regulations. The County will evaluate the requirements for additional staffing in conjunction with the consideration for adoption of the Proposed Regulations, and in conjunction with future County operating budgets. No changes to the Proposed Regulations have been made in response to this comment.

One individual commented that, as written, several additional attorneys should be included for the District Attorney’s staff to implement the Proposed Regulations. This individual also indicated that the District Attorney’s staff needs to thoroughly review this document prior to adoption.

As outlined in the response to the previous comment, the County does not disagree that additional staff effort, including legal staff effort, may be required to implement some portions of the Proposed Regulations. The County will evaluate the requirements for such additional staffing in conjunction with the consideration for adoption of the Proposed Regulations, and in conjunction with future County operating budgets. The Proposed Regulations have undergone legal review by various legal representatives of the County and may be subjected to additional legal review by the County prior to consideration for adoption. No changes to the Proposed Regulations have been made in response to this comment.

Section 2.04 – Development Authorizations within ETJ of a Municipality

One individual commented that, under Section 2.04(B), the Proposed Regulation indicate that the County is “authorized” to enter into inter-local agreements with municipalities to determine who will regulate subdivisions within that municipality’s extra-territorial jurisdiction (ETJ) and that it may be more accurate to indicate that the County is required to do so. This individual further indicated that this requirement had a deadline that was to have been met several years ago.

Under the Texas Local Government Code (TLGC), Chapter 232,³ the County is granted the authority to regulate the subdivision and platting of property within unincorporated areas of the County. Incorporated municipalities are also granted certain legal authority to regulate the platting and subdivision of property within the unincorporated areas included in their ETJ under TLGC Chapter 212.⁴ These chapters of the TLGC provide overlapping authority for both the County and the municipality within the unincorporated area within the ETJ. However, both of these chapters include a provision indicating that this authority is subject to the provisions of agreements authorized under TLGC Chapter 242.⁵ TLGC Chapter 242 indicates that “a municipality and a county may not both regulate subdivisions and approve related permits in the extraterritorial jurisdiction of a municipality after an agreement...is executed.”⁶ TLGC Chapter 242 further provides some deadlines for finalizing these agreements, with dates ranging from 2001 to 2006, and places the burden for developing these agreements on both the County and the municipality.⁷ While not all of these agreements are currently in place, the Proposed Regulations are worded to address both situations where there are agreements in place and where the agreement is not in place. No changes to the Proposed Regulations have been made in response to this comment.

One individual commented that all fees should be based on a cost of service and that it was not clear what costs the County would incur if the County was not the reviewing authority, and this individual did not understand how fees could be collected in these instances.

This comment was understood to question the County’s basis for collecting fees in conjunction with applications for various permits and approvals (referred to as “Development Authorizations”) included within the Proposed Regulations, for which the County was not the Reviewing Authority. Although the Proposed Regulations do not directly establish fees for the various activities anticipated, they do make provision for the Commissioners Court to establish and for the Hays County Resource Protection and Transportation Planning Department (referred to as “Department”) to collect those fees. In general, these fees cover the County’s costs to review applications, consider for acceptance of maintenance, coordinate with other jurisdictions, and to conduct inspections in connection with project for which the County issues Development Authorization. In instances where the County is the Reviewing Authority, the County clearly has a “cost of service” for all elements of the review and approval process. However, the fact that the County is not the Reviewing Authority for a particular application does not mean that the County has not “cost of service” basis. For projects located within the ETJ of a municipality, the County would still be responsible for coordinating any Development Authorizations issued for the project and would accept maintenance responsibility for any publicly dedicated infrastructure associated with the project. The County would also have a “cost of service” for these elements of the review and approval process, and would therefore be justified in assessing fees independent of those assessed by another entity serving as the Reviewing Authority. The factors used as the basis for establishing these fees will be determined by the Commissioners Court in

³ Texas Local Government Code (TLGC), Title 7, "Regulation of Land Use, Structure, Businesses, and Related Activities" Chapter 232, "County Regulation of Subdivisions", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

⁴ TLGC, Title 7, "Regulation of Land Use, Structure, Businesses, and Related Activities" Chapter 212, "Municipal Regulation of Subdivisions and Property Development", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

⁵ TLGC §212.0025 and TLGC §232.0013, respectively.

⁶ TLGC §242.001(c)

⁷ TLGC §242.001(c), (f) and (i) and §242.0015

the process of establishing fees. No changes to the Proposed Regulations have been made in response to this comment.

Section 2.07 – Affect of Regulations on Previously Unregulated Activities

One individual indicated that Section 2.07, Item (A) did not appear to be necessary since it had no real effect, and that Section 2.07 Items (B) and (C) did not appear to comply with the State law that provides that the rules a projects starts under remain in effect for the duration of the project.

This comment is understood to address the general context of the “grandfathering”⁸ provisions under TLGC Chapter 245 for various permits and approvals (referred to as “Development Authorizations”) issued by the County. The County intended this section of the Proposed Regulations to address certain newly regulated activities for which the County had not previously received “fair notice” of a project, as that term is used in TLGC, Chapter 245,⁹ and projects that are exempted from the “grandfathering” provisions under TLGC, Chapter 245.¹⁰ The language of TLGC Chapter 245 that extends the “grandfathering” protection to Development Authorizations issued by the County is predicated upon an applicant submitting an application for a permit or approval. In addition, certain activities (e.g. utility connection certifications, flood hazard area permits, and construction standards for certain items constructed in public right-of-way) are exempted from the “grandfathering” protections and “fair notice” provisions granted by TLGC 245. These sections are primarily intended to address the types of Development Authorizations associated with these activities. Section 2.06 of the Proposed Regulations is intended to address projects for which the County has previously received “fair notice” of a project and which qualify for the “grandfathering” protections under TLGC, Chapter 245. Based on these distinctions, the County believes that these provisions are necessary and do comply with applicable Texas State law. No changes to the Proposed Regulations have been made in response to this comment.

Subchapter 3 - Definitions

One individual commented that Subchapter 3 should start with Section 3.01 for consistency.

In reviewing this comment, it was determined that this Section should be modified to be consistent with the remaining Subchapters of this Chapter of the Proposed Regulations. This section has been modified to include two new Sections (3.01 and 3.02) reading as follows:

Section 3.01 Language Construction and Meaning

Unless otherwise indicated by individual Chapters of these Regulations, the language construction and meaning shall be that assigned in common usage at the time of their adoption.

Section 3.02 Defined Terms Used in the Regulations

⁸ “Grandfathering” is the process whereby a person is covered with the benefits of a “grandfather clause”, which is “a provision that creates an exemption from the law’s effect for something that existed before the law’s effective date” [Ref. Black’s Law Dictionary, Eighth Edition, “grandfather” and “grandfather clause”.]

⁹ TLGC §245.002(a-1)

¹⁰ TLGC §245.004

Unless otherwise indicated by individual Chapters, the following terms shall have the meaning ascribed to them as outlined below:

One individual commented that the definition for a Conservation Easement, included in Chapter 765 should be moved to Chapter 701, Subchapter 3.

In reviewing this comment, it was determined that the term conservation easement was used in places within the Proposed Regulations other than Chapter 765. The definition for Conservation Easement has been moved from Chapter 765 to Chapter 701, Subchapter 3.

One individual commented that certain Groundwater Conservation Districts (GCDs) are political subdivisions that have jurisdiction within the County and are potentially affected by the Proposed Regulations and should therefore be included within the definition of a Political Subdivision.

In reviewing this comment, it was determined that this change would clarify that GCDs are political subdivisions that should be acknowledged under the Proposed Regulations. The term “groundwater conservation districts” has been added to the definition of a Political Subdivision.

One individual commented that the Proposed Regulations differentiate between water systems that are surface water systems and groundwater systems, and that the Proposed Regulations do not clearly define this difference. This individual further identified several instances where surface water systems and groundwater systems were referenced in the Proposed Regulations and suggested the following definitions be adopted:

Surface Water - Water not defined as Groundwater or Rainwater.

Groundwater - As defined and interpreted by 30 TAC 290.38 on the date of adoption of the Proposed Regulations: Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

Rainwater - Water collected for use in a Rainwater Harvesting System, collected in accordance with the requirements of Chapter 715.

Groundwater under the direct influence of surface water - As defined and interpreted by 30 TAC 290.38 date of adoption of the Proposed Regulations: Any water beneath the surface of the ground with: (A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia or Cryptosporidium; or (B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

Groundwater System - Public Water System whose most-future-case projected groundwater source capacity is at least 50% of the most-future-case projected demand, as described in the system's current applicable regional plan(s).

Public Water System - As defined and interpreted by 30 TAC 290.38 on date of adoption of the Proposed Regulations.

This individual further suggested that the Commissioners Court provide some definition on how to determine which definition applied to a development that uses multiple sources of water, and

that the Court provide some flexibility within these definitions to accommodate unanticipated situations in the future.

While this comment was offered in the context of the definitions, presented in Subchapter 3 of Chapter 701, it addresses items in Chapters 705, regarding subdivisions, in Chapter 715, regarding water and wastewater service to certain regulated developments, and to Chapter 741, regarding OSSFs. The type of water system by which a development is serviced is used in both the County's existing regulations and in the Proposed Regulations to address characteristics of the development, such as minimum lot size. The bases for these differences:

- Public health threats inherent in using on-site groundwater supply and domestic waste treatment and dispersal; and,
- The identified limitations on groundwater availability and water quality pollution threats identified by the inclusion of a majority of the County within a Priority Groundwater Management Area (PGMA)¹¹ as identified by the Texas Commission on Environmental Quality (TCEQ);

In reviewing this comment, it was determined that there was little definition provided between surface water systems, groundwater systems and systems that use multiple sources of water supply. While the County's regulations are intended to ensure that citizens of the County have an adequate supply of safe drinking water, the County has additional concerns regarding the use of groundwater. The TCEQ regulates most water systems, but does not necessarily regulate the use of individual groundwater wells. In addressing this comment, the County has determined it beneficial to rely on those definitions within the TCEQ regulations for water systems, and to supplement those definitions as necessary. Because the concerns that are unique to the County are related to the use of groundwater, the County has elected to differentiate between water supply sources by whether or not these systems obtain more than one-third of their overall supply from groundwater that is taken from certain aquifers within Hays County. To implement this differentiation, the following additional definitions have been included in Subchapter 3:

Local Groundwater – Water obtained by pumping or extracting water from below the surface of the ground from an Aquifer native to Hays County such as the Trinity or Edwards Aquifer.

Local Groundwater Supply System – A water system (either a public or non-public) that obtains more than one-third of its total supply from Local Groundwater.

Other Water Supply System – A supply system in which greater than two-thirds of the total water obtained is from a “surface” source, rainwater collection, or groundwater that is not Local Groundwater. In the event any water supply system relies on Local Groundwater for greater than one-third, but not more than one-half of its total water supply, the Commissioners Court may, on a case by case basis, approve an application to consider such water supply system to be considered an “Other Water Supply System” for the purposes of these Regulations.

In addition to these changes, additional changes have been made under Chapters 705, 715 and 741 in response to these comments.

¹¹ Title 30, Texas Administrative Code (TAC), Chapter 294, “Priority Groundwater Management Areas”, specifically 30 TAC §294.39 through §294.44.

One individual commented that Items (G) and (P) should simply state that the Contributing Zone and Recharge zone are as defined by the TCEQ.

The current wording of the definitions for Items (G) and (P) language of the Proposed Regulations modifies the existing language to mimic the language used in the current TCEQ regulations for the Edwards Aquifer Program.¹² The intent of the modifications included in the Proposed Regulations was to conform the definitions to those used by the TCEQ, while still providing specificity within the document. The County wishes to avoid conflicting definitions of these terms in the future. In reviewing this comment, it was determined that the current proposed wording should be retained, but that additional language should be supplied to indicate the tie to the definition in the TCEQ regulations. The definitions for Items (G) and (P) have been modified to include the following wording:

It is the intent of the County that this definition conform to the corresponding definition included in the TCEQ Edwards Aquifer Program regulations, as subsequently amended.

One individual commented that Items (KK)(5) is within the definition of “Regulated Roadways” and that the reference to “utilities” is confusing.

In reviewing this comment, it was determined that current proposed wording could be confusing. The definition for Items (KK) has been modified to as follows:

(KK) Regulated Roadways – Those roadways, including the associated right-of-way and features constructed in the right-of-way, located within the County...

(1) through (4) [unchanged]

~~(5) Driveways, utilities, storm water management facilities or features, and other similar items constructed and/or maintained in a County roadway right-of-way. This provision only regulates those portions of the facilities or features within the County right-of-way.~~

One individual commented that Item (UU) should simply state that Wetlands are as defined by the U.S. Army Corps of Engineers.

The current proposed wording of the definition for Items (UU) is from a common dictionary definition of a “wetland”. In reviewing this comment, it was determined that this definition was not consistent with other applicable regulatory definitions of a “wetland”. Specific regulatory definitions consulted included the U.S. Army Corps of Engineer’s “Wetland Delineation Manual”¹³ and the definition for “wetland” included in the Texas Water Code (TWC).¹⁴ The intent of the Proposed Regulations is to conform the definition to that used in implementing the federal wetlands programs in the State of Texas. For this reason, the language of the Proposed

¹² Title 30, TAC, Chapter 213, “Edwards Aquifer”, specifically 30 TAC §213.3(27) and 30 TAC §213.3(27).

¹³ “Corps of Engineers Wetlands Delineation Manual – Final Report”, Wetlands Research Program Technical Report Y-87-1, U.S. Army Corps of Engineers, Waterways Experiment Station, January 1987.

¹⁴ Texas Water Code (TWC), Title 2, “Water Administration”, Chapter 11, “Water Rights”, as amended through the 80th Regular Legislative Session, Legislature of the State of Texas, specifically TWC §11.502(1).

Regulations has been modified to tie to the definition used in the TWC. The definition for Items (UU) has been modified to read as follows:

Wetland(s) - ~~an transitional land between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation, and conforms to the U.S. Army Corps of Engineers' definition. The intent of this definition is to conform to the corresponding definition included in the Texas Water Code, Chapter 11, Subchapter J, as subsequently amended.~~

Section 4.01 – Responsible Departments

One individual commented that the last sentence of Section 4.01 was not complete.

In reviewing this comment, it was determined that the last sentence of Section 4.01 was complete, intended to convey to the Department the authority to coordinate with any other County personnel in performing the duties that are either required or authorized in the Proposed Regulations. No changes to the Proposed Regulations have been made in response to this comment.

Section 4.04 – Public Records

One individual questioned how the County was going to determine that a level of “Significant Public Interest” has been obtained, and suggested leaving this sentence out since it is something the County is going to do and not the Applicant.

This comment applies to the last sentence in this Section. In reviewing this comment, it was determined that this section identifies the procedures to be used to make information available to public. This language is intended to inform the public and the regulated community about the County’s intent to make information publicly available, and to formally delegate responsibilities to the Department and other County personnel. No changes to the Proposed Regulations have been made in response to this comment.

Subchapter 5 – Outstanding Tax Liabilities

One individual expressed understanding and agreement with verifying that the taxes have been paid for the property being developed, but questioned whether it was appropriate to extend the tax verification beyond that parcel. This individual also indicated that the sections in this subchapter should address disputed tax situations.

This comment refers to the requirement in §701.5.03 that the County may verify tax status separately for: 1) the persons or entities applying for a County Development Authorization [referred to as the “Applicant” and the “Permittee” in §701.5.01], and 2) the affected property [referred to as the “Subject Property” in §701.5.02]. This provision of the Proposed Regulations is based on Chapter 32 of the Texas Tax Code.¹⁵ Specifically the County is relying on TLGC §32.07 which authorizes counties to establish personal liability for taxes on property owned by

¹⁵ Texas Tax Code, Title 1, “Property Tax Code”, Chapter 32, “Tax Liens and Personal Liability”, as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

persons (including natural persons and business entities), even if those person no longer own the property. In addition, Texas Tax Code Chapter 31¹⁶ authorizes the County to collect amounts that are owed, but unpaid, using measures ranging from administrative requests to property seizures. Based on this authority, it is appropriate for the County to attempt to collected unpaid taxes during the administrative review process for Development Authorizations to be issued under the Proposed Regulations. It is also appropriate for the County to seek payment from persons owing those unpaid taxes, even if those individuals do not have an interest in the Subject Property submitted for a Development Authorization. No changes to the Proposed Regulations have been made in response to the first component of this comment.

In reviewing the second component of the comment, it was determined that the recommendation to address disputed tax situations would provide clarity to the payment of delinquent taxes. To address these situations, the wording of the Proposed Regulations in §701.5.03 and §701.5.04 has been modified, and a new §701.5.06 has been added, as follows:

5.03 Documentation of Tax Status

...The Department may require the Applicant to submit ~~documentation of the status of payment of County taxes~~ certificates for the Applicant, Permittee...

5.04 Establishment and Assessment of Fees

...are delinquent in payment of any ~~non-disputed~~ County tax liability.

§5.06. Disputed Tax Situations

In situations where the amount of tax owed to the County is in dispute, payment of all non-disputed amounts will be required. If the dispute is resolved while the Application is under consideration, payment of the final resolution amount shall be made prior to the County issuing the Development Authorization. Any payments made to the County in excess of the final resolution amount may be credited towards other amounts due the County (e.g. review and inspection fees, payments-in-lieu, etc) or they may be refunded, at the option of the person making the excess payment.

Subchapter 6 - Fees

One individual commented that §701.6.02 through §701.6.05 need to be evaluated with consideration to the timing of payment of fees. This individual indicated that the collection of fees occurs in several locations throughout the Proposed Regulations and recommended that the fees be calculated by the County as a part of the administrative approval, and that the fees be paid prior to starting the technical review process. This individual acknowledged that it may be appropriate to charge a small fee for the administrative review process that would be a set amount per application, and thought the recommended process would avoid having the applicant calculate the incorrect fee and pay the wrong amount.

In reviewing this comment, it was determined that the recommendation would provide significant clarity to the timing of the payment of fees and would minimize the number of

¹⁶ Texas Tax Code, Title 1, "Property Tax Code", Chapter 31, "Collections", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

instances where an Applicant would pay the wrong amount, requiring additional administration time on behalf of the Applicant and the County. In preparing the proposed language, it was acknowledged that there may be times when an Applicant and the Department do not agree on the fee calculation. To address these situations, the wording of Sections 6.01 and 6.02 of the Proposed Regulations have been modified as follows:

6.01 Establishment and Assessment of Fees

...The Department shall maintain and make available to the public a list of all fees established under these Regulations. Any dispute between the Applicant and the Department regarding the basis or amount of applicable fees may be appealed by either party to the Commissioners Court.

6.02 Payment of Fees

(A) For fee amounts estimated to exceed \$100, the Applicant may elect to pay review fees to the County separately as an administrative review fee and a technical review fee. If the Applicant makes this election, the Applicant shall submit payment of the administrative review fee and shall provide an estimate of the technical review fees and any other subsequent fees. The Department shall include with their administrative completeness determination a confirmation or adjustment of the technical review fees and other fees. The amount determined by the Department shall serve as the basis for payment of the subsequent fees.

(B) All fees for Applications, permits, inspections or other fees required...

Section 7.05 - Supplemental Requirements Based on Type of Applicant or Permittee

Two individual indicated that partnerships and corporations are created by the State as entities to conduct business in the State under strict rules, and the County should be concerned that whoever is signing for the entity is an authorized representative. These individuals further commented that a listing of every partner, officer and director is unwarranted, not germane or applicable to the review of a project and leaves the impression that the County is more concerned with who may be employed by or benefitting from a project rather than the merit of the project.

These comments are understood to apply to §701.7.05(A), §701.7.05(B)(1), and §701.7.05(C)(1), all of which require a listing of those natural persons that are officers, directors or partners in the various types of business entities. These requirements stem from the County's current regulations and were instituted to identify those natural persons authorized to act on behalf of the business entity. Based on this comment, a review of Texas state law regarding the powers of business entities was conducted.

From this review, it was determined that there were several different types of business entities authorized under Texas law that were not addressed in the Proposed Regulations. In recent years, the Texas Legislature has authorized numerous types of business entities with various purposes and powers under the Texas Business Organizations Code.¹⁷ In addition to the entities

¹⁷ Texas Business Organizations Code, Titles 1 through 8, as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

anticipated in the Proposed Regulations, the TBOC makes provision for several different types of associations, companies and partnerships. The TBOC has also modified some of the general language used to describe business entities authorized to do business in Texas, and describes which natural persons or groups of natural persons are authorized to act on behalf of each type of business entity. In addition to these business entities, the Proposed Regulations also govern certain activities conducted by governmental entities. To accommodate all the types of entities authorized under Texas state law and to not require the submission of unnecessary information, the wording of §701.7.05 of the Proposed Regulations have been modified as follows:

§7.05 Supplemental Requirements Based on Type of Applicant or Permittee

Applicants or Permittees who are not individuals (“natural persons” as defined in the Texas Business Organizations Code §1.002) must submit additional documentation in accordance with the following requirements:

(A) Applicants that are partnerships entities that are not natural persons shall ~~submit, the name and mailing address for each member of the partnership. If the Applicant is a general partnership, a copy of the fully executed partnership agreement shall be submitted. If the Applicant is a limited partnership, a date-stamped copy of the Certificate of Limited Partnership shall be submitted. file with the County:~~

(1) a certified copy of a resolution or other documentation approved by the entity’s governing body authorizing the entity to file documents pursuant to these Regulations and designating the natural person(s) authorized to execute documents on behalf of the entity.

(2) Additional documentation as may be required by the County documenting the existence of the entity and the authority of those natural persons acting on behalf of the entity.

(B) Applicants that are ~~corporations~~ business entities that are not natural persons shall submit:

~~(1) the name and mailing address of each officer and director of the corporation;~~

~~(2) the name and address for service of process of the registered agent of the corporation~~business entity; and,

~~(3) a date-stamped copy of the Articles of Incorporation~~ entity’s enabling documents filed with the Texas Secretary of State, or as otherwise existing; ~~and,~~

~~(4) a certified copy of the corporate resolution authorizing the corporation to file an applicant pursuant to these rules and designating the officer authorized to execute the application on behalf of the corporation.~~

(C) Applicants that are ~~Associations~~ governmental entities that are requesting a waiver of fees by the County shall submit written documentation signed by the entity’s chief elected official or chief executive officer formally requesting the County to waive the applicable fees and indicating that the entity will in turn waive

similar fees for the County. The Director is authorized to waive such fees upon receipt of the necessary documents.

~~(1) the name and mailing address of each officer of the association;~~

~~(2) the name and address for service of process of the registered agent of the association;~~

~~(3) a date-stamped copy of the Certificate of Formation filed with the Texas Secretary of State; and,~~

~~(4) a certified copy of the resolution authorizing the association to file an applicant pursuant to these rules and designating the officer authorized to execute the application on behalf of the association.~~

(D) Applicants using an assumed name shall submit a date-stamped copy of the Certificate of Assumed Name;

Section 8.01 – Delegation of Administrative Authorizations

One individual questioned why transfers resulting from sale are not administrative. Two individuals indicated that the County should not regulate the legal sale of property (and therefore property rights) once an entitlement is granted through issuance of a permit. These individuals further indicated that the County's only interest should be that the conditions of the permit are complied with by the Permittee, and that the current language seems to confiscate a legal property right from an owner that has followed the Regulations and meets the requirements of a permit. One of these individuals indicated that it appeared from the language that the County wished to reserve the right to discriminate against particular individuals based on no stated criteria, rather imposing a capricious and arbitrary standard that may change over time. This individual further indicated that a permit entitling land that runs with the land should be subject to sale without interference by the County, and that the County may also be assuming a great liability for interference with a legal business transaction without any written criteria or justifiable public interest.

Although this comment was offered in response to §701.8.01(A)(9), the content and focus of the comment appears to relate more directly to relating to §701.15.04, relating to the transfer of development authorizations. §701.8.01 is intended to be a recitation of items that the Commissioners Court is delegating to the Department. The subject matter of this comment will be addressed in conjunction with similar comments received in response to §701.15.04.

Section 8.02 – Criteria for Variance

One individual questioned what constituted a “regulatory taking”.

This comment addresses the term “regulatory taking” in §701.8.02. In accordance with Texas State law, the County has prepared and made available to the public a Takings Impact Assessment (TIA) for the Proposed Regulations to address the potential for regulatory takings under the Proposed Regulations. This item is addressed in more detail in a response to a comment under Chapter 701, Section 1.02 of the Proposed Regulations. No changes to the Proposed Regulations have been made in response to this comment.

Section 8.05 – Acknowledged Administrative Variances

One individual questioned how the recognized administrative variance for a Conservation Development to increase its impervious cover by up to two percent (2%) through the use of certain supplements to impervious cover compared with the Lower Colorado River Authority (LCRA) regulations.

The acknowledged administrative variance was included in the Proposed Regulations to address instances where certain supplements to impervious cover (e.g. permeable concrete, rainwater harvesting, etc.) were included as a part of a Conservation Development. However, the wording of the Proposed Regulations was not clear and appeared to indicate that the two percent (2%) threshold was referenced from the LCRA regulations. However, the original intent was to reference the impervious cover calculation procedures from the LCRA regulations, and not any particular limit for an adjustment of impervious cover. Upon review, §701.8.05(E) was modified to eliminate this provision.

Section 9.01 – Communication with Precinct Commissioner

One individual indicated that the Commissioners may want to investigate the number of contacts that may be anticipated. This individual further indicated that the Proposed Regulations need to better define what “contact” includes (i.e. is it sufficient to leave a voice mail message or email with a copy to the Director?).

This comments applies to the requirement to contact the Precinct Commissioner as outlined in §701.9.01. This requirement was included to ensure that Precinct Commissioners are aware of significant projects proposed within their precinct, while at the same time, acknowledging that the Commissioners and their office staff have other responsibilities that may limit their time to coordinate with Applicants for all types of Development Authorizations. Due to this acknowledgement, the intent of the Proposed Regulations was to require contact with the Precinct Commissioner for subdivisions (§705.4.04), Manufactured Home Rental Communities (§745.3.04), permits for use of County facilities that do not qualify for a minor permit (§751.6.02), and conservation developments (§765.3.06). Since the registration of certain qualifying uses of County facilities would be submitted to the applicable Commissioner’s office (§751.2.01), additional coordination with the Commissioner’s office would be redundant. It was not intended that Applicants contact the Commissioner’s office for other types of projects included in the Proposed Regulations. No changes to the Proposed Regulations have been made in response to the first component of this comment.

In reviewing the second component of the comment, it was determined that the recommendation to provide additional definition to the form and content of the “contact” would provide clarity to the process. To address this issue, and to correct some typographical errors, the wording of the Proposed Regulations in §701.9.01 has been modified as follows:

9.01 Communication with Precinct Commissioner

Where individual Chapters of these Regulations require ~~and form of notice communication or contact with the Precinct Commissioner~~, the Applicant or the Applicant’s authorized agent is required to contact the Commissioner(s) in whose precinct(s) the proposed development is located prior to the submission of the Application. This contact or communication shall consist of either written

communication or a personal visit by the Applicant or the Applicant's authorized agent. The Commissioner shall establish and make available to the public a copy of contact procedures for this purpose. Commissioners may delegate contact and communication responsibilities to one or more members of their staff. If the Commissioner requests a personal visit in response to receiving written communication, the Applicant or the Applicant's authorized agent shall arrange a personal visit with the Commissioner or the Commissioner's designee at a mutually agreeable time and place. The purpose of this personal visit shall be for the Applicant to inform the Commissioner about the project and for the Commissioner to present to the Applicant any constraints or concerns associated with the project. Documentation of contact or communication with the Commissioner, including the personal visit, if requested, shall be furnished to the County in conjunction with an Application.

Section 9.03 – Documentation

One individual questioned what type of documentation of notice may be required by the County.

There are several different types of documentation that may suffice for demonstrating that notice was accomplished. Due to the different circumstances surrounding the specific notice required for each project or development, the County wishes to provide flexibility to the Department, while at the same time allowing the specific requirements to be made available. The language of Section 9.03 has been supplemented with the following:

Specific documentation requirements shall be established by the Department for each type of notice required under these Regulations.

Section 9.04 – Posted Notice

One individual commented the posted notice requirement should be tied to the Application being declared administratively complete, similar to a previous comment regarding the timing of the payment of fees. This individual also indicated that the requirement to replace the signs, in §701.9.04(H), should be conditioned upon the Applicant becoming aware of the problem.

As outlined in §701.7.07, formal review of Applications filed under the Proposed Regulations will not begin until an application has been determined to be administratively complete. This is also the point at which the statutory timeframes begin. Based on this comment, the timing of the requirement to post notice has been changed to be within two (2) calendar days of the Application being determined to be administratively complete, with the wording of §701.9.04(A) modified as follows:

(A) Within two (2) working days of filing receipt of notice from the Department that an Application filed with the County has been determined to be Administratively Complete, the Applicant shall install public notice signs on the Subject Property...

In addition to this change, corresponding changes have been made to §701.9.08 (Delivery of Written Notice) and §701.9.09 (Publishing notice) regarding the timing of the notice to coordinate with the determination of administratively complete status.

Section 9.08 – Delivery of Written Notice

One individual commented that the submission of mailed notices by certified mail can create an issue for the person receiving the notice since they must be home for delivery or take off work and go to the post office to pick up the notice. This individual also requested that this requirement be reconsidered in terms of the requirements it places on the individual receiving the notice.

In the Proposed Regulations, written notice is generally required to be mailed to owners of Contiguous Property (i.e. properties which share a common boundary, or are within two hundred feet of the Subject Property), the County Commissioner in whose precinct the proposed development is located, and affected political subdivisions. In the realm of members of the public whose interests may be affected by the County's approval of a proposed development, these individuals and entities are likely to be those that experience the greatest affect. To facilitate notice of the proposed development to these individuals and entities, the County has instituted requirements in the Proposed Regulations to provide written notice through mail. In reviewing the burden of the requirements of the County's approval process, the County acknowledges that providing written notice through certified mail requires more effort on the part of the Applicant and the notice recipient than providing written notice by regular mail. However, the County believes that this additional effort will also provide greater assurance that the individuals most likely affected by a proposed development will actually receive notice of the proposed development. In addition to providing written confirmation of delivery that can be used to prove that the Applicant met his notice delivery burden, certified mail also provides a mechanism to notify the Applicant of incorrect or invalid addresses. Written notice, as differentiated between posted notice (signs) and published notice (newspaper legal notices) provides notice to property owners who may not reside within Hays County. The County believes that it is important to preserve the right for these non-resident property owners to participate in the approval process, if they are inclined to do so. No changes to the Proposed Regulations have been made in response to this comment.

Section 9.09 – Published Notice

One individual commented that it needed to be verified that the local newspapers can provide a "notarized" affidavit. This individual also indicated that the notice requirement be tied to the Application being declared administratively complete.

In conjunction with the publication of the Proposed Regulations, the County received several standard publisher's affidavits to confirm publication. However, a review of these affidavits indicated that not all of them were notarized. As outlined in §701.7.07, formal review of Applications filed under the Proposed Regulations will not begin until an application has been determined to be administratively complete. This is also the point at which the statutory timeframes begin. Based on this comment, the requirement to provide a notarized publishers affidavit has been modified to require an original, signed publishers affidavit, and the timing of the requirement to publish notice has been changed to be within thirty (30) calendar days of the Application being determined to be administratively complete. In addition to this change, corresponding changes have been made to §701.9.04 (Posting of notice) and §701.9.08 (Delivery of Written Notice) regarding the timing of the notice to coordinate with the determination of administratively complete status.

One individual commented the published notice required on specific timeframes cannot be completed without the use of internet publishings, and asked why it was necessary to have the application noticed.

Where allowed flexibility by statute, the County has included timeframes that allow notice to be accomplished on a flexible timeframe to accommodate notice by the Applicant in many of the weekly papers published in Hays County. However, in instances where the published notice timing requirements are established by state statute, the County has conformed the timing requirements for notice under the Proposed Regulations to those statutory timeframes. It may be possible that in a unique set of circumstances (e.g. certain instances where property is being replatted or a plat is being canceled), the use of a weekly newspaper publication may not meet every established statutory deadline. However, the County believes that in those limited possible instances, there are newspapers within the County that publish more frequently than weekly that could be utilized to comply with the established statutory deadlines. In addition, the County believes that public notice is an essential element to the involvement of the public in an important regulatory function of the County and that such notice is consistent with the County's charge under TLGC Chapter 232 to ensure "orderly development". No changes to the Proposed Regulations have been made in response to this comment.

Section 10.03 – Applicant Sponsored Public Meetings Required

One individual questioned whether the basis for determining the density for being exempted from an Applicant Sponsored Public Meeting was the average size of the actual lots or the total acreage simply divided by the number of lots.

This comment addresses the phrase "a density of less than one dwelling unit for each five (5) acres..." in §701.10.03. This particular section of §701.10.03 was intended to exempt developments that were: 1) primarily residential, and 2) would result in a density less than the limit specified. For the purposes of determining qualification for the density portion of this exemption, the intent was to utilize the total acreage of the property (referred to in the Proposed Regulations as the "Subject Property"). The resulting density would then be calculated by dividing the number of residential lots by the acreage of the Subject Property (the total acreage). If the development was intended to be primarily residential and if the resulting density would be below the specified limit, the Applicant would be exempted from the requirement to host a Public Meeting. In reviewing this comment, it was determined that the wording of this provision may be ambiguous. The wording of this provision has been modified to read as follows:

...and will result in an average density of less than one dwelling unit for each five (5) acres increment of the Subject Property, are exempted from...

Section 10.04 – Requirements for Applicant Sponsored Public Meetings

One individual commented that the amount and content of the information required to be sent in the notice required by §701.10.04(C) is onerous to the contiguous property owners, since they would have access to this information at the meeting. This individual also indicated that newspaper notice should not be required.

This comment addresses the public notice required in conjunction with Applicant Sponsored Public Meetings. The intent of the Proposed Regulations is that these Public Meetings be required for those proposed developments that are generally larger with a higher density. Prior to conducting a Public Meeting, this section requires the Applicant to develop a concept plan for

the Subject Property that provides general information on the proposed development. The Applicant is required to provide written (mailed) notice to affected persons that includes the text of the newspaper publication of the notice for the Public Meeting and a copy of the concept plan. Since these items are already required to be produced, the County does not believe that mailing both the notice and the concept plan constitutes an “onerous” burden on either the Applicant or those persons receiving notice. In addition, the County believes that published (newspaper) notice is an effective means of notifying the public about actions that may affect the interest of the public. No changes to the Proposed Regulations have been made in response to this comment.

Section 10.05 – Public Hearings Required

One individual questioned whether the Applicant Sponsored Public Meeting would be a public hearing, and indicated that if so, this would be an additional, unnecessary burden on the Applicant.

This particular provision is an acknowledgement of existing requirements in Texas state law for the County to hold public hearings in conjunction with their approval of certain actions. It was not intended to apply to Public Meetings. The County believes that public meetings for larger projects are a beneficial way to provide opportunities for involvement of the public in an important regulatory function of the County and that the requirement to hold such meetings is consistent with the County’s charge under TLGC Chapter 232 to ensure “orderly development”. As outlined in the Proposed Regulations, a Public Meeting is not a “public hearing” as that term is used in existing Texas state law. However, it is conceivable that there may be some instance wherein the County and the Applicant may agree to combine a Public Meeting hosted by the Applicant, with a “public hearing” conducted by the County. Based on this comment, the clarification of this intent is warranted. To provide this clarification, the following wording has been added to §701.10.05:

An Applicant Sponsored Public Meeting held under these Regulations does not constitute a public hearing, unless it is conducted in accordance with Texas State requirements for hearings by public entities.

Section 11.08 – General Provisions Incorporated Into Development Authorizations

Regarding §701.11.08(D), one individual commented that the County has limitations regarding unilateral decision making authority regarding the acceptance of public dedications, if they are completed in accordance with an approved Development Authorization.

§701.11.08(D) addresses the County’s ability to accept the public dedication of rights-of way, easements, open space, parkland, or other public dedications contained in a recorded conveyance instrument filed for the purposes of registering an otherwise exempt subdivision. As outlined in Subchapter 3 of the Proposed Regulations, state statutes authorize the County and the County has elected in the Proposed Regulations to except certain types of subdivisions from the requirements to comply with the County’s normal subdivision process.¹⁸ Exempted subdivisions of property are allowed to file a registration document that is not subject to review and approval by the County. In these instances, the County would not issue a Development Authorization. This provision was included to allow the County to accept public dedications, such as conservation easements, that would not otherwise be required to be processed through the

¹⁸ TLGC §232.0015

County's normal subdivision process. TLGC Chapter 270¹⁹ authorizes Counties to acquire "rights" and "interest" in Real Property through normal property conveyance instruments.²⁰ In the example of a conservation easement, the rights granted to the County would represent an interest in the Real Property subject to the easement, and would be authorized under TLGC Chapter 270. No changes to the Proposed Regulations have been made in response to this comment.

Regarding §701.11.08(E), one individual questioned whether or not the County could require a "hold harmless" statement on publicly dedicated facilities perpetually.

§701.11.08(E) requires the County to include in all Development Authorizations issued a clause stating that that the Permittee, the Applicant, and owner of the Subject Property will hold harmless the County "against any action for personal injury or property damage sustained by reason of the exercise of the activities authorized in the Development Authorization". The grant of a Development Authorization by the County bestows certain legal rights and responsibilities on the Permittee, the Applicant and/or the owner of Subject Property. By virtue of filing the Application, these parties were seeking an approval from the County for certain regulated activities to be conducted in conjunction with the proposed development. The "hold harmless" provision is based on the parties' exercise of "regulate activities" and not the parties' dedication of real property rights to the public. In exchange for the grant of the rights and responsibilities conveyed to these parties, the County is requiring that these parties "hold harmless" the County from actions resulting from these party's exercise of the rights and responsibilities so granted by the County. The County believes it is due this legal protection from these parties because the County is not requesting authorization to conduct regulated activities but is simply fulfilling its statutory authority to regulate. No changes to the Proposed Regulations have been made in response to this comment.

Section 12.03 – Filing With the County Clerk

One individual commented that this is ridiculous duplicative paperwork, that the County already has these documents in their files, and that the County should be cognizant of the Paperwork Act.

TLGC Chapter 232 assigns the responsibility to review and approve plats to the County Commissioners Court²¹ and separately dictates that such plats must be filed with the County Clerk.²² Even if this results in two different departments within the County having duplicate paperwork, the filing of plats with the County Clerk is required by Texas State Statutes. However, in reviewing this comment, it was determined that the phrase "Final record documents that have been executed by the County Judge..." may be misleading, in that not all final record documents are required to be filed with the County Clerk. The wording of this section has been modified as follows:

Final record documents that are required to be filed in the Official County Records and that have been executed by the County Judge...

¹⁹ TLGC, Title 8, "Acquisition, Sale, or Lease of Property", Chapter 270, "Miscellaneous Provisions affecting the Acquisition, Sale, or Lease of Property by Counties", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

²⁰ TLGC §270.001

²¹ TLGC §232.002(a)

²² TLGC §232.001(d)

Section 13.05 - Enforcement of Covenants and Representations

Several individuals commented that the County should not engage in the enforcement of private deed restrictions. Two individuals commented that most other public entities in Texas, with a few exceptions, have elected not to assume the enforcement role, and that the enforcement of these restrictions is best left to civil courts and private owners. One individual commented that a common restriction encountered is the restriction of ownership in certain subdivisions by particular racial or ethnic groups, and that the County could not enforce these restrictions.

The intent of the language of §701.13.05 was to give the County the ability to enforce covenants, representations and restrictions submitted by an Applicant for the purpose of obtaining a Development Authorization from the County. An example of this would be a restriction placed in the Record Documents to enforce a limitation on the use of groundwater as outlined in a Water and Wastewater Service Plan where the certified groundwater availability was less than the estimated water usage and the Applicant had proposed a supplemental water supply source to meet estimated total usage. If there were no enforcement provisions available to the County, the County would be unable to take any corrective action if the end users of the development subsequently disabled the supplemental water supply source and began using groundwater exclusively, in quantities significantly larger than was certified to be available. This would be a material breach of the terms under which the County issued the Development Authorization. The lack of an enforcement mechanism in instance such as this would prevent the County from effectively administering orderly development. This section was not intended and should not be interpreted to apply to other situations. However, in response to this Comment, the County has determined that it would be beneficial to include language establishing the intent and scope of the County's enforcement authority in these instances. The language in §701.13.05 has been supplemented with the following:

All such covenants and representations (e.g. Plat notes, deed restrictions, etc.) shall reflect that the County may enforce any such ~~covenants and representations~~ special provisions or restrictions incorporated in order to qualify for a Development Authorization issued under these Regulations. The County's enforcement of these special provisions or restrictions is limited to those that are used as the basis for issuing a Development Authorization, and shall be limited within those items to only those measures required to achieve compliance with these Regulations. Plat notes and deed...

Section 13.07 – Enforcement Actions

One individual questioned what “representatives” the County might designate to file an enforcement action in a court of competent jurisdiction.

This comment addresses the phrase “such other authorized legal representative” in §701.13.07(A). Under various provisions of Texas Statutes, counties and county agencies are authorized to hire special legal counsel, in addition to statutory elected or appointed legal counsel for the County. This provision was included to acknowledge that in addition to the Hays County Criminal District Attorney's Office, the County may from time to time utilize special counsel to file enforcement actions in court and to represent the County on those matters. No changes to the Proposed Regulations have been made in response to this comment.

Another individual commented that this Section could encourage “any person” to initiate litigation and that may involve the County in costly actions that may be utilized to harass and delay a legitimate project. This individual further commented that while any person has the right to institute legal action for any reason, the County should not encourage frivolous legal actions.

This comment addresses the phrase “Whenever it appears that a violation of any of these rules has occurred or is occurring, any person is entitled to bring a suit...” in §701.13.07(B) and addresses language from the 1997 edition of the regulations. Under various provisions of Texas Statutes, (e.g. Texas Water Code, Chapter 7, Subchapter H)²³ “a person”²⁴ is authorized to file a suit in response to an apparent “violation or threat of violation” by another party. This provision was included to acknowledge that existing right under Texas law and was not included either to encourage or discourage any person from filing suit. No changes to the Proposed Regulations have been made in response to this comment.

One individual commented that suits for enforcement actions under the Proposed Regulations should not be restricted to the Justice of the Peace Courts nor should venue be limited to the precinct in which the alleged violation occurred. This commenter further indicated that this provision should allow any the County to use any court of competent jurisdiction.

In reviewing this comment, the County has determined that it may be beneficial to the public interest to not restrict the court in which to prosecute a suit to enforce these Proposed Regulations. The language in §701.13.07(C) has been modified as follows:

Prosecution of a suit under this Chapter is in the Justice of the Peace Courts these Regulations may be exercised by any court of competent jurisdiction. Venue for prosecution of a suit under this Article is the Justice of the Peace precinct in which the violation is alleged to have occurred.

Section 15.04 - Notice for Transfer or Modification of Development Authorizations

Several individuals commented that requiring public notice for the transfer through sale of a legally issued Development Authorization was a time consuming, costly process that may result in the denial of a property right by the County. One individual further commented that this requirement was an interference with legitimate commerce by the County and serves no real public interest. Another individual commented that requiring this notice gave the public a second opportunity for comment on a matter that had already been deliberated by the Commissioners Court, and further indicated that this requirement was onerous and over-reaching.

These comments address the requirement under §701.15.04 for the Applicant to provide public notice for Development Authorizations that are transferred. This comment did not specifically reference modifications to Development Authorizations, and as such transfers that also included modifications have not been included in this response. As outlined in §701.15.03, any transfers that also involved a modification of a Development Authorization would need to undergo a

²³ Texas Water Code, Title 2, "Water Administration", Chapter 7, "Enforcement", Subchapter H, "Suit By Others", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

²⁴ TWC §7.351(a)

technical evaluation to ensure that any modifications complied with the regulations in effect at the time the modification was submitted.

In addition to the requirement for public notice under §701.15.04, the Commissioners Court has made provision for certain transfers to be processed by the Department as administrative approvals under §701.8.01(A)(9), provided the transfer involves:

- The elimination of one or more of the original Permittees, as long as at least one of them continues to hold the DA; or,
- Conveying the ownership to a legal successor in the event of death, incapacitation, or insolvency, provided that the new owner submits appropriate documentation.

However, §701.8.01(A)(9) does indicate that transfers resulting from a sale do not qualify for consideration of an as an administrative authorization, even if preceded by an otherwise qualifying event. Under the current proposed wording in §701.15.04, the requirement to provide public notice would apply to any transfer, including administrative transfers. The Proposed Regulations currently require public notice for the following types of Development Authorizations:

- Subdivisions (Chapter 705);
- Manufactured Home Rental Communities (Chapter 745);
- Use of County Facilities (Chapter 751);
- Regulated Land Uses (e.g. Sexually Oriented Businesses, Automotive Wrecking and Salvage Yards, Demolition Businesses, Flea Markets, Junkyards and Outdoor Resale Businesses under Chapter 755); and,
- Any Development Authorization involving a Development Agreement (Chapter 771).

Under the proposed wording of §701.15.04, any of these types of Development Authorizations that were transferred would require the same public notice for the transfer as was required for the initial Application. These types of Development Authorizations convey a significant property right granted by the County under applicable Texas state law and that are governed by County regulations intended to protect the public interest. In addition, under both the existing and Proposed Regulations, Applicants are required to submit certain information to the County identifying the Applicant and Permittee(s) and indicating their representation to comply with the County's regulations, including any special provisions included in the Development Authorization. As such, the County's basis for approving a transfer that did not involve a modification would be acceptable submittal of the required identification information and representations on behalf of the new Permittee(s). The County believes that this new information is public information and that providing the public notice of the availability of this new information is in the public interest. The requirement to provide this notice does not expand or reduce the public's right to provide input to the County on whether such transfer should be approved and it does not change the County's basis for approving or denying the transfer. The notice requirement for transfers serves only to make the public aware of the availability of this new information. No changes to the Proposed Regulations have been made in response to this comment.

Section 16.02 – Additional Coordination

One individual commented that there were emergency response agencies other than emergency services districts (ESDs) that operated within the County and that it would be prudent to require

that Applicants coordinate with these districts if they may be providing service to the proposed development.

In reviewing this comment, the County has determined that there may be some instances in which emergency response agencies other than ESDs may provide service to a proposed development approved under these Regulations. One example of this would be where service would be provided by a municipality within their extra-territorial jurisdiction (ETJ). In those instances, the County believes it will be important to require the Applicant to coordinate with any emergency response agency that may serve the proposed development. To clarify this, the wording of §701.16.02 has been modified as follows:

...fire departments, and emergency services districts (ESDs) and any other emergency response agencies authorized to operate in the County whose response might be requested during an emergency.

Chapter 705 – Subdivision and Platting of Property

Section 1.03 - Approval Required Prior to Construction

One individual indicated that §705.1.03 appeared to indicate that filing of the final plat was required before construction and wondered about those that might want to file fiscal assurance and begin construction before final plat approval.

§705.1.03 states that construction may not begin prior to final plat approval “unless excluded or exempted under State law or as exempted below”. This wording was intended to reference Chapter 731, “Construction and Acceptance of Maintenance for Public Infrastructure”. Chapter 731 specifically provides for interim authorization for construction prior to approval, as addressed in this comment. No changes to the Proposed Regulations have been made in response to this comment.

Section 1.04 - Approval Required Prior to Furnishing Utility Service

One individual questioned under what authority the County could require another governmental entity to obtain approval to provide utility service from the County and who would pay for this requirement.

The County is adopting this section of the Proposed Regulations under the authority of the Texas Local Government Code (TLGC), Chapter 232. Specifically the County is relying on TLGC §232.106 which authorizes certain Counties to regulate the connection of utilities in accordance with TLGC §232.0291. This provision of the TLGC authorizes counties to require a certification from the County before a “utility” extends service to a subdivision. The purpose of this requirement is to prevent utility providers from furnishing utility service to developments that do not meet the County’s requirements. Unscrupulous developers may attempt to circumvent the County’s requirements by selling property to unsuspecting homeowners before ensuring that the County has issued approval for the development. In TLGC §232.021(14), a “utility” is defined to be a “person, including a legal entity or political subdivision”, and is further defined to include electric, gas and water and sewer utilities. This provision of the TLGC authorizes the County, upon the adoption of the Proposed Regulations, to require all utility providers, including other governmental entities, to obtain certification from the County prior to extending utility service to a subdivision.

In accordance with the County's general fee policy outlined in Chapter 701, Subchapter 6 of the Proposed Regulations, the Applicant for the certification would be responsible for payment of any associated fees. No changes to the Proposed Regulation have been made in response to this comment.

Section 3.01 – Exempted Subdivisions

One individual recommended exemptions of divisions caused by undivided interest in an inherited estate.

Section 3.01 exempts from subdivision and platting requirements certain subdivisions of real property that are identified under TLGC Chapter 232. TLGC Chapter 232 specifically exempts divisions made to transfer property to individuals having an undivided interest, provided: 1) the division does not include laying out streets or other publicly dedicated spaces (e.g. parkland, openspace, etc.); and 2) all parts of the divided property are transferred to individuals who hold an undivided interest in the property.²⁵ Based on this exemption being recognized under TLGC Chapter 232, the Proposed Regulations already exempt the type of division anticipated in the comment. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.02 - Registration

One individual questioned under what authority the County could enforce an affidavit regarding an exemption that is tied to a future even, as referenced in §705.3.02(A)(3) and §705.3.03.

The affidavit referenced in §705.3.02(A)(3) and §705.3.03 is intended to ensure that the property owner making the exempt subdivision is aware of the qualifications for the exemption and that changes in the exemption status in the future will require a formal subdivision. The County does not envision this affidavit will be enforceable beyond establishing that the property owner had knowledge of the consequences of a later change in the exemption status of the property. The establishment of this knowledge would only be an issue if: 1) that property owner knowingly violated the qualifications for the exemption; 2) the County became aware of the violation; and 3) the County chose to pursue enforcement against that property owner for failing to obtain a plat for a non-exempt subdivision. Since the Proposed Regulations (if enacted in their present form) utilize the same exemptions authorized under TLGC Chapter 232,²⁶ an action determined to be a violation of the authorized exemptions from the formal subdivision and platting requirements would not only be a violation of the County's regulations, but would also be a violation of TLGC Chapter 232. TLGC Chapter 232 includes provisions allowing enforcement against actions that violate either TLGC Chapter 232 or County regulations adopted based on TLGC Chapter 232.²⁷ In the rare circumstances in which this affidavit might be used, the underlying statutory authority would be TLGC Chapter 232. No changes to the Proposed Regulations have been made in response to this comment.

Two individuals questioned whether the County had a need to require additional affidavits and filings for every property owner who is exempt from subdivision and platting requirements and who has a mortgage on their house (or homestead) and/or land, as referenced in §705.3.02(C). These individuals further indicated that these transactions are governed by state and federal

²⁵ TLGC §232.0015(k)

²⁶ TLGC §232.0015

²⁷ TLGC §232.005

banking regulations and the Texas Property Code and should not require any additional regulations by the County.

The Proposed Regulations exempt from platting, but require the registration of property divisions made for financial severance purposes (hereafter “Financial Severance Subdivisions” or “FSS”). In general, Financial Severance Subdivisions are divisions of property made to allow a portion of a property to serve as collateral for a financial transaction, while the remaining portion of the property is not subject to the financial transaction. The requirements included in the Proposed Regulations appear to differ slightly from the circumstances envisioned in this comment. The comment appears to envision that this requirement applies to every mortgage involving a house, homestead or land. In fact, the cited Section of the Proposed Regulations would only apply to a subset of mortgages or other financial arrangements where only a portion of a property was divided out to serve as collateral for a financial transaction. The cited section would not apply to mortgages or other financial arrangements where the entire property was used for collateral for a financial transaction.

The County developed this section of the Proposed Regulations to address instances where a property owner has carved out a portion of a tract of land to identify that separated property for financial severance purposes (an FSS), and that separated property is subsequently transferred to another person. Most often this separated property is used as collateral for funding to construct of a home on the remaining portion of the property. While no subdivision *per se* has been made when the FSS is identified, a non-exempt subdivision would occur if that FSS is used as the basis for the transfer of the property to a person that does not qualify for an exempt transfer of property under State Law²⁸. If the property owner defaults on the financial obligation for which the separated property is used as collateral, the lender holding the mortgage could take possession of the separated portion of the property. If the lender is not a natural person properly related to the defaulting property owner, when this separate ownership is perfected, a *de facto* subdivision occurs that would be regulated under both state law and County ordinances. If the original FSS was not configured to include access to a public road, this *de facto* subdivision would create a separate tract with no public access, in violation of state law and County ordinances. The purpose of the proposed section of the Proposed Regulations is to prevent the adverse affects of these types of subdivisions of property that make no provision for public access to a portion of a property divided through financial severance.

Under the County’s authority to regulate the subdivision of property provided in Texas Local Government Code, Chapter 232 the County is proposing to require the registration of FSSs which would otherwise be exempt under State Law. Specifically the County is relying on TLGG §232.0015(a) which authorizes counties to classify divisions of property and exempt some of those from platting requirements. While the Proposed Regulations do institute a requirement for property owners making FSSs to make additional filings, as stated in the comment, these additional filings have a very limited purpose, designed to protect the public and are not duplicative of other requirements of state or federal property transfer law. Given these conditions, the County does have a need to address an issue that is not currently addressed by other portions of state or federal law. No changes to the Proposed Regulations have been made in response to this comment.

²⁸ Under TLGC §232.0015(e), exempt subdivisions may be transferred to individuals related to the owner within the third degrees of consanguinity or affinity of the property owner.

Section 4.03 – Additional Application Items

One individual questioned under what authority the County could ask for a specific land use and consider that information as part of the review process, in referenced to §705.4.03(D).

This comment implies that this Section of the Proposed Regulation is asking for a specific land use. In fact, this Section of the Proposed Regulations simply requests “a detailed description of the specific activities proposed for the Subject Property.” Due to its inclusion in Chapter 705, Subchapter 4 of the Proposed Regulations, this Section only addresses non-exempt subdivisions. As such, this Section is requesting a description of activities proposed in conjunction with the subdivision. It is anticipated that these actions would include things such as the division of the property into lots for sale, the provision of water and wastewater service to the subdivision, the installation of Regulated Roadways, and storm water management facilities, the provision of parkland and open space, furnishing of adequate utilities to the site, and whether or not the Application includes any other activities governed by the Proposed Regulations. Since the County does not have general zoning authority, and has only limited land-use regulation authority for certain activities, the County does directly regulate land use through the subdivision or platting process.

However, there may be instances where an Applicant for a Development Authorization (in this case a subdivision plat) makes certain representations regarding land use that serve as the basis for the County issuing that Development Authorization. This is specifically applicable to the provision of water and wastewater availability for the subdivision. In both the existing and Proposed Regulations, the County has relied extensively on the long-established procedures used by the Texas Commission on Environmental Quality (TCEQ) for quantifying the water and wastewater service requirements²⁹. The procedures used by the TCEQ determine the water and wastewater quantities based on the specific land use under evaluation. In exercising its authority to approve subdivisions under TLGC Chapter 232, the County is mandated to require an Applicant to demonstrate adequate water and wastewater availability. The County has chosen to implement this authority relying on the TCEQ criteria, which in turn utilizes land use to quantify the water and wastewater service requirements. The County believes that even though it currently has no direct land use regulatory authority following approval, it is working within its legal authority under TLGC Chapter 232 to require the Applicant to identify the specific land use represented as the basis for demonstrating water and wastewater availability.

Further, the language in §701.15.02 of the Proposed Regulations would allow the County to revoke any Development Authorization, including a subdivision plat, that was obtained through a “false material statement, representation or certification”. This would allow the County to consider the revocation of a subdivision plat that was obtained based on a representation that it required a certain quantity of water service if in fact the quantity of water required to service the ultimate end use was materially different than the estimated quantity. No changes to the Proposed Regulations have been made in response to this comment.

²⁹ Title 30, TAC, Chapter 290, “Public Drinking Water” (specifically 30 TAC §290.45), Title 30, TAC, Chapter 217, “Design Criteria for Domestic Wastewater Systems” (specifically 30 TAC §217.10), and Title 30, TAC, Chapter 285, “On-Site Sewage Facilities” (specifically 30 TAC §285.91).

Section 4.05 – Supplemental Information

One individual commented that the submission of digital data, as required under §705.4.05(E) should take place following the completion of the technical review, unless the information is going to be used by the County as a part of the review process. This individual further indicated that providing this information could get into the contractual arrangements between the Applicant and consultants (e.g. engineers and surveyors) and the submitting this digital information may put these consultants at a disadvantage if a payment dispute arises.

§705.4.05(E) requires the Applicant to submit certain digital data in conjunction with an application. The County does currently and intends in the future to use this information during the review process for technical review of applications. While there may be instances arising between the Applicant and the Applicant’s consultants regarding disputed payments, the County is not a party to these matters and as such is only concerned with the submission of the information necessary to evaluate the Application in accordance with the Regulations. No changes to the Proposed Regulations have been made in response to this comment.

Section 4.07 – Technical Review Procedure

One individual commented that the technical review timeframes applicable to the County should be stated in §705.4.07(A).

The timeframe for the County’s technical review are spelled out elsewhere in Subchapter 4 of Chapter 705. In addition, general application processing procedures are addressed in Chapter 701. These timeframes are also spelled out in TLGC Chapter 232. The County does not believe it is helpful to duplicate this information in this section. No changes to the Proposed Regulations have been made in response to this comment.

One individual commented that in accordance with TLGC Chapter 232, the County must act on the application and that the County cannot arbitrarily decide to terminate the application as outlined in §705.4.07(E).

In addition to informing the public about the way Applications will be processed, §705.4.07(E) also serves as a formal delegation of a responsibility from the Commissioners Court to the Department. This delegation allows for the County to administratively deny an Application for which the Applicant fails to respond to requests for information to the Department, and sets out the circumstances under which an Application may be rejected. TLGC Chapter 232 allows this action to be taken on behalf of the County by a designee of the Commissioners Court.³⁰ As such, the rejection of a non-responsive Application is an “action” upon an Application, as required under TLGC Chapter 232, and is not an arbitrary termination. No changes to the Proposed Regulations have been made in response to this comment.

Section 5.01 – General Information

One individual questioned whether the County had the legal authority to require building setback lines from the proposed right-of-way.

TLGC Chapter 233 authorizes counties to “(1) establish by order building or set-back lines on the public roads, including major highways and roads, in the county; and (2) prohibit the location

³⁰ TLGC §232.0025(d)

of a new building within those building or set-back lines.”³¹ TLGC Chapter 232 further authorizes counties to adopt these setback lines without a limitation period.³² The County is proposing to adopt building setback lines included in the Proposed Regulations based on this legal authority. No changes to the Proposed Regulations have been made in response to this comment.

Section 5.02 – Water, Wastewater and Utilities Information

One individual questioned how this requirement would affect the deregulation of most of these utilities.

As presented in this comment, the term “deregulation” has been interpreted as that term is used in common language. In this context, “deregulation” generally refers to the process of reducing or eliminating the regulation of a utility as a “public utility”, and typically refers to the elimination of rate controls. The County has no statutory authority to regulate “public utilities” other than those based on the statutory authority outlined in the Proposed Regulations and does not engage in the regulation of the rates those utilities charge their customers. The statutory authority granted to the County is independent of the regulation of other governmental entities, such as the State of Texas Public Utility Commission or other federal regulatory agencies. The “deregulation” of certain utilities by other jurisdictions does not directly affect the County’s regulatory program for these utilities. No changes to the Proposed Regulations have been made in response to this comment.

Section 5.05 – Lot Size Requirements

Several individuals questioned the scientific basis for making distinctions between the recharge zone for the Edwards Aquifer and the recharge zones for other important aquifers within the County, particularly the Trinity aquifer group. One individual indicating that basing this distinction on consistency with existing TCEQ regulations represents poor science and poor policy when attempting to apply it to all of Hays County. This individual further indicated that less than half of Hays County has subsurface aquifer objectives in the Edwards Aquifer, and that the Trinity aquifer group was is the subsurface objective in the western portion of the County. Geologists and hydrologists agree that because of the recharge nature of the Hill Country’s karst limestone formations that all surface lots are in the recharge zone of some aquifer. Several individuals recommended that there be no differentiation between “contributing and recharge zones” as surface pollution in either may degrade the quality of subsurface groundwater in nearby water wells used by the public, and that the various lot size tables within the regulations (including Table 705.05.01) be changed to reflect one set of values across the County. One individual indicated that this change would make the Proposed Regulations clearer and easier to administer

These comments deal with a differentiation that is present within the existing regulations adopted in 1997. This differentiation was maintained within the July 2008 publication of the Proposed Regulations. This differentiation was based on existing differentiations in TCEQ Regulations³³ as well as information that was available at the time on differences in geology and hydrology between the Edwards aquifer and other aquifers in the region. In response to these comments, the Commissioners Court convened a panel of recognized experts to address this issue. Based on

³¹ TLGC §233.032(a)

³² TLGC §233.032(a)

³³ 30 TAC Chapter 213, “Edwards Aquifer”.

the input obtained from this panel, the County believes that there are significant differences between the Edwards aquifer and other aquifers within the County (specifically the Trinity aquifer group) and the principal threats are different. The County believes that the overriding issue for the Edwards aquifer is the pollution threat posed by human activity, while the overriding issue for the Trinity aquifer group is a limitation on water availability. Due to these factors, the County has elected to maintain the differentiation included within the existing regulations and the Proposed Regulations. The County acknowledges that many of the same issues are common to all the aquifers within the County. In recognition of the differences between the Edwards aquifer and the Trinity aquifer group, the County has also proposed more stringent regulation of the use of groundwater within the Priority Groundwater Management Area within the County, which consists entirely of area occupied by the Trinity aquifer group (described in more detail below). No changes to the Proposed Regulations have been made in response to these comments.

Table 705.05.01

In reference to Table 705.05.01, one individual indicated that all instances of the term "Surface Water" should be replaced with the term "Public Water System other than Groundwater System", and that a footnote should be added for the Water Availability Heading to read, "Property partially or wholly within the CCN of a Groundwater System shall be considered as having Groundwater System availability".

This comment addresses subject matter that has been changed in response to another comment. Please refer to the response to comments provided for Chapter 701, Subchapter 3 and Chapter 715, Subchapter 1. The items referenced in this comment were modified in response to other comments that result in providing equivalent clarifications to this section.

Section 5.06

One individual questioned which enabling statute allowed the County to require the provision of parkland and open space.

Under the County's authority to regulate the subdivision of property provided in TLGC Chapter 232 the County is proposing to implement requirements for the provision of parkland and open space for non-exempt subdivisions of property through the platting process. Specifically, TLGC Chapter 232 authorizes counties to adopt rules to "promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county."³⁴ The County is proposing to adopt the requirement for the provision of parkland and open space included in the Proposed Regulations based on this legal authority. No changes to the Proposed Regulations have been made in response to this comment.

Two individuals indicated that it was reasonable and beneficial for both the County and the resident to include provisions for parkland and open space. However, these individuals indicated that it did not make a lot of sense to base this requirement on acreage rather than population, since this penalizes developments with larger lots and rewards developments with higher density. Both of these individuals suggested basing the requirement on population rather than on acreage. One of these individuals also provided some comparative parkland provision requirements for other jurisdictions.

³⁴ TLGC §232.101(a)

These comments address the basis for determining the quantity of parkland/open space allocation within the subdivision process. The basis for establishing the parkland/open space allocations was discussed during a Commissioners Court workshop in October, 2008. This intent of the proposal was to establish parkland/open space allocations that were consistent with other local jurisdictions. The consulting team performed an informal survey of the parkland/open space requirements of several jurisdictions within Hays County. Most of the local jurisdictions surveyed were municipalities with authority to regulate land use and zoning. For the purposes of those ordinances, most of the municipalities based the parkland/openspace requirements on population.

The informal survey was standardized on the basis of percentage of area of the Subject Property (i.e. the tract being developed). This was done by taking the minimum lot size within that ordinance, assigning that lot the median household size for Hays County (based on information published by the U.S. Census Bureau) and including a twenty percent (20%) allowance for common areas (e.g. roadways, etc.) The results of this informal survey yielded values ranging from one (1) acre per thirty (30) acres [3.3% of the Subject Property] to one (1) acre per 120 acres [0.83% of the Subject Property]. During the workshop discussion, the Commissioners Court elected to establish the parkland/open space allocation at one (1) acre per fifty (50) acres [2.0% of the Subject Property] based on this range. As outlined in response to other comments received, the County does not have the legal authority to regulate land use and therefore has no real basis for determining parkland/open space dedication requirements on the population occupying the proposed development. Due to this limitation, the County believes that using a percentage of the Subject Area within the range of other jurisdictions within the local area is a reasonable approach. No changes to the Proposed Regulations have been made in response to this comment.

Section 6.01 – General Information

One individual indicated that the preliminary plan requirements were onerous, and in particular the Water and Wastewater Service Plan. This individual further indicated that the purpose of the preliminary plan was to secure general approval of the subdivision plan and to review the basic layout of before investing large amounts of money in surveying and engineering design. This individual also indicated that the preparation of large reports with detailed descriptions of infrastructure was not necessary for the preliminary plan, and would ultimately be supplied in conjunction with the final plat.

This comment addresses the split of information between the preliminary plan and the final plat. In response to this comment, several discussions were held between the consulting team and the County staff. In response to this comment and these discussions, several items that were required for Preliminary Plans in the July 2008 proposal have been moved to the requirements for Final Plats. The modified language is reflected in the latest publication in Subchapters 5 and 8 of Chapter 705.

Section 7.02 – Construction Activities

One individual indicated that §705.7.02 appeared to indicate that filing of the final plat was required before construction and wondered about those that might want to file fiscal assurance and begin construction before final plat approval.

As outlined in the response to comment under §705.1.03, §705.7.02 states that construction may not begin prior to final plat approval “except as permitted under Chapter 731”. Chapter 731

specifically provides for interim authorization for construction prior to approval, as addressed in this comment. No changes to the Proposed Regulations have been made in response to this comment.

Section 7.04 – Expiration

In response to §705.7.04, one individual commented that the preliminary plan does not expire if progress is being made to complete the project.

As indicated in §705.7.04, the provisions under which preliminary plans may expire are addressed in TLGC Chapter 245.³⁵ In addition, the existing County regulations include a provision dictating the expiration of a preliminary plan if the final plat associated with that preliminary plan is not filed within twelve (12) months of the approval of the preliminary plan. The County has elected to continue this requirement in the Proposed Regulations. No changes to the Proposed Regulations have been made in response to this comment.

Section 8.01 – General Information

One individual indicated that consideration needs to be made for a surveyor signature on a final plat since it is a statement that all pins have been set, and this is typically not done until the plat is recorded and not upon submittal.

This Section of the Proposed Regulations [§705.8.01(B)] indicates that the final plat is to include a “description of monumentation used to mark all boundary...corners...in accordance with the regulations of the Texas Board of Land Surveying”. This particular requirement stems from TLGC Chapter 232 which authorizes counties to require “lot and block monumentation to be set by a registered professional surveyor before recordation of the plat”.³⁶ Based on this provision, the County’s requirements comply with the TLGC. However, a review of the requirements of the Texas Board of Professional Land Surveying (TBPLS)³⁷ indicates that the current language in this section of the Proposed Regulations may conflict with the requirements of TBPLS. To address this issue, a new provision §705.10.01(C) has been added to the Proposed Regulations as follows:

10.01 Submission of Record Plat to the Department

(C) Original signatures and original seals and signatures for licensed or registered professionals.

Section 8.02 – Floodplain and Drainage Information

In response to §705.8.02(A), two individuals indicated that it was difficult to establish finished floor elevations on large lots, since there would not be a specific building location identified. One of these individuals suggested making this requirement applicable only to smaller lots.

The purpose of providing finished floor elevations, as required under §705.8.02(A) is to provide a record to property owners and regulatory agencies regarding expected flood elevations. This information is routinely used by property owners and regulatory agencies to issue building

³⁵ TLGC §245.005

³⁶ TLGC §232.003(9)

³⁷ Texas Administrative Code (TAC), Title 22, “Examining Boards”, Part 29, “Texas Board of Professional Land Surveying”, Chapter 663, “Standards of Responsibility and Rules of Conduct”, specifically 22 TAC §663.17.

authorizations and to obtain insurance. As such the recommended finished floor elevations are important pieces of information to be contained on a final plat. This section does not specify how this information is to be presented on the final plat, but simply requires that it be presented. In most instances, recommended finished floor elevations are identified by referencing calculated base flood elevations. While it may not be appropriate to assign one finished floor elevation to a large lot, it is generally possible to establish finished floor elevation contours, similar to established base flood elevation contours. Many Federal Emergency Management Agency (FEMA) Flood Hazard Boundary Maps (FHBMs) already identify the base flood elevations by contour or elevation lines. Even in instances the FHBM do not present the base flood elevations in this way, it is generally possible to obtain the base flood elevations from the Flood Information Study (FIS) or backup information available from FEMA. For subdivisions with identified flood hazard areas, this information is also required to be evaluated as a part of the approval process under Chapter 735. As such, this information will be available to the persons preparing the Application in almost every case. As such, the County believes it is possible to establish and present on the final plat recommended finished floor elevations, even for large lots. No changes to the Proposed Regulations have been made in response to these comments.

Section 9.03 - Expiration

One individual indicated that once a final plat is recorded it should not expire, and that it should be determined if the County has the legal authority to set an expiration period for a final plat. This individual further questioned what happened to the common parkland and right-of-way that was dedicated with the final plat, and indicated that this requirement has the potential for catastrophic effects if left in place, since adjacent development may have planned their project around the dedicated right-of-way in the recorded plat.

This comment references the expiration of final plats under §705.9.03(B). The County is adopting this section of the Proposed Regulations under the authority of the Texas Local Government Code (TLGC), Chapter 245. Specifically the County is relying on TLGC Chapter 245 which authorizes a “regulatory agency” to establish expiration periods for various permits and approvals.³⁸ In this context, a “regulatory agency” includes a “political subdivision,³⁹ and “political subdivision” includes a county.⁴⁰ This provision of the TLGC authorizes the County, upon the adoption of the Proposed Regulations, to establish expiration periods for a broad range of permits, which is defined to include an “approval” or “other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.”⁴¹ The County has construed this provision to cover both preliminary plans and final plats approved following the effective date of the Proposed Regulations.

The intent of the proposed provision was to allow final plats to expire if they met the criteria for inactive projects in accordance with §705.9.03(B) of the Proposed Regulations. This would mean that there would be “no progress...made towards completion” within two (2) years of the final plat being approved, in essence meaning there would be no Regulated Roadways constructed, no utilities extended to the site, and none of the lots sold. Any progress on any of

³⁸ TLGC §245.005

³⁹ TLGC §245.001(4)

⁴⁰ TLGC §245.001(2)

⁴¹ TLGC §245.001(1)

these or similar items would mean that this specific expiration provision would not apply to that plat.

In reviewing this comment, it was determined that a provision of TLGC Chapter 232 appears to conflict with this provision in TLGC Chapter 245. Specifically, TLGC Chapter 232 makes provision for the expiration of a plat “[i]f no portion of the land subdivided under a plat approved under this section is sold or transferred before January 1 of the 51st year after the year in which the plat was approved”.⁴² This provision authorizes the expiration of a plat if no property is sold or transferred within fifty one (51) years of the plat being approved. Under this provision, it appears that a plat could expire in this 51 year timeframe even if the roadways, storm water infrastructure and other features associated with the plat had been completed. The Proposed Regulations did not enumerate this as an expiration condition for final plats.

The conditions presented in this comment appear to raise valid concerns regarding the expiration of final plats. The potential affects that the expiration of a plat may have on an adjacent property are legitimate concerns as are the concerns about the ultimate fate of the publicly dedicated land (e.g. right-of-way, parkland, open space, etc.) within the boundaries of the plat. This is particularly true since both the existing and Proposed Regulations make provision for adjacent properties connecting into previously platted rights-of-way and parkland/open space. Based on reviews and internal discussions with County staff and the attorneys representing the County on this matter, several significant changes are proposed to Section. The following revised wording is proposed for §705.9.03:

(A) Approval of a Final Plat shall expire and be of no further force and effect in the event that:

(A1) A Record Plat, as required by these Regulations, is not actually filed with County Judge’s office for signature within twelve (12) months of the approval of the Final Plat; or,

(B2) No progress has been made towards completion of the project within the project activity period. For purposes of this section, the term “project activity period” means the later of:

(1a) Two (2) years from the date of approval of the Final Plat; or,

(2a) Five (5) years from the date the first permit application was filed for the project; or,

(3) No portion of the land subdivided under a plat approved under this Chapter is sold or transferred before January 1 of the 51st year after the year in which the plat was approved.

(B) The intent of establishing an expiration period for a final plat under this Section is to allow the County to enforce future minimum size, configuration and arrangement standards on lots within the expired subdivision and is not intended to deprive the public of any use of dedicated public features within the expired subdivision. Publicly dedicated features included in any final plat that expires

⁴² TLGC §232.002(c)

under this Section shall remain subject to control by the County, including the ability to require a configuration on any subsequent plat for the affected property that accommodates at least the footprint of the public features included in the expired plat.

Section 12.01 – Applicant Sponsored Public Meeting

In response to this section, two commenters indicated that public input is generally a good idea. One of these commenters indicated that designs by committees were generally a poor substitute for the judgment of a property owner and their paid consultants who have to deal with economic realities and market forces. Both commenters further indicated that it was the County's responsibility to gather input from the Public, and that a requirement for the Applicant to host a public meeting outside of those required by State law was not warranted or likely to produce any meaningful result. These commenters indicated that the costs incurred by the Applicant would be substantial and would require them to listen to opponents who have no economic interest or expertise in development urging them to change or cancel a project that may have been in the planning stages for months or years. Both commenters further recommended that the Applicant Sponsored Public meetings could be encouraged, but they should not be mandatory, unless the County wants to pay for them.

This comment directly addresses the policy decision by the County to require Applicants for larger developments (as defined under §701.10.04) to host (including covering associated costs) a public meeting. While the County acknowledges that the requirement to host such a meeting does place an administrative and cost burden on the Applicant, the County also acknowledges that this burden arises from the Applicant's desire to obtain a development approval from the County. During the initial drafting process, the County received recommendations from the stakeholder committee to provide opportunities for public input early in the process for the approval of large developments. This recommendation was based on providing the public an opportunity for airing their concerns early in the process, and to allow Applicants to make changes they deemed appropriate or that the County determined were necessary prior to incurring significant planning and design costs. The approach of requiring the Applicant to develop a conceptual plan and to host a public meeting was the County's solution to address both of these issues. The County believes that the approach outlined in the Proposed Regulations is an appropriate response that balances an Applicant's interest to develop at a reasonable cost with the public's interest to ensure that development occurs in accordance with applicable public policy and regulation. No changes have been made to the Proposed Regulations in response to these comments.

One commenter repeated a comment offered in connection with §701.10.04(C), indicating that the notice requirements for an Applicant Sponsored Public meeting was onerous and unnecessary.

Please refer to the response offered for the original comment under §701.10.04(C). No changes to the Proposed Regulations have been made in response to this comment.

Chapter 711 – Site Development Review and Permitting

One commenter indicated that this is a poorly conceived and written Chapter. Two commenters indicated that the submittal requirements are the same as for a subdivision, and that a person building a garage on his lot or paving his driveway should not be required to submit massive amounts of information and hire numerous consultants. These commenters further indicated that

the stated purpose of the Proposed Regulations is to simplify, avoid delays, and save expense, and that none of these objectives were met under the proposed wording. Both commenters indicated that some streamlined procedure ought to be appropriate for a small, simple project as opposed to a large development, and were concerned that, as written, smaller projects would be required to submit the same information. One commenter indicated that the legal authority claimed under Texas Local Government Code Chapters 232, 233 and 234 does not specifically authorize site plan permitting and that this proposed action by the County is out of proportion to any authority granted by the State. This commenter further indicated that the County may have authority to permit some specific items, such as driveway connections and building in flood plains, but to claim the same powers as a home rule City is over reaching. Two commenters indicated that, as written, the language provides no agricultural exemption, and that if a rancher builds a barn next to his house or plows his field, he would be required to obtain a permit from the County. Two commenters also questioned whether the construction of a home or business on an existing platted lot would require a site development permit.

These comments appear to focus on the phase “Development Authorizations” in §711.1.01, and further appear to be based on a misunderstanding about the County’s intent. The County is adopting this Chapter to address general processing procedures for permits and other approvals that are not subdivisions. While this distinction is provided in several locations within the Proposed Regulations, the lack of specification of this distinction within this Chapter may lead some to conclude that other types of Development Authorizations issued by the County (e.g. driveway permits, OSSF permits, etc.) are required to provide the same level of detail as a subdivision. This overly broad interpretation is not intended and is not authorized under existing Texas state statutes on which the County is relying to adopt the Proposed Regulations. To better reflect the intent of this Chapter, the title has been modified as follows:

Site Development Review and ~~Permitting~~Development Authorizations

To clarify the County’s intent and limits on legal authority, the wording of §711.1.01 has been modified as follows:

This Chapter shall govern the issuance of various types of development reviews and Development Authorizations based on other Chapters within these regulations. Development Authorizations and permits governed under this Chapter shall include:

(A) Flood Hazard Area permits

(B) On-Site Sewage Facility (OSSF) permits

(C) Manufactured Home Rental Community permits

(D) Use of County Properties or Facilities permits

(E) Regulated Land Use/Location Restriction permits

Section 1.06 – [Unidentified]

In response to §711.1.06 [sic] one individual questions under what authority can the County require another governmental entity to get approval to provide utility service from the County, and questioned who would pay for this requirement?

This comment appears to have been offered in response to an older version of the Proposed Regulation. This general subject matter has been addressed in responses to similar comments received under other Chapters (see specifically response to comments under §705.1.04). No changes to the Proposed Regulations have been made in response to this comment.

Section 2.02 – Additional Application Information and Section 4.02 – Additional Application Information

In reference to §711.2.02(B) and §711.4.02(B), one individual questioned under what authority the County could ask for a specific land use and consider that information as part of the review process.

This general subject matter has been addressed in responses to similar comments received under other Chapters (see specifically response to comments under §705.4.03). The County utilizes land use information in evaluating whether to issue a number of different types of permits and approvals governed by this Chapter (see the listing provided under the response to comments under §711.1.01). The County is required or authorized to request land use information under the enabling statutes governing each of these programs. As discussed in the response to comment under §705.4.03, the permits and approvals issued by the County are based on this land use information, and therefore the County is authorized to request this information. No changes to the Proposed Regulations have been made in response to this comment.

Chapter 715 – Water and Wastewater Availability

Two individuals commented that this Chapter requires water and wastewater certifications for any activity that requires a County “Development Authorization” and was concerned that building a home, a structure such as a barn, or paving a driveway on an existing platted lot or ranch would now require engineering studies and utility certifications. One of these commenters further indicated that the County did not have the statutory authority to require these studies.

This comment appears to focus on the phrase “in conjunction with the issuance of Development Authorizations” in §715.1.01. The County is adopting this section to address water and wastewater availability demonstrations for Subdivisions and for Manufactured Home Rental Communities. While this distinction is provided in §715.1.03, the wording of §715.1.01 may lead some to conclude that other types of Development Authorizations issued by the County (e.g. driveway permits, OSSF permits, etc.) are required to make water and wastewater availability demonstrations. This overly broad interpretation is not intended and, as the commenter references, there is insufficient statutory authority for the County to adopt water and wastewater availability demonstration requirements for Development Authorizations other than Subdivision Plats and Manufactured Home Rental Community Permits. The wording in §715.1.01 has been revised to replace the generic “Development Authorizations” with “approval of subdivision plats” and the “issuance of Manufactured Home Rental Community permits”.

Two individuals indicated that the utility certification requirements may be applicable to new subdivisions under state law, but they were concerned that the County’s regulations overlap and

intrude into specific authorizations of Groundwater Conservation Districts, the TCEQ and certain special districts. These commenters indicated that they did not believe that the County was empowered to regulate special districts or the use of surface water and that a plat note indicating that lots within the subdivision could not be occupied until it is connected to an approved utility provider. One individual also questioned under what authority the County could require another governmental entity to obtain approval to provide utility service from the County and who would pay for this requirement.

These comments have many similar elements to comments regarding utility certifications for subdivisions. For additional information regarding a response to these issues, please refer to the response under §705.1.04. This comment also addresses the County's relationship to other entities with overlapping jurisdiction. As noted in that response, TLGG §232.106 authorizes certain Counties to regulate the connection of utilities in accordance with TLGC §232.0291, even if the utility required to obtain the certification is another governmental entity or subdivision of the State. While the exercise of this specific authority (i.e requiring utility certification to enforce the proper platting and subdivision of property as mandated under Texas law) under the TLGC may regulate certain aspects of activities by other governmental entities, it does not constitute the broad regulation of special districts or over the use of surface water. The County believes that the exercise of this authority was anticipated by the legislature and was specifically acknowledged as normal interaction between governmental entities with overlapping jurisdiction.

In addition, the commenter's proposed solution of requiring a plat note indicating that lots should not be occupied prior to approved utility service does not address the root problem that is the focus of the proposed provision. As outlined in the response to comments under §705.1.04, the purpose of the utility certification is to prevent utility providers from furnishing utility service to developments that do not meet the County's requirements. No changes to the Proposed Regulations have been made in response to these comments.

New Section 1.04 – Water System Classification and Requirements

In reference to Chapter 701, Subchapter 3, one individual commented that the Proposed Regulations clearly define the differences between the types of water systems allowed.

As outlined in the response to this item in Chapter 701, Subchapter 3, certain general definitions have been modified and new definitions added to the Proposed Regulations in response to this comment. Additional changes in response to this comment are discussed in the responses in Chapters 705 and 741 that reference the type of water supply system to make reference to the new language in these definitions. In response to this comment, a new Section 1.04 has been added to Chapter 715 that reads as follows:

Section 1.04 Water System Classification and Requirements

Under authority granted to the County under the Texas Water Code and the Texas Local Government Code, the Commissioners Court established classifications for water supply sources recognized under these Regulations to implement the minimum lot sizes requirements in Chapters 705 and 741. Specific definitions for these classifications are provided in Subchapter 3 of Chapter 701.

(A) Local Groundwater System

A Local Groundwater Supply System is any water supply system that obtains greater than one third of its overall supply from Local Groundwater. Applicants that plan to serve any phase of a development with Local Groundwater Supply System must comply with the minimum lot size and other requirements contained in these Regulations for Local Groundwater Supply Systems, except as outlined in §715.1.04(B). As outlined in the remainder of this Chapter, water supply systems that use Local Groundwater must comply with the requirements stipulated in this Chapter for the use of that Local Groundwater in any quantity. For implementation purposes, this classification of water supply systems is further subdivided into Public Local Groundwater Supply Systems and Non-Public Groundwater Supply Systems. Public Local Groundwater Supply Systems are those owned and/or operated by a governmental entity recognized under the Texas Local Government Code or any system designated a Public Water System by the Texas Commission on Environmental Quality. Non-Public Local Groundwater Supply Systems are any Local Groundwater Supply System that does not qualify as a Public Local Groundwater Supply System, including, but not limited to individual water supply wells.

(B) Other Water Supply Systems

Systems which are not Local Groundwater Supply Systems are considered Other Water Supply Systems. Other Water Supply Systems obtain more than two thirds of their total supply from any combination of surface water, rainwater harvesting and groundwater that is not Local Groundwater. The Commissioners Court will consider on a case by case basis requests to reclassify certain Local Groundwater Supply Systems as an Other Water Supply System for the purposes of serving a specific development. Local Groundwater Supply Systems that obtain greater than one-third, but less than one-half of their the total supply from Local Groundwater, may request this re-classification from the Commissioners Court, for the purposes of serving a specific development.

Applicants wishing to request re-classification of a specific system shall submit within ten (10) working days of making an Application for a Development Authorization a letter to the Department requesting this request be considered by the Commissioners Court. If the request for re-classification is approved by the Commissioners Court, the Applicant and/or the Permittee will be required to enter into a Development Agreement with the County pursuant to Chapter 771 of these Regulations. The initial request letter shall include contact information for all parties that will be included in drafting the Development Agreement with the County. Within ten (10) working days of receipt of this request, a County representative will contact the Applicant or his designated representative regarding the proposed Development Agreement. A development agreement shall be drafted within thirty (30) working days, unless all parties involved on an extended timeline.

Applicants that plan to serve all phases of a development with an Other Water Supply System may utilize the minimum lot size and other requirements contained in these Regulations for Other Water Supply Systems.

Section 2.01 – Water and Wastewater Service Plan Required

In reference to Section §715.2.01, one individual indicated that having a Certificate of Convenience and Necessity (CCN) may preclude some options for backup service.

While this comment was offered in response to §715.2.01, that provision does not address backup service. However, §715.3.02 and §715.4.02 address providing a description for backup water and wastewater service, respectively. However, these provisions do not mandate backup service, but simply require a “statement as to whether there are plans for alternative or backup ... service”. If backup service was precluded in response to limitations imposed in a CCN issued by the TCEQ, then these limitations would need to simply be referenced and described in the Water and Wastewater Service Plan. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.01 – Applicability

One individual commented that the applicability of Chapter 715 was not the same as the exemptions for subdivisions occurring in Chapter 705 and that the exemptions allowed in Chapter 715 were preferable.

This comment was offered in response to §715.3.01, which identifies the types of developments that are required to demonstrate water availability in conjunction with obtaining a Development Authorization. The list of exemptions for subdivisions occurring in Chapter 705 (§705.3.01) addresses subdivisions that are exempt from the platting process. The exemptions listed in §715.3.01 represent the category of developments that the County has elected to exempt from the requirement to demonstrate water availability. These lists have two separate and distinct purposes and the fact that a subdivision has been exempted from the requirement to demonstrate water availability does not mean that same subdivision has also been exempted from the platting process. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.03 – Notification for All Developments Using Groundwater

In reference to Section §715.3.03, one individual questioned whether the County had authority to enforce restrictions and limitations imposed by another governmental entity on a water or wastewater customer.

This comment appears to focus on the phrase “imposed by other entities”. In conversations with this commenter, it appears that the concern was that the County would take requirements of other entities and attempt to incorporate them into the County’s enforcement program. This was not the intent of this provision. This provision was intended to be a notice provision to notify that the in conjunction with the issuance of Development Authorizations” in §715.1.01. These comments have many similar elements to comments regarding utility certifications for subdivisions. For additional information regarding a response to these issues, please refer to the response under §705.1.04. This comment also addresses the County’s relationship to other entities with overlapping jurisdiction. As noted in that response, TLGG §232.106 authorizes certain Counties to regulate the connection of utilities in accordance with TLGC §232.0291, even if the utility required to obtain the certification is another governmental entity or subdivision of the State. While the exercise of this specific authority (i.e requiring utility certification to enforce the proper platting and subdivision of property as mandated under Texas law) under the TLGC may regulate certain aspects of activities by other governmental entities, it does not constitute the broad regulation of special districts or over the use of surface water. The

County believes that the exercise of this authority was anticipated by the legislature and was specifically acknowledged as normal interaction between governmental entities with overlapping jurisdiction. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.05 – Water Availability Demonstrations Using Private Water Wells

In reference to Section §715.3.05(B), one individual questioned how the “marketers” would even know a “renter” and indicated that this statement should be struck in its entirety.

As identified in the responses to the general comments regarding the applicability of Chapter 715, it applies to subdivisions and Manufactured Home Rental Communities. In general, persons that acquire lots in subdivisions are considered purchasers, while persons who procure the use of a manufactured home in a Manufactured Home Rental Community would be considered renters. This provision requires the individuals marketing either type of property to disclose to the individuals that will use that property (either purchasers or renters) the extent to which water and wastewater service is available to that property. The County believes this is an important action to ensure orderly development, as authorized under TLGC Chapter 232. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.06 – Additional Requirements for Subdivisions Served by Individual Water Wells in Priority Groundwater Management Areas

In reference to Section §715.3.06(B), one individual questioned whether the County was going to provide access to adjoining properties so that the Applicant could perform a walking receptor survey for water wells located within five hundred feet (500') of the boundary of the Subject Property.

This comment appears to have been offered in response to an earlier draft of the Proposed Regulations and not the formal draft published in July 2008. As identified in the text of §715.3.06(B) from the July 2008 publication draft, the person preparing the water availability certification is to “perform a walking receptor survey around the perimeter of the Subject Property to identify the visual location of apparent undocumented water wells and to visually confirm the presence of documented water wells within five hundred (500) feet of the boundaries of the subject property”. This provision was not intended to alter any right or prohibition on property access, but was intended to require the person completing the certification to attempt to confirm the presence of water wells on adjacent property, as viewed from the Subject Property. The County believes that this type of approach is routinely used in the industry and is relevant to achieving the regulatory objectives included in the Proposed Regulations. No changes to the Proposed Regulations have been made in response to this comment.

In reference to Section §715.3.06(D) and (E), one individual indicated that it did not seem logical to apply regional estimated recharge rates to the specific footprint of the Subject Property, and indicated that the County needs to evaluate the legality of limiting groundwater use to a specific recharge potential in light of current state laws governing the usage of groundwater.

Section 3.09 – Water Availability Demonstrations Utilizing Rainwater Harvesting

One individual indicated they were glad to see the County was acknowledging rainwater harvesting as a viable source of domestic water supply within the Proposed Regulations. This

individual further indicated that as growth continues to occur in the surrounding counties, the additional development density could not be supported on limited groundwater resources, and felt that a properly designed rainwater harvesting system could provide a sustainable source of high-quality water even through a repeat of the drought of record, since rainwater harvesting for domestic use had been practiced for thousands of years and was commonly used in the Texas Hill Country by our forefathers. This individual indicated that his comments were based on eight years experience using a rainwater harvesting system as the sole source of potable and non-potable water for his home. This individual further commented that the “Texas Manual on Rainwater Harvesting”⁴³, referenced in the Proposed Regulations is an excellent reference and guide in the design and implementation of a domestic rainwater harvesting systems.

In response to §715.3.09(B), this individual indicated that the recommended minimum consumptive use of 50 gallons per person per day included in the Proposed Regulation is based on municipal use and is an average of all municipal use divided by the population which is not representative of residential per capita use for rainwater harvesting purposes. This individual indicated that typically homeowners dependent on a rainwater harvesting system as their sole source of water supply are more conservation minded and their typical usage is estimated at 35 gallons per person per day. This individual indicated that his own in-home use averaged from 49 to 57 gallons per day, or 25 to 29 gallons per person per day for two residents, periodic out of town guests and numerous parties and get-to gathers. This individual further indicated that he typically used 150 gallons per day as the design value for a three person household, including 45 gallons per day for miscellaneous uses. ($3 \times 35 + 45 = 150$).

These comments address several elements of the design of rainwater harvesting systems that are used to demonstrate water availability for developments approved by the County. The commenter correctly indicates that most individuals that utilize rainwater harvesting for their sole source of long-term water supply adapt their water usage habits to match the amount of water available from that source. While this process is beneficial from an overall water conservation standpoint, the County has some additional considerations that must be addressed in the process of regulating development, specifically as it relates to water availability.

Along with the exercise of its authority under TLGC Chapter 232, the County has assumed a regulatory burden to establish and enforce minimum standards for water availability for those developments it approves. In executing those duties, the County specifically intends to protect those members of the public that in the future may purchase interests in developments the County has approved. While the County cannot guarantee the availability of water in any particular instance, by exercising its regulatory authority, the County assumes a burden of ensuring that Applicants for development authorizations make a reasonable demonstration that adequate water will be available to service the proposed development at full build-out. Given the growing reliance on rainwater harvesting in the Texas Hill Country, it is reasonable for the County to assume that at least some of the members of the public whose interests the County is intending to protect (i.e. those purchasing lots in the future) will be versed in the operation and maintenance of rainwater harvesting systems. However, the County does not believe that it is reasonable to assume that all, or even a majority of the members of the public whose interests the County is intending to protect, will be familiar with rainwater harvesting systems.

⁴³ “Texas Manual on Rainwater Harvesting - Third Edition”, Texas Water Development Board, Austin, Texas, 2005.

This issue was discussed extensively with the stakeholder committee during the process of drafting the Proposed Regulations. The stakeholder committee recommended some reductions in the water capacity demand requirements for rainwater harvesting as compared to the TCEQ's public water system criteria. Based on this recommendation, the County has elected to use the upper end of the range indicated in the Texas Water Development Board's (TWDB's) "Texas Manual on Rainwater Harvesting" (TMRH), referenced in the comment. Specifically, the recommendation to use fifty (50) gallons per person per day originates directly from the TMRH.⁴⁴ No changes to the Proposed Regulations have been made in response to this comment.

In response to §715.3.09(C), this individual indicated that the proposed requirement that a standard design and operating and maintenance plan for a rainwater harvesting system be prepared by a licensed professional engineer was unnecessary, costly, and provided no benefits to the consumer. This individual further indicated that Texas state law encouraged each institution of higher education to develop a curriculum to include rainwater harvesting, and that to date there are few engineers versed in the art of designing a rainwater harvesting system. This individual felt that the design, operation and maintenance of a rainwater harvesting system is a simple, logical and straight forward process that did not require the expertise of a licensed professional engineer, and that the American Rainwater Catchment Systems Association and the Texas Rainwater Catchment Association provide training for the Rainwater Catchment System Accredited Professional. This individual indicated that this alternate training provides the necessary understanding to design, install and maintain a rainwater harvesting system.

These comments address the requirement in the Proposed Regulation that a "standardized design" for a rainwater harvesting system be prepared by a professional engineer for the proposed development. The County does not disagree that other individuals may be qualified to design individual rainwater harvesting systems. However, the Proposed Regulations do not require that a professional engineer design the individual rainwater harvesting systems used at the proposed development. For the purposes of demonstrating water availability, the County has elected to require that a standard design for a rainwater harvesting system be prepared by a professional engineer. The County made this decision based on several factors. Under Texas state statutes, a professional engineer must oversee the design of public water supply systems. Based on this requirement, other types of water systems serving proposed developments would have to be designed by a professional engineer. In addition, professional engineer are required by Texas state statutes to protect public health and safety, and are regulated by the Texas Board of Professional Engineers.⁴⁵ Designers with other types of credentials may not have this level of oversight. In addition, the type of design and evaluation work being performed in conjunction with a proposed development likely falls under the practice of engineering.⁴⁶ Based on the similarities and the requirement for the use of professional engineers for designs related to water availability demonstrations using other sources of water, the County has elected to that professional engineers prepare the require standardized designs for rainwater harvesting systems submitted to demonstrate water availability for developments considered under these Regulations. No changes to the Proposed Regulations have been made in response to this comment.

⁴⁴ "Texas Manual on Rainwater Harvesting", Page 33, "Estimating Demand: 'A water-conserving household will use between 25 and 50 gallons per person per day'."

⁴⁵ Texas Occupations Code, Title 6, "Regulation of Engineering, Architecture, Land Surveying, and Related Practices", Chapter 1001, "Engineers", specifically TOC §1001.201.

⁴⁶ TOC §1001.003.

This individual recommended that the Proposed Regulations include a minimum storage capacity for the system and provide for a knowledgeable county reviewer to review the installation proposal. This individual further indicated that each rainwater harvesting system has common components, but each system is specifically designed and installed to meet unique site conditions. This individual was concerned that the County was attempting to “over regulated” rainwater harvesting to the point that a valuable source of sustainable high-quality water would be regulated out of existence due to fear of the unknown. This individual was also concerned that the Proposed Regulations did not stipulate minimum production rates for private wells or the water quality or any minimum storage volumes that the groundwater system must meet; the same decisions should be left to homeowners when considering a rainwater harvesting system for their home, and that the only variation to this would be requiring a minimum 20,000 gallons of storage for a rainwater harvesting system.

This comment recommends that the Proposed Regulations incorporate specific a minimum storage capacity. While the County does not disagree that adequate storage is critical to both the design and operation of a rainwater harvesting system, the County believes that the requirement to establish the minimum storage capacity is a part of the standardized system design. Rather than identify a proscriptive minimum storage capacity, the wording included in §715.3.09(C) requires that the professional engineer identify “minimum requirements”. While it was the intent of this section to include the identification of any minimum storage capacity in the standardized design, the wording has been modified as follows to clarify this intent:

...any minimum requirements (e.g. minimum storage tank sizes) and appropriate adjustment...

One individual suggested adding a new section 3.09[sic] describing the procedures to request a determination that a Public Water System is not a Groundwater System, to establish the criteria for classification as a groundwater system, and to describe the intent for considering groundwater systems with the Proposed Regulations.

This comment addresses subject matter affected by changes in response to comments in other parts of the Proposed Regulations. Specifically, Chapters 701, 705 and 741, as well as Subchapter 1 of this Chapter have been modified to address these issues.

Chapter 721 – Roadway Standards

One individual indicated that Hays County Roads would exceed the design standards established by the Texas Department of Transportation (TxDOT) for the Farm to Market (FM) system and questioned whether the public wanted subdivision roads that exceeded the design standards of TxDOT.

This comment provides no references to specific provisions within the Proposed Regulations where the commenter alleges that the Hays County Roadway Standards exceed the requirements for the TXDOT FM system. In addition, this comment provides no outside supporting information substantiating the claim made in this comment. A review of the Proposed Regulations by the consulting team did not identify any specific instances where the proposed roadway standards exceeded the standards of the TXDOT FM standard. If such a case exists, it will be based on existing Hays County Roadway Standard promulgated by the Hays County Engineer. There is no Texas state statute that requires or restricts County roadways to

conformance with TXDOT FM system standards. No changes to the Proposed Regulations have been made in response to this comment.

Section 2.02 – Country Lane and Section 2.03 – Local Roadway

One individual commented that the descriptions for Country Lanes and Local Roadways needed to specify a design capacity in terms of Average Daily Traffic (ADT).

Based on a review of this comments, the County believes it would be beneficial to include the suggested information. The language of §721.2.02 and §721.2.02 has been modified as follows:

§2.02. Country Lane

A Country Lane shall be a one or two lane paved roadway, without improved shoulders, and considered a Special Purpose Road with a design capacity of up to 100 ADT in accordance with AASHTO design standards, and third-class roadways in accordance with TTC Chapter 251.

§2.03. Local Roadway

A Local Roadway shall be a two lane paved roadway, with improved shoulders or curb and gutter, and considered a Local Rural Road with a design capacity of between 101 and 1,000 ADT in accordance with AASHTO design standards, and third-class roadways in accordance with TTC Chapter 251.

Sub-Chapter 4 – Private Roadways

One individual indicated that Subchapter 4, as proposed, eliminates the ability to use innovative designs for subdivisions.

This comment purports that Subchapter 4, which deals only with Private Roadways, eliminates the ability to practice innovative design. The County has allowed in the past and intends to allow in the future through the Proposed Regulations, the use of Private Roadways in certain circumstances. While the County's existing regulations do require that private roadways serving approved developments be properly maintained, these existing regulations do not identify the party or parties responsible for the maintenance, nor do they address the geometric and surface requirements to ensure safe passage of emergency and public use vehicles (e.g. ambulances and school buses). The Proposed Regulations are intended to address these on-going maintenance and public safety issues and are not intended to restrict innovative design practices. The County believes that the flexibility provided within the Proposed Regulations do allow the use of innovative design in subdivision planning. While the comment address the use of private roadways in subdivisions, the requirements of Chapter 721 (including Subchapter 4) would also apply to the use of private roadways within Manufactured Home Rental Communities. No changes to the Proposed Regulations have been made in response to this comment.

Section 4.02 – Criteria for Determining Private Roadway Status

One individual questioned the reasoning behind requiring large lots (greater than 5 acres) for subdivisions served by private roadways and requiring a minimum of 50 lots. Another individual indicated that requiring subdivisions to have an average lot size of 5 acres to be able to use private roadways is onerous and subjective and removes the designer's ability to use innovative design practices

The first comment appears to be based on a misunderstanding of the criteria for the use of private roadways within subdivisions and Manufactured Home Rental Communities. Under the language of the Proposed Regulations, developments may utilize private roadways under two (2) sets of conditions:

- The development has an average minimum lot size of at least five (5) acres, and the person(s) responsible for maintenance of those roadways have executed a maintenance agreement with the County that includes financial assurance [§721.4.02(A)-(C)]; or,
- The development is a master-planned residential community with at least fifty (50) lots that has executed a Development Agreement with the County.

These provisions outline two alternatives for the use of private roadways and are not two compounded requirements for one alternative. The County believes that the use of Private Roadways is appropriate where they can be properly maintained, provide adequate emergency/public vehicle access, and are consistent with a “rural character development”. The County further believes that these objectives for the use of private roadways can be accomplished through the Proposed Regulations as structured. No changes to the Proposed Regulations have been made in response to this comment.

Section 5.07 – Shared Access Driveways

In reference to §721.5.07(C), one individual indicated that many shared access driveways are constructed to minimize driveway cuts onto the roadway and are put in like loops through lots to provide common access points. This individual further indicated that the wording of this provision removes the ability to do this and will force individual drives if shared drives must have 500’ spacing.

This comment addresses language that has been in the County’s existing regulations since 1997. Based on a review by the consulting team and County staff, there were no reported instances where this provision created an unworkable restriction on developments considered for approval in that time period. No changes to the Proposed Regulations have been made in response to this comment.

Section 5.08 – Coordination with “911” Addressing System

One individual indicated that they did not generally receive address plats from the County 911 Coordinator until after the final plat is recorded or approved by the Commissioners Court. This individual further indicated that this section appears to ask for this information at the application stage.

This comment appears to address the requirement that the Applicant establish a “911” address for all lots or components of the development, as outlined in Subchapter 16 of Chapter 701, and specifically §701.16.03. While the comment appears to address only subdivision plats, the requirements of §721.5.08 also apply to Manufactured Home Rental Communities. As a part of the stakeholder committee process and consultations with County staff, the consulting team recommended that the establishment of “911” addresses occur prior to approval of the final record documents, so that this information could be reflected on the filed record documents. The intent of the language in §721.5.08 is to set forth two (2) new policy objectives for the County. First, it places the burden for interaction with the County “911” Coordinator upon the Applicant. Secondly, it requires that future subdivisions and Manufactured Home Rental Communities have “911” addresses established for all components of the development prior to filing the record

documents. The County believes that this is good public policy going forward and serves an important public safety purpose in ensuring “orderly development”. No changes to the Proposed Regulations have been made in response to this comment.

Section 5.10 – Construction Quality Assurance for Regulated Roadways

In reference §721.5.10(A), one individual indicated that “distribution of asphalt” is not standard nomenclature for any common quality assurance test, and questioned what was intended.

The term “distribution of asphalt” is a general description of the uniformity of placement for liquid asphalt materials. Asphalt distribution is generally measured in gallons per square yard, in accordance with the standard specifications of TXDOT.⁴⁷ The County believes that this term is consistent with standard industry practice. No changes to the Proposed Regulations have been made in response to this comment.

Table 721.02 – Design Requirements Based on Roadway Classification

Several individuals expressed concerns with this table. One individual indicated that for Country Lanes the minimum driveway spacing exceeds the minimum lot width, which means that every third lot would not get a driveway. This individual also indicated that the minimum lot frontages for Minor and Major Collectors exceeds any criteria he was aware of and appeared to be a methodology to arbitrarily control lot size. Another individual indicated that the Average Daily Traffic (ADT) values for all of the roadways were too small. Two individuals indicated that the minimum lot frontages may conflict with the ability to design cluster developments.

In reviewing these comments, the County determined that an incorrect version of this table was inadvertently included in the July 2008 proposal. The table as published, did not agree with the County’s existing requirements. A corrected table has been included with the latest publication of the Proposed Regulations. The County believes that this corrected table addresses the comments offered in response to the table in the July 2008 publication.

On individual questioned the reasoning for and the legal authority behind the County’s proposal to establish building setback lines. This individual indicated that a setback of fifty (50) feet exceeds any setback for typical residential development and since a minor collector can only provide service for up to 400 Average Daily Traffic (ADT, which equates to about 40 homes) there will be a considerable amount of development with major collectors which will create problems for most residential developments.

This comment contains similar subject matter to a comment offered in response to proposed §705.5.01. As outlined in the response to that comment, the County is relying on authority granted under TLGC Chapters 232 and 233 for the establishment of the setback lines. The specific setback distances included in the Proposed Regulations are within the maximum allowable setback distances authorized under TLGC Chapters 232 and 233. No changes to the Proposed Regulations have been made in response to this comment.

⁴⁷ Item 316, “Surface Treatments”, Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, Texas Department of Transportation, June 1, 2004, specifically Item 316.4(G).

Chapter 725 – Storm Water Management Standards

Section 2.01 - Publically Maintained and Dedicated Facilities.

One individual indicated that this provision obligates the owner to create a public easement to contain a “facility” – typically a detention pond, and further obligates the County to maintain it. This individual further indicated that the cost to fund the maintenance activities to accomplish this will be quite large and may negatively affect everyone in the County.

This comment appears to be based on a misinterpretation of this provision. This provision does not independently require that a particular storm water management facility be dedicated to the public. It simply provides the procedures required for those facilities that will be dedicated to the public. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.01 – Design of Storm Water Management Facilities.

One individual indicated that it makes little sense in a regional planning effort to assume fully developed upstream conditions for the hydrology, and that this requirement was onerous and unnecessary. Another individual indicated that this requirement was very conservative and would result in additional expense for storm water management facilities. This individual also agreed that flood plains should be based on fully developed conditions, but felt it was common practice to design storm water management facilities based on existing upstream conditions with the assumption that all other upstream development should also be required to incorporate similar structures within their development.

This comment characterizes the proposal to require developments consider fully developed upstream conditions as a “regional planning effort”. The County believes that these requirements are not “regional plans” but rather interim drainage criteria until such time as the County has adopted a master drainage plan with drainage design criteria. The County is currently developing this plan. This provision anticipates the adoption in the future of these County’s drainage criteria and allows those criteria to govern, once they have been adopted. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.02 – Control of Runoff Rate and Volume

Several individuals commented on the requirement that developments limit the volume of their storm water discharges to pre-development conditions. One individual indicated that development cannot maintain “volume” of runoff, and felt that if runoff volume cannot be increased, then no development could occur and this would constitute a regulatory taking. Another individual indicated that generally only the rate and not the volume of flow is held to a pre-development level, and felt that this requirement would practically preclude any future development. Another individual indicated that the concept of “no increase in storm water volume runoff” was quite simply absurd. Several individuals indicated that this requirement could only be met through retention/irrigation and that this technology was extremely expensive, required large amounts of land area, and relies upon non-passive systems that frequently fail and require intensive maintenance regimes. One of these individuals indicated that it appeared to be contrary to the public interest to propose this requirement for an area where recharge enhancement is heralded, and that increased duration of storm water flow would result in increased opportunity for recharge via stream bed recharge features. Several individuals indicated that this requirement was outside the authority granted under the Texas Water Code. One of these individuals indicated that legal precedent under the TWC has consistently held that

development may not "damage" other properties by changes in flow characteristics, and that "damage" has been repeatedly found to be increased water surface elevations on adjacent properties, increased (erosive) velocities downstream, capturing (withholding water) from reaching downstream properties. This individual further indicated that increased duration of flow (i.e. net increase in volume discharge from properly designed detention not resulting in increased flow rate) has not historically been found to meet this standard of "damage" under the Texas state statutes from which the County states it derives its authority. Several individuals also expressed concern about the economic impact of this proposal. One of these individuals indicated that it would make criminals out of every existing homeowner and bankrupt the County. Other individuals indicated that this provision would be difficult or impossible to enforce.

The principal intent of the requirement to control post-development runoff volume in the July 2008 proposal was to minimize erosion within natural watercourses due to the cumulative effect of excessive velocities resulting from increased flow volumes from developed property. In response to these comments, the Commissioners Court convened a panel of recognized experts to address this issue. Based on the input obtained from this panel, as well as additional research performed by the consulting team, the County has elected to modify this requirement. The language in §725.3.02 has been modified to eliminate the requirement to control total runoff volume and to address the concerns about erosion within natural watercourses through the control of discharge rate. The language has been modified as follows:

Storm water runoff from any proposed development ~~may not be released~~ that is discharged from the Subject Property onto adjacent property owners, into any other county storm water management facility or any such storm water management facility associated with an existing roadway, whether public or private, must be released at a controlled rate or volume. For rainfall events up to and including the five (5) year event, storm water may be discharged under the post-development conditions at no more than one-half (1/2) of the maximum discharge rate under pre-development condition. For storm events exceeding the five (5) year event, storm water runoff may be discharged under the postdevelopment conditions at a rate no greater than when the property was in its undeveloped condition.

Section 3.05 – Maximum Headwater Elevation for Roadway Crossings

In reference §725.3.05(A), one individual indicated that the design criteria for a maximum weir flow velocity of ten (10) feet per second was wrong and that the structure velocity would be ten (10) feet per second, but that the weir flow would be much higher. This individual further commented that there is no way to design a weir flow of 10 feet/sec.

This comment appears to take issue with the design standard recommended for weir flow across roadways, and appears to be based on a misunderstanding of the intent of this design standard. The velocity through and over a storm water structure (e.g. a culvert or low water crossing) is dependent on the design and configuration of the structure and the water flowrate passed by the structure. While the County believes that it is possible to design structures to this criteria, it may require additional engineering evaluation and increased structure size. The intent of this new design criteria is based on several public safety discussions from the stakeholder committees concerning injuries and deaths from automobiles washed away while attempting to cross flooded roadways.

In response to these discussions, the consulting team reviewed the requirements of other Texas Hill Country local governments to determine if any other their design criteria addressed this issue. Several of these local governments referenced a maximum water flow velocity of ten (10) feet per second across the top of the roadway. In discussions with one of these entities it was indicated that the ten (10) foot per second flow velocity, combined with a water depth of six (6) inches generated sufficient force on the wheels to allow an average automobile to be displaced from the roadway, and possibly swept away. The basis for instituting this new design criteria is based in a public safety issue and not a hydrology (water flow) issue. While a general design criteria of this nature will not guarantee safe passage to every automobile under these design conditions, the County believes that this criteria advances an important public safety issue. No changes to the Proposed Regulations have been made in response to this comment.

In reference §725.3.05(B), one individual indicated that the requirement to place a depth gauge at all places in a subdivision where the depth of the 100 year flow exceeds the elevation of the roadway poses a ridiculous roadside hazard and cannot be done. This individual further indicated that these gauges would be located everywhere within a subdivision and therefore meaning nothing to the residents of the subdivision. This individual suggested that this criteria might be applicable only on major and minor arterials.

This comment addresses language that has been in the County's existing regulations since 1997. Based on a review by the consulting team and County staff, there were no reported instances where this provision created an unworkable restriction on developments considered for approval in that time period. In addition, the County does not agree with this individual's characterization of this requirement as a "ridiculous roadside hazard". These depth gauges are intended to provide drivers on flooded roadways with the approximate depth of the water over the roadway in hopes of deterring attempted automobile passage in unsafe conditions. The County believes that this requirement advances an important public safety purpose. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.06 – Public Safety Considerations

One individual indicated that to make driveway culverts meet TxDOT standards would require the installation of safety end treatments (SET's) with a slope of six (6) horizontal to one (1) vertical [6:1] and that there would not be enough right-of-way to accommodate this requirement on any County road.

This comment appears to be based on a misunderstanding of the intent of the Proposed Regulations. This provision indicates it is applicable to "public storm water management facilities". As defined in §725.2.02, public storm water management facilities are those dedicated to the public in conjunction with obtaining a Development Authorization from the County. Driveway culverts, while required to obtain a County Facilities Use Permit under Chapter 751 (fka a "driveway permit"), would not be a "public" facility and would therefore not be subject to this provision. However, based on a review of this comment, the County believes it would be beneficial to clarify this intent. The following wording has been added to §725.3.06:

All driveways shall conform to the Hays County Driveway Specifications.

Section 3.07 – Identification of Special Flood Hazard Areas

In response to §725.3.07(B), one individual indicated that the requirement to dedicate a drainage easement should be limited to any concentrated flow outside the limits of proposed right-of-ways.

This comment addresses language that has been in the County’s existing regulations since 1997. Based on a review by the consulting team and County staff, there were no reported instances where this provision created an unworkable situation for developments considered for approval in that time period. It is the County’s intent that this provision apply to storm water facilities and natural watercourses outside of proposed roadways. The County believes that the current language adequately addresses these situations. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.08 – Completion of Drainage System Prior to Acceptance of Roadway Maintenance

One individual indicated that driveway culverts are not typically installed until a structure is built on the lot, and that may be years after the roadways are built. This individual further indicated that requiring all driveway pipes to be placed prior to acceptance is onerous and unreasonable.

This comment appears to be based on a misunderstanding of the intent of the Proposed Regulations. This provision indicates it is applicable to “drain pipes for all driveways constructed as of the acceptance date” [emphasis added]. Based on this language, the requirement to have these features inspected and approved by the County would only apply to those driveways that had been installed as of the acceptance date. It is not the intent of the County for this provision to be construed to require the installation of driveways to serve lots where no construction has yet occurred. Driveways that were installed after the acceptance date would be subject to the requirements of Chapter 755. The County believes the current language is sufficient to address this situation. No changes to the Proposed Regulations have been made in response to this comment.

Subchapter 6 – Incentives for Water Quality Protection Features

One individual indicated that he assumed that all items in Subchapter 6 of Chapter 725 were offered as incentive items only and were not required by the County for subdivision approval.

The County’s intent for Subchapter 6 of Chapter 725 was that it outline the requirements for voluntary storm water quality protection features applicable only to those developments seeking either financial incentives (under Chapter 761) or designation as a “Conservation Development” under Chapter 765. Subdivisions for which the designation of Conservation Development was sought by the Applicant under Chapter 765 would be required to comply with these requirement. However, since this designation is a voluntary designated, it would not apply to other subdivisions that were not approved as conservation developments. No changes to the Proposed Regulations have been made in response to this comment.

Section 6.02 – Water Quality Protection Design Requirements

In reference to §725.6.02(A), one individual indicated that this standard for pollutant remove far exceeds the standards of the Lower Colorado River Authority (LCRA), Texas Commission on Environmental Quality (TCEQ) and the Save Our Springs (SOS) ordinance of the City of Austin.

This individual suggest that the County instead require developments to meet the applicable TCEQ or LCRA standards as a starting point.

The County's intent for including incentive provisions within the Proposed Regulations is to encourage proposed developments to incorporate storm water quality protection measures beyond those already required in existing regulations. The County does not disagree that some of the pollutant removal standards included in these voluntary provisions may exceed those of other jurisdictions. The commenter suggested that the County require developments to meet the applicable TCEQ or LCRA requirements. However, the TCEQ requirements are currently in effect in the majority of Hays County, and the LCRA requirements are currently in effect for some portions of County within close proximity to the Highland Lakes. The County does not believe that this would advance the objective of encouraging the voluntary use of more rigorous water quality protection measures. No changes to the Proposed Regulations have been made in response to this comment.

In reference to §725.6.02(D), one individual indicated that a procedure needs to be outlined for establishing pre-development pollutant loads.

§725.6.02(C) indicates that the design of water quality protection measures under Subchapter 6 may be performed using procedures from any of three (3) locally utilized design criteria, namely:

- The LCRA "Water Quality Management Technical Criteria";
- The TCEQ "Edwards Aquifer Technical Guidance Manual"; or,
- The City of Austin "Drainage Criteria Manual" and "Environmental Criteria Manual".

Each of these guidance documents contains procedures for establishing pre-development pollutant loads. The County's believes that this provision provides adequate guidance, while allowing flexibility in the procedure to be used to establish these pollutant loads. No changes to the Proposed Regulations have been made in response to this comment.

Section 6.03 – Stream Offsets/Buffer Zones

In reference to the stream offset/buffer zones in §725.6.03(A), one individual indicated that the proposed offsets are onerous and not substantiated. This individual further indicated that on a watershed of one (1) square mile, small by most evaluations, approximately 1.38 acres of land per 100 feet of stream length will be designated as buffer and restricted. This individual indicated that buffers should be reserved for watersheds greater than 640 acres, with a minimum buffer and then increase from that point, unless the point is to take arbitrarily. This individual further indicated that the proposed setbacks should be compared to those used by the LCRA and that there should be continuity in terms of the stream contributing area. This individual also recommended a study on "takings" as they relate to these setbacks. Two individuals indicated that extensive engineering studies have shown that twenty five (25) foot buffer zones adjacent to streams are an effective way to improve water quality, and that the Corps of Engineers and LCRA both include this as their standard. These same individuals further indicated that the 100 foot to 300 foot buffers seemed excessive and appeared to be nothing more than a land use control, that there was no scientific or engineering basis for the stream buffers, and that they appeared to be completely arbitrary. One individual indicated that a simple "flood plain plus 25 foot requirement" would be sufficient and this approach was supported by science and engineering studies. Several individuals indicated that the proposed setback values differ from those of other regulatory entities in the region, and that in areas of overlapping jurisdiction, this would create confusion.

As outlined in the general response for Subchapter 6, the intent of these requirements is that they are voluntary in nature and that they apply to developments seeking financial incentives or designation as a Conservation Development. The specific stream setbacks and buffers included in the Proposed Regulations were taken from a Regional Water Quality Protection Plan⁴⁸ whose study area included a significant portion of Hays County. That plan included a comparative review of the stream setbacks and buffers recommended and/or required by other jurisdictions. The County does not disagree that some of the stream buffer recommendations may exceed those of other jurisdictions. However, as state previously, the County's objective for these voluntary measures is that they encourage the voluntary use of more rigorous water quality protection measures. The County disagrees with the assertion that the proposed stream setbacks are arbitrary and have no basis science or engineering. The specific recommendations were taken from a regional planning study that included extensive engineering and scientific input. The County also disagrees with the assertion that these provisions may be a "taking". The issue of regulatory takings is addressed in the Takings Impact Assessment, discussed previously. No changes to the Proposed Regulations have been made in response to this comment.

In reference to §725.6.03(D), one individual indicated that not allowing BMP's within the stream setbacks and having such extensive stream setbacks would pose a major hardship to development in Hays County.

A review of other local ordinances used by other jurisdictions that require stream setbacks or buffers indicated that none of these ordinances authorize structural BMPs to be located within the stream setbacks or buffers. As outlined in the general response for Subchapter 6, the intent of these requirements is that they are voluntary in nature and that they apply to developments seeking financial incentives or designation as a Conservation Development. The County does not anticipate that a large fraction of the developments within the County will seek these voluntary designations, and therefore disagrees with the assertion in this comment that adopting the proposed stream setback/buffers would pose a "major hardship". No changes to the Proposed Regulations have been made in response to this comment.

One individual indicated that the design criteria outlined in this section are more restrictive and significantly more expensive to implement than any other regulation in this area, and that these criteria will force all development to construct detention / retention ponds, even though that may not be the best alternative. This individual further indicated that for developments with impervious covers less than about 25% it is often more beneficial to have multiple outfalls that simulate the sheet flow conditions instead of forcing all the flow to a pond and having a single discharge point.

As outlined in the general response for Subchapter 6, the intent of these requirements is that they are voluntary in nature and that they apply to developments seeking financial incentives or designation as a Conservation Development. As such, these requirements would not apply to "all developments". The County acknowledges that these measures may be more restrictive and more expensive, but as state previously, the County's objective for these voluntary measures is that they encourage the use of more rigorous water quality protection measures. The County does not disagree that for certain developments, site designs with multiple outfalls simulating sheet flow may be more beneficial. However, the County believes that this is a design issue that

⁴⁸ "International Stormwater BMP Database", U.S. Environmental Protection Agency (EPA), et al, (<http://www.bmpdatabase.org/index.htm>), 2009

should be address in the overall site planning. No changes to the Proposed Regulations have been made in response to this comment.

Section 6.04 – Control of Hydrologic Regime

One individual indicated that this section was created by someone who knows nothing about hydrology and urban storm water management, and recommended that it be struck in its entirety. This individual indicated that volume cannot be minimized unless complete retention for the family of storms is utilized and this will represent a taking because no engineer can certify “no increase in volume” otherwise.

The concept of control of hydrologic regime is used in numerous water quality control programs across the country and specifically within the region. Specific examples of current ordinances within the region that use this concept include the Cities of Buda, Dripping Springs, and Kyle. In general, ordinances such as these generally require that a “water quality volume” be captured and retained. The County does not disagree that this may require retention, but there are a number of systems in-place in the region that operate using this design principal. In reference to the issue of a “taking” raised in the comment, the issue of whether or not a specific action by a governmental entity constitutes a “regulatory taking” requires a comprehensive analysis. In conjunction, the County prepared a Takings Impact Assessment (referenced previously) that addresses these concepts. No changes to the Proposed Regulations have been made in response to this comment.

Section 6.05 – Water Quality Protection Design Requirements

One individual indicated that stream Buffers should be considered as non-structural BMP’s.

Reference sources on the classification of specific best management practices (BMPs) vary in their classification of these BMPs as structural and non-structural. A international database on BMP’s maintained by the U.S. Environmental Protection Agency⁴⁹ does not specifically identify stream buffers as a structural BMP. However, the previously referenced Regional Water Quality Protection Plan classifies similar features (e.g. grassy swales, vegetative filter strips, etc.) as structural BMPs. In addition, structural BMPs typically require a land component for their construction and operation. While stream buffers do not involve construction, they do require a land component. For these reasons, the County believes that stream buffers are best left within the structural BMP category. No changes to the Proposed Regulations have been made in response to this comment.

Chapter 731 – Construction and Acceptance of Maintenance for Public Infrastructure

Section 1.01 - Public Infrastructure

Two individuals questioned whether the County had the authority to own, operate and maintain public utilities such as water, wastewater, electrical and communications facilities. One of these individuals acknowledged that the County had the ability to regulate the design and construction of all utilities located within the County Right-of-way, but questioned whether the County had the ability to regulate the operation of those utilities within the right-of-way or to regulate these utilities outside of the right-of-way. One of these individuals further commented that many of these types of public utilities are owned and maintained by other governmental entities and was concerned about overlapping jurisdiction.

⁴⁹ “Regional Water Quality Protection Plan for the Barton Springs Segment of the Edwards Aquifer and Its Contributing Zone”, Naismith Engineering, Inc., et al, (<http://www.waterqualityplan.org/>), June 2005

Under the Texas Local Government Code (TLGC), Chapter 562,⁵⁰ effective on April 1, 2009, the County is granted the authority to acquire property to obtain and transport surface water⁵¹ and to “acquire, own, finance, operate, or contract for the operation of, a water or sewer utility system to serve an unincorporated area of the county.”⁵² §751.1.01(C) has been included in the Proposed Regulations to allow the County to exercise this authority, when it becomes effective, if the Commissioners Court elects to do so. This provision was specifically inserted to allow the County to allow such facilities to be constructed as a part of a regulated development, and then to allow the facilities to be accepted for maintenance by the County. It is not the intent of this provision to attempt to extend the County’s regulatory authority to utilities operated by other entities outside of the County right-of-way, but to allow the County to own, operate and accept for maintenance these utilities where they are otherwise allowed by state law to do so. The authorizing statutes address issues of overlapping jurisdiction⁵³ and that issue is address elsewhere within the Proposed Regulations. While TLGC Chapter 562 clearly applies to water and wastewater utilities, there is no indication that it applies to electric and communication utilities. To address this issue, the text of §731.1.01(C) has been revised to eliminate references to “electrical, communications, and other essential services”.

One individual commented that this whole chapter was poorly written and oversteps the bounds of County authority.

As outlined in the previous response, the County is relying on TLGC Chapter 562 for its authority to regulate the construction and accept for maintenance utilities such as water and wastewater. Within the context of that response, the County believes it is not overstepping and it is working within the bounds of the authority granted to it by the Texas legislature. While several changes have been included to clarify this Chapter, the County does not agree that the Chapter is poorly written. No changes to the Proposed Regulations have been made in response to this comment.

Section 2.02 - Interim Authorization for Construction and Section 2.03 - Construction Occurring After Issuance of Development Authorization

Two individuals questioned whether the County could require performance assurance for public utilities such as water, wastewater, electrical and communications facilities. These individuals cited TLGC §232.004 as indicating that bonds “cannot exceed the cost of roads, streets and drainage requirements”.

These comments were generally offered in response to §731.2.02(C) and §731.2.03(A). As indicated in the response to the previous comments, the County is relying on TLGC Chapter 562 and not on TLGC Chapter 232 for its authority to regulate the construction and accept for maintenance utilities such as water and wastewater. Although not specifically identified in TLGC Chapter 562, the County believes the requiring performance assurance for the construction of other public utilities is consistent with other established public policies. If these utilities were being constructed under a direct contract with the County, under TLGC Chapter

⁵⁰ TLGC, Title 13, "Water and Utilities", Chapter 562, "County Water Supply", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

⁵¹ TLGC §562.014

⁵² TLGC §562.016

⁵³ TLGC §562.014 and §562.016

262,⁵⁴ performance assurance would be required. As pointed out by the commentors, TLGC Chapter 232 requires performance assurance for other types of public infrastructure for which the County accepts maintenance responsibility. The County believes it is good public policy to require performance assurance for all public infrastructure it will eventually accept for maintenance. No changes to the Proposed Regulations have been made in response to this comment.

Section 2.05 - Temporary Construction Erosion Controls

One individual questioned whether the manual referenced under this section was available for review. This individual further indicated that TCEQ already had such a manual and suggested that the County may want to consider adopting it by reference.

As a result of some staff comments, the original reference included in the publication version of the Proposed Regulations (July 2008) has been changed to reference the “Hays County Erosion and Sedimentation Control Manual”. This manual is currently under development and is not yet available for public review. The current plan is to have the manual approved by the Department and submitted to the Commissioners Court for approval through a separate action. No changes to the Proposed Regulations have been made in response to this comment.

Section 2.07 - Construction Changes

One individual indicated that if field changes were to be approved by the Department that the needed to be a minimum twenty four hour turn-around to prevent undo construction losses. This individual further indicated that many changes should be handled by field inspectors and documented in the as-built drawings rather than being processed by the Department.

This issue was also raised by several County staff members. The County has a vested interest in any construction changes, since these changes have the ability to affect the long-term performance of the infrastructure under construction. However, there will be some routine changes that can be handled between the County inspector and the construction contractor that might be unnecessarily delayed if a formal approval process was required. In response to this comment and staff comments, the text of has been revised as follows:

Changes in the construction of public infrastructure and related improvement shall require the ~~written~~ approval of the Department. Minor changes that do not conflict with the terms of the Development Authorization may be verbally authorized by the field inspector, with those changes subsequently documented in a field change form. For other changes, ~~T~~the Applicant or Permittee shall provide a written request for approval of the change to the Department. The request for the change shall be accompanied by sufficient additional information to identify the changes requested and to allow the changes to be evaluated by Department for compliance with these Regulations. Where determined to be necessary by the Departmentrequired, the changes shall be accompanied by new or revised construction plans, specifications cost estimates prepared by a Texas licensed professional engineer...

⁵⁴ TLGC, Title 8, "Acquisition, Sale or Lease of Property", Chapter 262, "Purchasing and Contracting Authority of Counties", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas. Specifically TLGC §262.032.

Section 2.07 - Construction Changes, Section 2.08 - Interim Inspections, Section 2.09 - Final Inspections, and Section 2.10 - As-Built Submittals

Two individual questioned whether the County had the authority to inspect, approve changes, or require “as-built” drawings of any utilities except as it relates to the surface use of County right-of-way.

As outlined in a response under §731.1.01, the County is relying on TLGC Chapter 562 and not on TLGC Chapter 232 for its authority to regulate the construction and accept for maintenance utilities such as water and wastewater. Within the context of that response, the County believes it has established the authority to inspect, approve changes, or require “as-built” drawings for water and wastewater utilities that it accepts for maintenance. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.02 – County Acceptance of Maintenance

Two individuals commented that the County should not take on the obligation to maintain public infrastructure that is not related to roads streets or drainage, since the County has no expertise, equipment or the ability to maintain water mains, sewers or other utilities and cannot afford to do so.

As outlined in a response under §731.1.01, the County is relying on TLGC Chapter 562 for its authority to regulate the construction and accept for maintenance utilities such as water and wastewater. Within the context of that response, the County believes it has established its authority to own and operate water and sewer utilities. The fact that the County has the legal authority to own and operate these utilities does not necessarily obligate the County to do so. This is a policy decision to be made by the Commissioners Court based on factors such as those the commenters identified. The language included in the Proposed Regulations is intended to facilitate the County’s ownership and operation of water and wastewater utilities, if and when the Commissioners Court decides that the County is ready to do so. No changes to the Proposed Regulations have been made in response to this comment.

Chapter 741- On-Site Sewage Facilities

One individual indicated that the proposed changes to the OSSF rules would not result in any substantial changes to what has been done in the past. This individual indicated that the price he charges for preparing planning materials would likely increase by twenty (20) to thirty percent (30%) to cover the additional information required. This individual further indicated that the changes were not worth the increased cost and that he did not believe there would be any additional protection of public safety.

This comment offers a general position on the effect of the Proposed Regulations in total and asserts that costs for system installation will increase by at least twenty percent (20%) and will provide no additional public safety benefit. However, there is no reference to a specific provision within the Proposed Regulations or back-up information provided for the commenter’s assertion on increased cost. No changes to the Proposed Regulations have been made in response to this comment.

Section 8.01 – Facility Planning

In reference to §741.8.01(A)(3)(a), one individual indicated that the restriction of the wastewater loading on a particular tract to the equivalent of one (1) dwelling unit equivalent (DUE) of 300

gallons per day per acre will make the construction of restaurants, apartments or condominiums served by OSSFs extremely difficult and probably not economically viable. Another individual characterized this provision as onerous.

This comment offers general opposition to the revision of the “Living Unit Equivalent” used to prepare planning materials for OSSFs for installations other than a single family residence. In the July 2008 publication, the County elected to change the term used for this purpose from “Living Unit Equivalent” to “Dwelling Unit Equivalent” (DUE). In addition to that change, the consulting team for the County prepared an evaluation to assess the appropriate volumetric quantity of wastewater generated by an average household in Hays County. This evaluation was performed using the median household size for Hays County, as determined from the latest available information from the U.S. Census Bureau, combined with the estimates of wastewater generation based on household size outlined in the TCEQ Regulations.⁵⁵ This evaluation yielded a volume of 300 gallons per day for the median household. Based on this evaluation, the County elected to also include this change in the July 2008 publication. The County acknowledges that provision may result in either a larger lot size being required to service a particular OSSF system design, or the activities proposed for the site may need to be scaled back to accommodate the limitations imposed by the OSSF system design. However, the County also acknowledges that a significant portion of the complaints and compliance issues associated with OSSFs under its jurisdiction originate from commercial and institutional OSSFs, such as those referenced in this comment. OSSFs serving these types of developments generally experience hydraulic (flow volume) and biological (wastewater strength) loadings that are significantly larger than those experienced by a typically OSSF serving a single family residence. The intent of the proposed change is to require this subset of OSSFs to account for these additional loadings in a manner that is more representative of the typical dwelling unit in Hays County. While the County does not disagree that some increases in the cost in installation and operation of these particular OSSFs may result from this action, the County also believes that the proposed provision will reduce the long-term costs on the part of the County and the regulated community due to improper operation of these systems. No changes to the Proposed Regulations have been made in response to this comment.

In reference to §741.8.01(A)(3)(a), one individual indicated that the minimum area should be based on the “average” lot size of one acre but with the minimum lot size prescribed in the TCEQ Regulations.

This comment appears to presume that the Proposed Regulations in Chapter 741 apply only to contemporaneously platted lots. However, this Chapter also governs the installation of OSSFs on un-platted and previously platted lots. For installations on individual lots, long after the platting process, the concept of lot size averaging is not applicable. §741.8.01(B) includes provisions for platted development to take advantage of lot size averaging. No changes to the Proposed Regulations have been made in response to this comment.

In reference to Table 741.05 under §741.8.01(C), one individual indicated that the heading “Water Service” should be changed to “Water Availability”, and that all instances of the term “Surface Water System” should be replaced with the term “Public Water System other than Groundwater System”. This individual further recommended that all instances of the term

⁵⁵ Title 30, Texas Administrative Code (TAC), Chapter 285, “On-Site Sewage Facilities”, specifically 30 TAC §285.91(3).

"Public System Using Groundwater" should be replaced with the term "Groundwater System". This individual further commented that a footnote for the Water Availability heading should be added to read "Property partially or wholly within the CCN of a Groundwater System shall be considered as having Groundwater System availability".

This comment addresses subject matter that has been changed in response to another comment. Please refer to the response to comments provided for Chapter 701, Subchapter 3 and Chapter 715, Subchapter 1. The items referenced in this comment were modified in response to other comments that result in provided equivalent clarifications in this section.

In reference to Table 741.06 under §741.8.01(E)(5), one individual indicated that the heading "Water Service" should be changed to "Water Availability", and that all instances of the term "Surface Water System" should be replaced with the term "Public Water System other than Groundwater System". This individual further recommended that all instances of the term "Public Well Water" should be replaced with the term "Groundwater System". This individual further commented that a footnote for the Water Availability heading should be added to read "Property partially or wholly within the CCN of a Groundwater System shall be considered as having Groundwater System availability".

This comment addresses subject matter that has been changed in response to another comment. Please refer to the response to comments provided for Chapter 701, Subchapter 3 and Chapter 715, Subchapter 1. The items referenced in this comment were modified in response to other comments that result in providing equivalent clarifications to this section.

Section 8.02 – Minimum Required Separation Distances for On-Site Sewage Facilities

In reference to Table 741.08.07 under §741.8.02, one individual indicated that he took exception to several of the separation distances. This individual indicated that there was no justification for a twenty (20) foot property line setback for a septic tank, transfer line or subsurface disposal area. This individual further indicated that there was no justification for requiring a 150 foot separation from a private water well off the lot for all OSSF components where only a 100 foot setback would be required for a private water well on the lot, and that this requirement could harm the use of the property. This individual also indicated that placing a home inside the 100 foot separation would constitute a violation of the Proposed Regulations. This individual indicated that there was no justification for a sixty (60) foot separation between the property line and spray heads, and that flexibility for the OSSF designer to apply effluent would be adversely impacted by this requirement. This individual further indicated that there was no justification for a forty (40) foot separation distance between the property line and a treated effluent spray disposal area. The individual indicated that small lots would be adversely impacted by these requirements and strongly urged the County to reconsider these provisions.

This question appears to generally address the application of the minimum separation distances in Table 741.08.07 under §741.8.02 to existing small lots, and specifically addresses some of the individual separation requirements presented in that table. Many of the proposed separation distances were recommended during the stakeholder process to address specific issues. One issue of particular concern to the stakeholder committee and County staff was spray drift associated with spray application systems. Based on a number of discussions conducted with County staff and with the recognized experts making presentations before the Commissioners Court, as well as an analysis performed by the consulting team to assess the impact of applying

these separation distances to existing small lots, the County believes that some clarification of these separation distances is appropriate.

The County believes that strictly applying the proposed separation distances to existing small lots may render many of these lots unsuitable for the installation of an OSSF. For this reason, the County is modifying the application of the proposed separation distances to have them apply to lots platted following the effective date of the Proposed Regulations. In reviewing the separation requirements from the named creeks included in the July 2008 publication version, it was determined that the language did not properly reflect the intent of the 1997 regulations by requiring that “all components” be offset 150 feet from the identified creek. This item was clarified to indicate that it applies only to effluent dispersal areas. In reviewing the requirement for on-site separations from property lines and gardens, the County believes that this requirement should be modified to include habitable structures and the reference to “gardens” clarified to indicate that it applies only to “vegetable gardens”. This modification is specifically intended to address potential human exposure from malfunctioning effluent dispersal systems, and the separation distances were not changed. In addition, the County believes that the separation distances from water wells included in the July 2008 publication did not properly reflect the intent of the discussions with the stakeholder committee and the recognized experts. The separation distances for water well have been modified to require a 150 foot separation between effluent dispersal areas and all public water wells (on-site or off-site), to require a fifty (50) foot separation between tanks and on-tie private water wells, and to require a twenty (20) foot separation between sewer pipe with water-tight joints and any public or private well.

Section 8.07 – Amendment to Section 285.5 (Submittal Requirements for Planning Materials)

In reference to §741.8.07(D), one individual indicated that references to wastewater strengths and organic load calculation would preclude a registered sanitarian or TCEQ licensed Installer from filing permit application with in the County, and would require a professional engineer to prepare all planning materials. This individual further indicated that this restriction did not serve the public interest.

As noted in the title, the language in this section of the Proposed Regulations modifies certain requirements contained in the TCEQ Regulations.⁵⁶ This section of the Proposed Regulations provides additional detail for items required to be submitted with all Planning Materials (as that term is defined in the Proposed Regulations and the TCEQ Regulations). The language in §741.8.07(D) does not require that the requested additional planning material be prepared any specific category of OSSF system designer. The TCEQ Regulations do dictate that certain planning materials may only be prepared by designers with certain qualifications (e.g. planning materials for a non-standard treatment system may only be submitted by a professional engineer or registered sanitarian).⁵⁷ However, it was not the County’s intent to modify these requirements and the County believes that the language of §741.8.07(D) as currently constructed does not impose the restrictions addressed in this comment. No changes to the Proposed Regulations have been made in response to this comment.

⁵⁶ 30 TAC §285.5.

⁵⁷ 30 TAC §285.5(b)(2)(A).

Section 8.14 – Amendment to Section 285.33(d)(1) (Additional Requirements for Surface Application Systems)

In reference to §741.8.14(F), one individual indicated that he took exception to the provision requiring surface application sprinkler heads to be protected by a concrete base or other structure. This individual further indicated that this would serve no purpose since vehicular traffic should already be restricted from the vegetated area.

The County's intent for the requirement referenced in this comment is to protect the individual sprinkler heads installed as a part of a surface application system. A review of this comment with County staff indicated that they routinely encounter missing or malfunctioning sprinkler heads that have been damaged. The County believes that protecting the sprinkler heads will increase the likelihood that the effluent dispersal system will function as intended and in accordance with County and TCEQ regulations. No changes to the Proposed Regulations have been made in response to this comment.

In reference to §741.8.14(F), one individual indicated that he took exception to the provision prohibiting surface application systems for food service establishments and other commercial and institutional OSSFs with high biological loading. This individual further indicated that limiting the disposal method selection could harm the operator of the system and potentially cause a malfunction and endanger the public health. This individual strongly urged the County to reconsider this requirement, and proposed either a separation distance or requiring the business to be closed to the public during the time that the effluent is dispersed).

The County's intent for this requirement was to eliminate one particular treated effluent dispersal method for certain OSSFs with high biological loading. The proposed action targeted at this specific group of OSSF was based on discussions with County staff regarding the frequency and magnitude of complaints and compliance problems with these systems. The County disagrees with the commenters assertion that limiting an OSSF operators effluent dispersal method will harm the operator, cause malfunctions and endanger the public. The County believes that these systems using this effluent dispersal method already have a high rate of malfunctions which may endanger the public. The County believes that eliminating this effluent dispersal method for certain classes of OSSFs advances an important public health and safety purpose. No changes to the Proposed Regulations have been made in response to this comment.

Section 8.15 – Amendment to Section 285.34(a) (Septic Tank Effluent Filters)

One individual indicated that the requirement to install an effluent filter on all standard treatment units was onerous and without merit. This individual further indicated that this requirement would add expense and nuisance to the operation of the system without a guarantee of a desired result, and that the test should be in the final treatment phase, in the soil. This individual indicated that most, if not all, failures occur from hydraulic overloading and that this requirement would do nothing to diminish this problem.

The County's intent for the requirement referenced in this comment is to protect the effluent dispersal system from clogging and damage due to the passing of large diameter from the treatment unit into the effluent dispersal system. The County does not disagree that significant problems with OSSFs result from hydraulic overloading, but the County believes that clogging in the effluent dispersal systems can exacerbate problems associated with hydraulic overloading. As with any mechanical component, effluent filters can clog and create problems if they are not

inspected routinely and changed as required. In addition, the commenter suggests that the soil, outside of the effluent dispersal system, is the “final treatment phase”. While the County does not disagree that additional treatment of the already treated wastewater may occur within the soil matrix, the TCEQ regulations and consequently the County regulations make no provision for any treatment occurring after the effluent leaves the “treatment system”. The purpose of this provision in the Proposed Regulations is minimize the likelihood that the effluent dispersal system will become clogged, causing a hydraulic back-up into the treatment unit that in turn results in the discharge of untreated wastewater. The County believes that the requirement to install an effluent filter will increase the likelihood that standard treatment systems function as intended. No changes to the Proposed Regulations have been made in response to this comment.

Section 8.19 – Miscellaneous

In reference to §741.8.19(H)(2), one individual indicated that he took exception to the provisions regarding aerobic treatment tank pretreatment tank sizing. This individual further indicated that limiting the pretreatment selection could harm to the operation of the system and potentially cause a malfunction and endanger the public health. This individual strongly urged the County to reconsider this provision.

The requirement for the County to require a pre-treatment tank on aerobic treatment units (ATU’s) is based on TCEQ regulations.⁵⁸ As identified in the TCEQ regulations, the purpose of providing the pre-treatment tank is to “prevent plastic and other non-digestible sewage from interfering” with the treatment process in the ATU. The County believes that incorporating this system design requirement advances the objective of the proper operation of ATU’s permitted by the County. As currently proposed, the language of §741.8.19(H)(2) provides minimum storage capacities, but does not “limit” the “pre-treatment selection” as asserted in the comment. The County disagrees with this commenter and believes that the requirement to include a pre-treatment tank with an ATU will reduce malfunctions and will increase the protection of public health. No changes to the Proposed Regulations have been made in response to this comment.

Section 8.02 – Grandfathering, Re-authorization and Re-permitting of Existing Systems

In reference to §741.8.20(B), one individual recommended that the County not issue a re-certification for an existing OSSF that was not modified, but instead require that the systems be inspected by a Qualified OSSF Inspector.

This comment was discussed and evaluated with County staff. During those discussions, the County staff was concerned about their ability to perform the level of inspection necessary to make such a re-certification within the involvement of an outside qualified OSSF inspector. The County staff also expressed concerns about their ability to meet this requirement given their current level of resources and personnel. Based on these discussions and a review of the objectives for the re-certification process, the County is eliminating the re-certification process and is replacing it with a re-inspection process. The County believes that this approach will better advance the intended goal of ensuring proper operation of OSSFs under their jurisdiction. To clarify the intent of this change, the title to the Section has been modified as follows:

Grandfathering, ~~Recertification-authorization~~ and Re-permitting of Existing Systems

⁵⁸ 30 TAC §285.32(b)(1)(G).

In addition, §741.8.20(B) has been modified as follows:

(B) ~~Re-certification~~inspection by Qualified Inspector.

(1) If there is a transfer of ownership of an OSSF, the new owner shall ~~apply for recertification of the OSSF prior to or~~ submit no later than five (5) days following the effective date of the ownership transfer the following information. ~~In addition, the Department at any time may require an OSSF to obtain recertification if the Department determines that the OSSF is creating a nuisance. The purpose of the recertification process is to ensure that the OSSF continues to meet all requirements applicable to the OSSF.~~

~~(2) To obtain certification of an OSSF, the OSSF owner shall submit at least the following information:~~

(a) Documentation verifying that the OSSF septic tank has been pumped within the previous three years and showing the tank capacity and depth of sludge; and,

(b) A copy of an OSSF inspection report prepared by a Qualified OSSF Inspector which contains a verification by the inspector that the OSSF is functioning in compliance with the applicable OSSF requirements.

~~(3) Where the Qualified OSSF Inspector or the Department suspect that the effluent disposal/dispersal component(s) are not functioning as designed, the OSSF owner shall have an evaluation of the suitability of the soil profile and infiltration characteristics of the ~~drainfield~~ dispersal area performed by a TCEQ licensed site evaluator.~~

~~(4) Based on a review of the above information and any other available information, the Department or the Commissioners Court may require that the OSSF be subject to repermitting under §741.8.13(C).~~

In reference to §741.8.20(B)(2), one individual indicated that he took exception to the proposed rule regarding recertification of existing septic systems by “Qualified Inspectors”, and indicated that “Certified” OSSF inspectors be limited to professional engineers, registered sanitarians, and individuals licensed by the TCEQ as OSSF Installers. This individual further indicated that designated representatives should be removed from the list, since this is a private sector task best left to the private sector.

This comment appears to have been offered in response to an older version of the Proposed Regulation. The text of §741.8.20(B)(2) in the July 2008 publication uses the phrase “Qualified OSSF Inspector”. In the July 2008 publication, §741.3(B) defines a Qualified OSSF Inspector to include TCEQ licensed installers, Texas licensed professional engineers and Texas registered sanitarians. The July 2008 publication does not reference designated representatives in this context and does not include them in the list of individuals identified as Qualified OSSF Inspectors. No changes to the Proposed Regulations have been made in response to this comment.

Chapter 745 – Manufactured Home Rental Communities

Section 1.04 - Approval Required Prior to Furnishing Utility Service

One individual questioned under what authority the County could require another governmental entity to obtain approval to provide utility service from the County and who would pay for this requirement.

As presented in the response to a similar question from Chapter 705, the County is adopting this section of the Proposed Regulations under the authority of TLGC Chapter 232. Specifically the County is relying on TLGG §232.007(h) which authorizes Counties to regulate the connection of utilities to a Manufactured Home Rental Community. As with the extension of utility service to subdivisions, the definition of utility includes other governmental entities and applies to electric, gas and water and sewer utilities, and the TLGC, Chapter 232, authorizes the County, upon the adoption of the Proposed Regulations, to require all utility providers, including other governmental entities, to obtain certification from the County prior to extending utility service. In accordance with the County’s general fee policy outlined in Chapter 701, Subchapter 6 of the Proposed Regulations, the Applicant for the certification would be responsible for payment of any associated fees. No changes to the Proposed Regulations have been made in response to this comment.

Chapter 751 – Use of County Properties or Facilities

One individual indicated that sidewalks and compliance with state and federal accessibility standards is a big problem in developments, and that the Proposed Regulations could use some additional discussion on driveways. The individual suggest incorporating a requirement that all driveways be approved by a registered accessibility specialist for compliance with state and federal accessibility standards.

This comment is understood to apply to the accessibility of sidewalks where they intersect sidewalks driveways within a right-of-way controlled by the County. Since the County does not have general site development permit or building permit authority, this comment is interpreted to address that portion of the driveway and/or sidewalks located within the right-of-way of a Regulated Roadway, specifically where such a driveway intersects a sidewalk. §751.7.03(A) indicates that all facilities included in applications for the use of County facilities, including right-of-way, must not pose a threat to public safety. This language could be construed to broadly cover the topic of accessibility. However, elsewhere in the Proposed Regulations, the regulations of other entities have been addressed through reference. Accessibility standards for projects within public right-of-way are governed by regulations adopted by the Texas Department of Licensing and Regulation (TDLR).⁵⁹ These regulations indicate that the accessibility standards only apply to the pedestrian elements (e.g. sidewalks) of a project within public right-of-way and that the pedestrian elements must exceed an established construction cost threshold for the regulations to apply. Under these regulations, it is possible that projects involving the construction of public sidewalks would likely meet this threshold, but unlikely that the construction of individual driveways would meet this requirement. However, this issue may be a consideration for some projects. §751.2.01(B) currently indicates that the installation of driveways will be subject to compliance with standards published by the Department. The Department currently includes these standards in their Roadway Construction Specifications, which can be modified to address these issues, where they occur. The design and construction of

⁵⁹ Title 16, TAC, Chapter 68, “Elimination of Architectural Barriers”, specifically 16 TAC §68.102.

pedestrian elements (e.g. sidewalks) in public right-of-ways will most often occur in conjunction with the construction of a public roadway and would be governed by Chapter 721. To address this issue, the following language has been added to §721.5.04(C):

Pedestrian elements (e.g. sidewalks, crosswalks, access ramps, etc.) for projects in Public Roadways shall comply with the accessibility requirements of the Texas Department of Licensing and Regulation (TDLR), and if required, shall be submitted to TDLR for review and approval.

One individual indicated that the Proposed Regulations should provide criteria to address lawn or landscape irrigation systems within County right-of-way, specifically to address irrigation onto roadways and leakage within the system.

As currently written, §751.1.03 would require approval by the County for the placement of lawn and landscape irrigation systems within a County right-of-way. While in most instances, these facilities would constitute an above grade obstruction to traffic or otherwise pose a significant hazard to the traveling public. As expressed in this comment, these facilities might also damage or contribute to the accelerated deterioration of roadways if improperly designed (e.g. spray heads allowed to spray onto paved areas, etc.) or if leakage from the system occurs. The installation of these systems in the County right-of-way might also present difficulty in constructing and/or maintaining other facilities or structures within County right-of-way. Because the lawn and landscape irrigation systems are not included in the list of items that qualify for a minor permit (issued administratively by the Department), the installation of these facilities in the County right-of-way would require a full permit. Since the primary objective of lawn and landscape irrigation facilities is aesthetic, it may not be determined to be in the public interest, as required under §751.7.02. The current wording of this Chapter will have the effect of discouraging the placement of these facilities within the County right-of-way. No changes to the Proposed Regulations have been made in response to this comment.

Section 5.03 - Contents of Minor Permit

One individual indicated that six months is a short time frame for a permit to expire since it may take longer than that to build some houses and the driveway is usually one of the last items to get built.

This comment references the six (6) month expiration for minor permits stipulated under §751.5.03(B). Under the qualifications outlined in Subchapter 2, minor permits would only be applicable to one single family residential project or one single business project on their own lot, that was proposing to install a mailbox, sign or driveways. For example, a minor permit could be obtained by one single family residence, a Manufactured Home Rental Community, or a multi-unit commercial operation that was proposing to install signs, mailboxes and driveways that were compliant with the County standard designs. In addition, a minor County facility use permit, to which this six (6) month timeframe would apply, would not be required to be obtained until these facilities were actually constructed. Although six (6) months should be an adequate timeframe in which to construct only these components (signs, mailboxes and driveways), the language of this Section of the Proposed Regulations has been modified to increase this timeframe to one (1) year.

Chapter 755 – Land Use and Location Restrictions

Section 6.03(B) Renewals

In reference to §755.6.03(B), two individuals indicated that a term should be established for permits or a definition should be provided for when renewals are required.

In reviewing Subchapter 6 of Chapter 755, it was determined that the commenters were correct and that there was no permit term specified for either the initial or renewal permits. A new Section (6.04) has been added indicating these permit terms, reading as follows:

Section 6.04 Permit Term, Renewal and Expiration

(A) Permits will be issued for an initial term of one (1) year.

(B) Renewals shall be valid for the term of one (1) or two (2) years, on a schedule established by the Department.

(C) Both initial and renewal permits issued under this Subchapter shall identify the expiration date.

Chapter 765 – Conservation Development

Section 7.01 Preferred Development Areas

Two individuals indicated that the Commissioners should designate preferred development areas based on written policies before adopting a conservation development ordinance that includes such preferred areas.

The propose language of §765.7.01 outlines the procedures to be used by the Department to make available the location of Preferred Development Areas (PDAs) that are established by the County Commissioners. At this time, there are no such areas established. The County does not disagree that the development of policies will be required to define these PDAs. The Commissioners Court wants to leave open the opportunity to designate these areas in the future and wishes to incorporate into these Proposed Regulations the ability to utilize those designations in the future. No changes to the Proposed Regulations have been made in response to this comment.

Chapter 771 – Development Agreements

In response to §771.1.05, one individuals indicated that where some provisions may be less restrictive in exchange for some restrictions being more restrictive and the net result a benefit for the County and its residents, the idea of requiring all changes in development agreements to be more restrictive may defeat the purpose of a development agreement.

The propose language of §771.1.05 does not address routine development agreements used to facilitate development activities. This section addresses a situation where a property owner may want to voluntarily encumber his own property with more restrictive provisions than are contained in the Proposed Regulations. In addition to a deed restriction, this section allows the property owner to negotiate an agreement with the County to restrict development on their property that sets forth the rationale for voluntarily restricting development and the specific restrictions to be used. In addition to the agreement and any associated deed restrictions, this section requires a conservation easement or similar easement to be placed on the property to

allow the County to enforce the limitations on development of the property contained in that easement. This section is not intended and should not be interpreted to apply to other situations. No changes to the Proposed Regulations have been made in response to this comment.

Section 3.07 - Expiration

One individual indicated that a two (2) year expiration is probably too short for a development agreement and that the expiration of the agreement should be established as a part of the agreement and not mandated ahead of time.

The propose language of §771.3.07 begins with the phrase “Unless otherwise indicated within the Development Agreement” and then defaults to an expiration term of two years. The default term would govern only if there were no expiration term specified in the agreement. This language makes adequate provision to establish the term of the agreement within the agreement. No changes to the Proposed Regulations have been made in response to this comment.