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December 26, 2014

*Via Hand Delivery*

Ms. Bridget C. Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
1200 Park 35 Circle  
Bldg. F- 1<sup>st</sup> Floor  
Austin, Texas 78711-3087

2014 DEC 29 AM 9:05  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Re: TCEQ Docket No. 2014-1402-DIS; In the Matter of The Application for  
Creation of Travis County Municipal Utility District No. 22

Dear Ms. Bohac:

Enclosed please find an original and seven copies of Applicants' Response to Hearing Request in the above-referenced matter. Copies of the Response are being sent by regular mail to other persons in accordance with the instructions set forth in your correspondence dated December 17, 2014. We request that you file stamp the enclosed extra copy of this letter for our recordkeeping purposes.

If you have any questions, please contact me at (512) 451-6680.

Sincerely,

  
Anthony S. Corbett

cc: Service List

IN THE MATTER OF  
THE APPLICATION FOR  
THE CREATION OF TRAVIS COUNTY  
MUNICIPAL UTILITY  
DISTRICT NO. 22

§  
§ BEFORE THE  
§ TEXAS COMMISSION ON  
§ ENVIRONMENTAL QUALITY  
§  
§

CHIEF CLERK'S OFFICE

2014 DEC 27 AM 9:05

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**APPLICANTS' RESPONSE TO HEARING REQUEST**

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**I.  
Introduction**

On November 25, 2013, JPH Capital, Ltd., John Hatchett and Sandra Hatchett (collectively, "Petitioners") filed a petition (the "Petition") with the Texas Commission on Environmental Quality ("Commission" or "TCEQ") for creation of Travis County Municipal Utility District No. 22 (the "District") in accordance with Section 54.014 et seq. of the Texas Water Code. The proposed District will include approximately 910 acres of real property owned by Petitioners and is located entirely within Travis County, as more particularly described in the Petition. The Petition was filed with TCEQ as part of an application prepared and filed in accordance with the requirements of 30 TAC §293.11 et seq. (the "Application").

The proposed District is a political subdivision of the State of Texas that will be governed by a Board of Directors elected by residents within the District. Petitioners seek creation of the District for the purposes set forth in Chapter 54, Texas Water Code, including the provision of water, wastewater and drainage facilities and services; park and recreation facilities and services; and road improvements for the lands within the boundaries of the District. These facilities and services are essential to, and required for, the proposed development of the Property as a single family residential community.<sup>1</sup> The District will allow for an adequate waterworks, sanitary sewer, and drainage system; roadway system; and park and recreation facilities and services within the District so as to promote the purity and sanitary condition of the State's waters and to promote the public health and welfare of the current and future inhabitants within the District.

The Application was declared administratively complete by TCEQ on December 18, 2013. On April 17, 2014 and April 24, 2014, Petitioners published notice of the creation application in the *Lake Travis View* and *Westlake Picayune*, both of which are newspapers of general circulation in Travis County, Texas. In response to the notice, Hamilton Pool Road

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<sup>1</sup> The project may also include limited commercial uses.

Matters (“HPR Matters”) filed a request for a contested case hearing by correspondence dated April 30, 2014 and May 23, 2014.

For the reasons more fully set forth below, neither HPR Matters nor any of its individual members have a justiciable interest regarding creation of the District. Petitioners therefore request that the Commission deny HPR Matters’ hearing request and grant the Petition for Creation of Travis County Municipal Utility District No. 22.

**II.**  
**Legal Criteria for Evaluation of Petition for Creation of District**

The Commission’s consideration of the Application is governed by Section 54.021 of the Texas Water Code. The statute requires the Commission to grant a petition for creation of a municipal utility district if the Commission finds that the petition confirms to the requirements of Section 54.015 of the Water Code and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the District.

In determining whether the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the District, the Commission is required to consider the following factors:

1. The availability of comparable service from other systems, including but not limited to water districts, municipalities and regional authorities;
2. The reasonableness of projected construction costs, tax rates and water and sewer rates; and
3. Whether or not the District and its system and subsequent development within the District will have an unreasonable effect on the following:
  - a. Land elevation;
  - b. Subsidence;
  - c. Groundwater level within the region;
  - d. Recharge capability of a groundwater source;
  - e. Natural run-off rates and drainage;
  - f. Water quality; and
  - g. Total tax assessments on all land located within the District.

The materials and information to be furnished to TCEQ for consideration of the foregoing criteria are governed by TCEQ rules set forth at 30 TAC § 293.11 et seq. In

accordance with these rules, the Application submitted by Petitioners demonstrates that creation of the District is necessary, feasible and practicable, and will be a benefit to the land included in the proposed District.

### **III. Legal Criteria for Evaluation of Hearing Requests**

30 TAC § 55.250 et seq. sets forth the criteria for evaluation of hearing requests related to the Application. Section 55.256 governs the determination of whether a person has a justiciable interest and is therefore an affected person who may request a contested case hearing. Section 55.252 governs the determination of a group or association that can request a contested case hearing. Hearing requests are processed by TCEQ in accordance with Section 55.254, and the Commission's determination of whether to grant a hearing request is governed by Section 55.255. A hearing request must comply with the following requirements:

1. Contents and Form- A hearing request must contain certain information and be in proper form. 30 TAC § 55.251(c). It must meet the following criteria in relevant part:
  - (i) Give the name, address, daytime telephone number of the person who files the request, or if made by a group or association, it must identify the name, address, telephone number of one person responsible for receiving official communications for the group;
  - (ii) Identify the person's personal justiciable interest affected by the application, explaining the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
  - (iii) Request a contested case hearing; and
  - (iv) Provide other information specified in the public notice.
2. Affected Person- 30 TAC § 55.256 defines an affected person as one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. The factors to be considered in determining whether a person is an affected person include the following:
  - (i) whether the interest claimed is one protected by the law under which the application will be considered;
  - (ii) distance restrictions or other limitations imposed by law on the affected interest;
  - (iii) whether a reasonable relationship exists between the interest claimed and the activity regulated;

- (iv) *likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;*
- (v) *likely impact of the regulated activity on use of the impacted natural resource by the person; and*
- (vi) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

(emphasis added).

Under 30 TAC § 55.252, a group or association may request a hearing only if one or more members would otherwise have standing to request a hearing in their own right; the interests the group or association seeks to protect are germane to the group's purpose; and neither the claim asserted nor the relief requested requires the participation of the individual member.

### **III. Hearing Request**

HPR Matters claims that it is an affected person and has standing to request a contested case hearing based on the alleged impact of the creation of the District and subsequent development activities on property owned by the following individual members of HPR Matters: (i) Judy Hendricks; (ii) Mehrad Morabbi; (iii) Jessica Tennant; and (iv) Dick and Kathie Hanson. Specifically, HPR Matters alleges that it has standing to request a contested case hearing regarding the creation of the District for the following reasons:

1. The individual members own property adjacent to the District and/or to Little Barton Creek downstream of the proposed District, and one or more of such members "enjoy the creek and take walks along the creek";
2. A wastewater treatment plant and subsurface irrigation fields will be located within the District;
3. Disposal of wastewater may unreasonably affect groundwater quality and recharge or surface water quality;
4. Contaminants from the irrigation fields could adversely impact the use and enjoyment of property, groundwater or surface water in the creek by such owners; and
5. Alteration of natural run-off rates and drainage by development activities could impact the use and enjoyment of property or natural resources by the individual members of HPR Matters.

#### IV.

#### **Analysis of Hearing Request for District Creation**

Only an affected person may request a contested case hearing. 30 TAC §55.256. To be affected, a person must have a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by an application. An interest common to members of the general public does not qualify as a personal justiciable interest. 30 TAC §55.256(a). In considering whether a person or group has standing, the Commission is charged with considering all relevant factors, including: (i) the likely impact of the regulated activity on the health, safety and use of property; and (ii) the likely impact of the regulated activity on impacted natural resources by the person.

HPR Matters has not asserted in its hearing request that creation of the District is not necessary for purposes of Texas Water Code § 54.021. It has also not asserted the availability of comparable service from other systems, or challenged the reasonableness of projected construction costs, tax rates, and water or sewer rates of the District for purposes of Texas Water Code § 54.021(b)(1) or (2). Since HPR Matters nor any of its members own land in the District or will receive services or pay any District fees, charges, rates or taxes of the District, none of the individual members could be affected by, or have standing to address, such issues.

Instead, HPR Matters' hearing request is based solely on the factors set forth at Texas Water Code §54.021(b)(3), which require the Commission to consider whether the District, its system, and subsequent development activities will have an unreasonable effect on the following factors: land elevation; subsidence; groundwater level; recharge capability; natural run-off rates and drainage; water quality; and total tax assessments.

#### **Creation of District will Not Impact Property Owners Outside District**

None of the individual members of HPR Matters own land within the District. None of the individuals will be subject to District taxes, or subject to payment of any District rates, fees or charges. Similarly, none of the members will receive services from District facilities. The District is governmental entity to be created on lands that do not include any property owned by members of HPR Matters. Therefore, creation of the District cannot, by itself, impact HPR Matters or any of its individual members different than members of the general public. As a result, such members do not have a justiciable interest and cannot have standing with respect to creation of the District. 30 TAC §55.256(a).

#### **Wastewater Treatment and Disposal Operations**

HPR Matters' hearing request is primarily based on the alleged potential impact of a wastewater treatment plant and subsurface drip irrigation facilities within the District. HPR Matters argues that its individual members own property adjacent to Little Barton Creek downstream of the proposed District and/or in proximity to the proposed wastewater treatment plant and/or irrigation fields. The group alleges that contaminants from the proposed wastewater

treatment and irrigation operations could adversely impact groundwater or surface water, and therefore the use and enjoyment of property or of Little Barton Creek by the individual members.

The merits of the proposed wastewater treatment plant and related irrigation operations is the subject of a separate administrative proceeding that is currently pending before TCEQ. The Executive Director's staff previously prepared draft Permit No. WQ0015201001 authorizing the construction and operation of a wastewater treatment plant and disposal facilities on the lands within the proposed District. A public meeting on the draft Permit was conducted on December 15, 2014. After the Executive Director responds to public comments, affected persons will be entitled to assert standing and request a contested case hearing regarding the permit and disposal operations.

The specific interests that HPR Matters asserts for standing with respect to the impact of wastewater treatment and disposal operations are directly relevant to, and in fact are the subject of, the pending water quality permit application proceeding. The purpose of the current proceeding is to evaluate whether the creation of the District is necessary, feasible and practicable, and will be of benefit to land in the proposed District. This proceeding is not intended to evaluate the merits of future wastewater treatment and disposal operations. If a hearing proceeds with respect to the District's creation, it will not impose wastewater treatment plant permit conditions or otherwise address any of the alleged concerns raised by HPR Matters with respect to the wastewater treatment plant or irrigation operations.

HPR Matters and its individual members will have the opportunity to assert standing and request a hearing regarding the proposed wastewater treatment plant and its alleged impact on property owners, groundwater or surface water in the water quality permit proceeding. For the Commission to grant a hearing concerning creation of a district based on allegations concerning wastewater activities that will otherwise be addressed in a separate administrative proceeding would result in two separate proceedings considering the same issues, needlessly resulting in wasted resources, inefficiencies, potentially conflicting findings and unnecessary delay.

### **Likely Impact of Future Development and Construction Activities**

HPR Matters alleges that the use of property or natural resources by its individual members may be affected by the "potential" for alteration of natural drainage or run-off, impacts to surface water or groundwater, impervious cover or recharge in connection with future development and construction activities within the District. In evaluating standing with respect to such claims, the Commission must consider the "likely impact" of such activities on the individuals under 30 TAC §55.256(c).

Future development and construction activities to be undertaken within the District will be subject to strict and comprehensive permitting, approvals and regulatory requirements under federal, state and local regulatory programs. These regulatory programs will be applicable independent of creation of the District, will be undertaken based on detailed construction plans depicting all proposed construction and development activities within the District, *and have been*

*established to address the same water quality, drainage and runoff issues raised by HPR Matters.*

## **Travis County Requirements**

Travis County has adopted comprehensive regulations to regulate drainage, groundwater and surface water quality and stormwater runoff. Such regulations will be applicable to all proposed construction and development activities within the District. A copy of relevant excerpts from Travis County's Development Standards are attached hereto. The County's requirements include the following:

1. Section 82.207: Water Quality Protection, Drainage and Floodplains.
  - a. A preliminary plan, final plat or development permit may not be approved for a project until it includes stormwater drainage facilities, permanent water quality controls and measures that:
    - i. Attenuate the effect of any proposed increase in stormwater to, from across, or along and within *or adjacent to the development*;
    - ii. Provide adequate conveyance of stormwater from a 100 year flood;
    - iii. Control, both temporarily during construction *and permanently thereafter, erosion and sedimentation so as to reduce to the maximum extent practicable or eliminate discharge of pollutants into watercourses*; and
    - iv. *Prevent any additional identifiable adverse flooding on other property.*
  - b. Stormwater calculations and the design of stormwater drainage facilities and controls *shall meet the specifications of the City of Austin Drainage Criteria Manual.*
2. Section 82.301: General Engineering Requirements.
  - a. Construction drawing and specifications prepared by a registered professional engineer must be submitted for review and a development permit issued by Travis County *prior to commencement of land clearing and construction.*
  - b. The Development Permit application must include construction drawings for all streets, site development, drainage, stormwater pollution prevention and permanent water quality controls, and temporary and permanent erosion and sedimentation control methods for all areas disturbed by construction.
3. Section 82.910: Water Quality Protection.

The purpose of the Travis County Water Quality Protection standards is "to control, reduce and eliminate the discharge of pollutants into Travis County storm sewer system *and water in the State* through the proper management of storm water and drainage while achieving optimal management of floodplains."

4. Section 82.917: Permanent Water Quality Control Maintenance Requirements.
  - a. The developer and District will be required to secure a BMP Maintenance Permit from the County to ensure proper maintenance of each structural, permanent water quality control facility constructed within the District.
  - b. The owner of the facility must submit, within its application for a development permit, a maintenance plan, procedures and information necessary to verify how any proposed permanent water quality control will be maintained in proper operating condition.
  
5. Section 82.931: Submittal Requirements for Environmental Review.
  - a. An application for a preliminary plan must include permanent water quality control and a summary of how such controls comply with applicable water quality standards and are compatible with drainage plan standards, and a construction storm water plan that describes how storm water controls will comply with applicable SWP3 standards for proposed construction.
  - b. The plat must identify the location of *all critical environmental features and waterways with required setbacks.*
  
6. Section 82.933: Technical Criteria.
  - a. Technical criteria for best management practices and permanent water quality controls are those set forth in LCRAs' HLWO Water Quality Management Technical Manual or to the extent of a conflict, TCEQ's Edwards Aquifer Rules: Technical Guidance and Best Management Practices (RG-348) may be used.
  
7. Section 82.934: General Storm Water Management Requirements for Construction Activities.
  - a. *Temporary and permanent best management practices shall be employed to prevent polluted storm water runoff from all construction and development activities from entering water in the State.*
  
8. Section 82.935: Storm Water Pollution Prevention Plan.
  - a. The contents of the Stormwater Pollution Prevention Plan (SWP3) must provide equivalent or greater environmental protection than the contents required by TPDES General Permit TXR150000 issued by the TCEQ.
  - b. *The SWP3 must describe all construction activity, all potential pollutants (including sediment from runoff), Best Management Practices (BMP) and Erosion and Sediment Control (ESC) implementation for each project phase, and all permanent storm water controls.*
  
9. Section 82.941: Setbacks from Critical Environmental Features and Waterways.

- a. *Drainage patterns must be designed to protect all critical environmental features and waterways from the effects of runoff from developed areas, and to maintain the catchment areas of recharge features in a natural state. Controls shall be sufficient to avoid the effects of erosion, sedimentation, and high rate of flow.*
- b. *Minimum protected setback zones up to 300 feet from Little Barton Creek will apply to construction and development activities in the District. Under Travis County's Development Standards, such setback zones must remain free of all construction, development and other alterations.*

10. Section 82.942: Environmental Assessment.

- a. An applicant must submit an environmental assessment that identifies critical environmental features and waterways, and proposes protection measures for the features.
- b. The report must describe topography, soils and geology, and demonstrate that proposed drainage patterns will *protect the quality and quantity of recharge.*

11. Section 82.944: Permanent Water Quality Control.

- a. The proposed development must include water quality controls for stormwater that demonstrate permanent water quality structural and non-structural BMPs.

12. Section 82.951: Owner and Primary Operator SWP3 Inspections.

- a. A qualified and certified SWP3 inspector must be designated to ensure the SWP3 controls and measures are properly implemented.

## **TCEQ Requirements**

All future construction and development activities within the District will also be subject to review and approval under TCEQ's Edwards Aquifer Protection Rules set forth at 30 TAC Chapter 213. These rules are specifically intended to protect development and construction activities that might otherwise pose a threat to water quality in the Edwards Aquifer, including wells, springs, and uplands areas draining to surface streams. Under the Edwards Aquifer Protection Rules, TCEQ will require submittal of detailed construction plans that include temporary erosion control BMPs, temporary sediment control BMPs, non-structural BMPs, and permanent structural BMPs. All such plans will be subject to review and approval by TCEQ's Regional Office under 30 TAC §§213.20 – .28. TCEQ's Optional Enhanced Measures (OEMs) that will be applicable to development activities in the District also establish minimum buffer zones from Little Barton Creek. TCEQ has a strict enforcement program to ensure compliance with the Edwards Aquifer Protection Rules and protection of water quality.

## **Federal Stormwater Regulations**

Under Section 402 of the federal Clean Water Act, construction activities will also be subject to regulation for the discharge of storm water associated with industrial activity. To comply with these provisions, the developer of lands in the District will be required to prepare a detailed Stormwater Pollution Prevention Plan (SWPPP) and notify the TCEQ prior to beginning and terminating construction activities, and will be subject to the requirements of TPDES General Permit TXR150000.

## **Summary**

To grant standing, the Commission must consider the “likely impact” of regulated activity on HPR Matters and its individual members under 30 TAC §55.256. To the extent the “regulated activity” is creation of the District, the individual members of HPR Matters do not own land in the District, will not receive services from the District, and will not be subject to the payment of District taxes, fees or charges. Therefore, they are not impacted by creation of the District any different than a member of the general public, and do not have a justiciable interest under 30 TAC 55.256(a).

To the extent future construction and development activities in the District are considered a “regulated activity” for purposes of a district creation application, the evaluation and protection of water quality, recharge, drainage and runoff associated with future construction and development activities within the District will be addressed by comprehensive local, state and federal regulatory proceedings independent of creation of the District. These programs include detailed and comprehensive review and approval requirements, and development restrictions, that include minimum setbacks, buffer zones, impervious cover allowances, drainage and run-off controls, all of which will protect water quality and adjacent properties. Detailed analyses of final construction, drainage and water quality plans will be undertaken under these programs to specifically review and protect the same issues raised by HPR Matters. Such construction plans do not exist yet and could not be properly evaluated in a hearing relating to creation of the District. As a result of such other regulatory reviews and approval requirements, the “likely impact” of future construction and development activities in the District is too remote for individual members to have standing with respect to creation of the District under 30 TAC §55.256(c)(4) and (5).

## **V.**

### **Conclusion**

Applicants request that the Commission deny the request for hearing by HPR Matters. The proposed District is a political subdivision of the State of Texas. None of the members of HPR Matters own land within the District, none will receive services from the District, and none will pay any District taxes, fees or charges. The members will not be impacted by its proposed creation different than members of the general public.

HPR Matters asserts that the future operation of a wastewater treatment plant and irrigation operations within the District may adversely impact the use of property or resources by individual members of the group. Under 30 TAC §5.256(c), the “regulated activity” that is the subject of this proceeding is creation of the District, not wastewater treatment and disposal operations. TCEQ is separately processing an application for Water Quality Permit No. WQ 0015201001 that will evaluate the construction and operation of the wastewater treatment and disposal facilities. HPR Matters and its members will have the opportunity to assert standing and request a hearing in connection with such application.

Finally, HPR Matters asserts that future construction and development activities in the District may impact water quality, recharge, natural runoff and drainage, and therefore may impact the use of property or natural resources by its members. All such construction activities will be subject to detailed and comprehensive federal, state and local regulatory review, approval and permitting requirements specifically established to ensure that there will be no such impact. Such review and evaluation will be based on detailed construction and development plans that have not yet been prepared. Consideration of such matters in connection with the creation of the District is limited to a determination under Texas Water Code §54.021(c) as to whether the District’s creation or subsequent construction activities will “have an unreasonable effect.” In light of the fact that other comprehensive local, state and federal regulatory reviews will be undertaken before construction activities may proceed, future development activities within the District will not have an “unreasonable effect” under Texas Water Code §54.021(c). For the same reason, the “likely impact” of future development and construction activities on the use of property or natural resources by the members of HPR Matters is too remote for such members to have a justiciable interest under 30 TAC §55.256.

For all of the foregoing reasons, the Applicants respectfully request that the Commission: (i) determine that HPR Matters does not have a justiciable interest; (ii) deny the request for contested case hearing submitted by HPR Matters; and (iii) approve the Petition for Creation of Travis County Municipal Utility District No. 22.

Respectfully submitted,

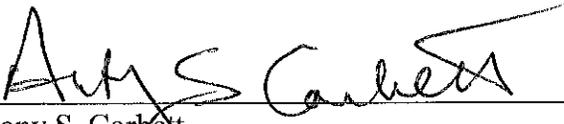
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By:   
\_\_\_\_\_  
Anthony S. Corbett  
State Bar No. 04811760

ATTORNEYS FOR APPLICANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on this the 26th day of December, 2014, via regular mail to the persons on the attached mailing list.

  
\_\_\_\_\_  
Anthony S. Corbett

**Mailing List**  
**LOWER COLORADO RIVER AUTHORITY**  
**DOCKET NO. 2006-0408-MWD; PERMIT NO. WQ0013594001**

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FOR ALTERNATIVE DISPUTE RESOLUTION:

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FOR THE CHIEF CLERK: (VIA HAND DELIVERY)

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**WATER QUALITY AND DRAINAGE**  
**EXCERPTS FROM TRAVIS COUNTY DEVELOPMENT STANDARDS**

- (8) Street lighting, signals, and other street related infrastructure must meet county Standards.
- (9) The county shall inspect the streets. Any repairs or maintenance strategies identified by the inspection report must be made and paid for by the owners of the private street prior to acceptance by the county. Repairs must conform to the same requirements and specifications for public streets.
- (10) The county will not maintain off-street parking and garbage container areas.
- (11) The county reserves the right to refuse to accept the public dedication of a private street.

(e) Restrictive Covenants.

A restrictive covenant which establishes the duty of a homeowners association or the property owners to maintain and pay real property taxes on the private streets shall, at a minimum, contain the following elements:

- (1) Identification of owners and establishment of owner's association;
- (2) Duty to maintain the private streets;
- (3) Duty to pay real property taxes on the private streets;
- (4) If no association is formed, or if the association is inactive or non-functional, the individual owners in the subdivision shall have the duty to maintain and pay real property taxes on the private streets; and
- (5) Easement language as set forth in Section 82.206(b)(2) above.

**82.207 WATER QUALITY PROTECTION, DRAINAGE, AND FLOODPLAINS**

(a) A preliminary plan, final plat, or development permit may not be approved unless it includes stormwater drainage facilities, permanent water quality controls, and measures that:

- (1) attenuate the effects of any proposed increase in stormwater, to, from, across, or along roadways and within or adjacent to the development;
- (2) provide adequate conveyance of stormwater from a 100-year flood;
- (3) ensure improvements are sufficiently strong to resist external pressure caused by earth or building and internal pressure to abrasion caused by water or debris;
- (4) ensure surface grades will not permit water to gather in a pool that may become stagnant;
- (5) control, both temporarily during construction and permanently thereafter, erosion and sedimentation so as to reduce to the maximum extent practicable or eliminate the

discharge of pollutants into water courses, in accordance with the requirements of Subchapters I and K;

- (6) prevent any additional identifiable adverse flooding on other property;
- (7) subject to Subsection (o) below, to the greatest extent feasible preserve the natural and traditional character of the land and the waterway within the 100-year floodplain; and
- (8) ensure onsite control of the two-year peak flow, provided that the development may provide offsite control of the two-year peak flow if not streambank erosion or adverse water quality impact from increased in-stream peak flow will occur.

(b) Stormwater data and calculations and design of stormwater drainage facilities and controls shall meet the specifications of the City of Austin Drainage Criteria Manual. Such facilities and controls shall provide for maintenance and protection from erosion in accordance with the City of Austin Environmental Criteria Manual. Use of alternative data, calculation, designs, or nonstructural measure, including but not limited to participation in the City of Austin Regional Stormwater Management program, shall require prior approval of the County.

(c) An applicant for a preliminary plan, final plat, or development permit shall submit a drainage plan for the total area to be developed demonstrating compliance with Subsection (a) if:

- (1) all or part of the development is in the ETJ of the City of Austin; or
- (2) the impervious cover of the development exceeds twenty percent (20%)

(d) Whenever the total area contributing to the point of consideration is 64 acres or more, the drainage plan required under Subsection (c) shall delineate, and the preliminary plan of development permits shall show, the limit of the 100-year floodplain based on the projected full development of the contributing area. The drainage plan shall be certified by an engineer and include an electronic copy of disk of all data and results files of approved hydraulic and hydrologic software.

(e) The owner of the property to be developed is responsible for the conveyance of all stormwater flowing through the property, including present and future stormwater that is directed to the property by other developed property or naturally flows through the property because of the topography.

- (1) The owner shall provide:
  - (A) easements dedicated to the public for stormwater drainage and open or enclosed drainage facilities to accommodate the 100-year flood, including the 100-year floodplain either as delineated in the drainage plan or, if exempt from the drainage plan requirement as depicted on then-current Federal Emergency Management Agency (FEMA) flood insurance rate maps (FIRM); and
  - (B) adequate off-site drainage improvements to accommodate the full effects of the development. If the construction or improvement of a stormwater drainage facility is required along a property line that is common to more than one

property owner, the owner proposing the development is, at the time the property is developed, responsible for each required facility on either side of the common property line, including the responsibility to dedicate or obtain the dedication of any right-of-way or easement necessary to accommodate the required construction or improvement of the stormwater drainage facility. If an owner proposed to develop only a portion of that property, a stormwater drainage facility to serve that portion of the property proposed for immediate development is required, unless construction or improvement of a drainage facility outside that portion of the property to be developed is essential to the development of the property to be developed.

- (2) In no event shall any easement dedicated to the public under this subsection be less than 25 feet wide, provided that the easement may be 15 feet wide if an enclosed drainage facility will be constructed. Where possible, the easement alignment shall follow the appropriate line of the drainage channel on maximum 50 foot chords and be located along lot lines. The easement shall prohibit construction of maintenance of, and grant authorized governmental entities the right to remove, all or part of any buildings, fences, trees, shrubs, or other improvements or growths that endanger or interfere with the construction, maintenance, or operation of the drainage system. The easement shall grant authorized governmental entities the right of access, including where necessary the right of ingress and egress across adjacent areas, for inspection, construction, reconstruction, improvement, operation maintenance, or rehabilitation of the drainage system.

(f) If any part of the 100-year floodplain depicted by FEMA on the FIRM extends beyond a drainage easement required by Subsection (e), or if the County determines that the proposed development will result in a flood insurance study (FIS) revision being required under National Flood Insurance Program regulations at 44 CFR Part 65, the applicant shall, at the applicant's expense, file the request with FEMA and provide all necessary data and materials to satisfy all FEMA requirements for approval of the revision.

(g) Approval of preliminary plans, final plats, and development permits subject to and FIS revision under Subsection (f) are subject to the following requirements:

- (1) If preliminary plan approval is required and the FIS revision results from land development activities, the applicant must submit evidence of FEMA's receipt of the applicant's request prior to preliminary plan approval and evidence of FEMA approval of that request prior to approval of a final plat under that preliminary plan.
- (2) If preliminary plant approval is not required or the FIS revision does not result from land development activities, the applicant must submit evidence of FEMA's receipt of the applicant's request prior to approval of final plat.
- (3) If at the time of acceptance or approval of the infrastructure in the development, FEMA has either issued a conditional approval of an FIS revisions resulting from land development activities or ahs not approved any other FIS type of revision, the applicant shall post fiscal security for all costs associated with securing final and unconditional FEMA approval of the FIS revision.

- (4) A development permit for any property affected by a required FIS revision may be denied or conditioned, either on the posting for fiscal security or otherwise, pending FEMA's final and unconditional approval of that FIS revision.
- (h) Preliminary plans, final plats, and development permits shall contain the following information on 100-year floodplains and drainage easements.
- (1) Preliminary plans shall show the 100-year floodplain delineated as required under Subsection (d), a proposed drainage easement containing it, and the 100-year floodplain as depicted on then-current FEMA FIRM.
  - (2) Final plats shall show the drainage easements required under Subsection (e) and to the extent it exceeds the limits of those drainage easements, the 100-year floodplain as depicted on then-current FEMA FIRM. The County may, for good cause, allow the owner to dedicate the drainage easement by separate instrument.
  - (3) Development permits shall show the 100-year floodplain delineated as required under Subsection (d), the drainage easement containing it, and the 100-year floodplain depicted on then-current FEMA FIRM.
  - (4) If any 100-year floodplain as depicted on then-current FEMA FIRM is show on a final plat, that plat shall also include a note referencing the community and panel number of the FEMA FIRM, referencing FEMA regulations on development and the requirements for flood insurance in floodplains, and indicating if any FIS revision affecting the property is being requested.
  - (5) If no portion of the property is within any 100-year floodplain and if no drainage easements must be dedicated, an applicant must provide a surveyor's certificate to that effect.
- (i) For any lot encumbered by either a drainage easement or a 100-year floodplain, an engineer must establish and show on the final plat a minimum floor elevation one foot above the surface elevation of the 100-year floodplain measured at the highest point on the lot which is immediately adjacent to the structure.
- (j) Lots shall be graded so that the cross sectional areas between buildings may be considered as emergency overflows.
- (k) An enclosed stormwater drainage facility is required to accommodate any portion of the 100-year floodplain that exceeds street capacity. Open drainage ditches may be constructed only if public health, safety, and welfare are not adversely affected.
- (l) If a creek, branch, drainway, or watercourse is covered, manholes at least two feet in diameter with removable covers shall be installed at intervals of not more than one-half the length of an average city block.
- (m) Record owner of a detention basin or appurtenance that receives stormwater runoff from a commercial or multifamily development shall maintain the basin or appurtenance. Maintenance of detention basins or appurtenances that are integral parts of roadways accepted for maintenance by a political subdivision shall be the responsibility of the accepting entity.

(n) Unless authorized by a development permit, a person may not place, or cause to be placed in a 100-year floodplain, an obstruction to stormwater.

(o) A proposal to modify a waterway shall include an analysis, based on a field investigation, by a qualified environmental professional delineating the riparian ecosystem related to the waterway and assessing both the suitability of maintaining the waterway's natural and traditional character and the effects of the proposed modifications on that natural and traditional character.

(1) Modifications of the natural and traditional character of a waterway shall be allowed to the extent one of the following conditions exists:

(A) The limits of the fully-developed 100-year floodplain extend beyond the limits of the riparian ecosystem related to the waterway, in which case the area from the limits of the floodplain to the limits of either the riparian ecosystem of the floodway, whichever is least restrictive, may be modified.

(B) The delineation top width of the full-developed 100-year floodplain exceeds the waterway's Critical Water Quality Zone, in which case the area from the delineation of the top width to the limits of the Critical Water Quality Zone, may be modified.

(C) The waterway is subject to accelerated streambank erosion.

(D) The waterway is subject to waterway scouring or erosion or sediment deposition that alters the flow of the fully-developed 2 year storm event.

(E) A modification is necessary to accommodate reasonable location for outlets into the waterway from upland drainage systems.

(F) The natural and traditional character of the waterway has already been altered by human activities.

(2) If one of the above conditions is not met, flood walls, levees, or other structural flood control measures within a waterway may nevertheless be allowed if one of the following conditions exists:

(A) There are existing structures within the limits of the fully-developed 100-year floodplain.

(B) The delineation top width of the fully-developed 100-year floodplain exceeds 500 feet.

(C) Neither modifications of the natural and traditional character of a waterway nor structural flood control measures are allowed if one of the following conditions exists.

(D) The modification would increase the height of base flood elevations on another person's property and the increase is not contained in a drainage easement.

(E) The applicant has not submitted a request for a revision to the applicable flood insurance study to FEMA and provided assurances satisfactory to the FEMA-

designated floodplain administrator responsible for the waterway that the waterway's flood carrying capacity will be maintained as required by 44 CFR Section 65.6(i)(12).

**82.208 DEDICATION OF PARKLAND**

(a) A subdivider of a residential subdivision shall provide for the parkland needs of the residents by the dedications of suitable land for park and recreational purposes. If the subdivision is in an ETJ, the subdivider shall so provide by dedicating parkland to or depositing a cash payment or fiscal security in lieu thereof with either the County or the municipality, but not both.

(b) The area to be dedicated must be shown on the preliminary plan and the plat and included in the dedication statement. The subdivider shall dedicate all parkland required by this section when a plat is approved, unless otherwise agreed by the subdivider and the County.

(c) The amount of parkland required to be dedicated by the subdivider is five acres for every 1,000 residents, as determined by the following formula:

$$\frac{5 \times (\text{Number of Units}) \times (\text{Residents Per Unit})}{1,000} = \text{Acres of Parkland}$$

(d) In calculating the amount of parkland to be dedicated under this section, the number of residents in each dwelling unite is based on density as follows:

Dwelling Units Per Acre	Residents In Each Dwelling Unit
Not more than 6	2.8
More than 6 and not more than 12	2.2
More than 12	1.7

(e) In calculating the amount of parkland to be dedicated under this section, density for a multi-family subdivision is assumed to be 24 dwelling units per acre, or the highest permitted in the zoning district if the property is zoned by a municipality. The subdivider may reduce the assumed density by restricting density in a restrictive covenant enforceable by the County.

(f) Land to be dedication must comply with standards established by the Executive Manager, who shall determine whether land offered for dedication is acceptable taking into account the following criteria:

- (1) If the land is in the ETJ, the Executive Manager shall consider whether the land meets any parkland dedication criteria of the municipality.
- (2) Fifty percent of acreage in applicable 100-year floodplain that is dedicated as parkland may be credited toward fulfilling the requirements of this part if the adjoining land within the 25-year floodplain may not be credited toward fulfilling the requirements of this part.
- (3) Land identified on the Critical Areas Map maintained by the City of Austin Watershed Protection and Development Review Department that does not otherwise comply

- (A) Completed application form.
- (B) Appropriate sets of plans required by the County.
- (C) Construction cost estimate signed and sealed by a Texas Registered Professional Engineer.

**Subchapter H. Water Quality Protection – General**

**82.910. Purpose.** The purpose of subchapters H - L is to set forth a consolidated set of water quality requirements that will control, reduce, and eliminate the discharge of pollutants into the Travis County storm sewer system and water in the State through the proper management of storm water and drainage while achieving optimal management of floodplains to prevent loss of property and human life. Proper storm water management requires three primary types of erosion and sediment controls (ESC): erosion source controls, sediment controls, and permanent erosion/soil stabilization controls, as well as applicable other controls, pollution prevention measures, and permanent water quality control design measures. Storm water management designs must include a combination of these types of ESC in order to control storm water volume and velocity within a construction site, minimize the discharge of sediment and other pollutants, and effectively minimize or eliminate pollutant discharges.

**82.911. Authority.** In addition to other authority and the authority granted to it in Chapter 232 of the Texas Local Government Code to adopt rules governing plats and subdivisions of land within the unincorporated area of the county 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, the Commissioners Court of Travis County adopts Subchapters H - K pursuant to its authority under:

(a) Texas Local Government Code Chapter 573 to take any necessary or proper action to comply with the requirements of the storm water permitting program under the national pollutant discharge elimination system (Section 402, Federal Water Pollution Control Act (33 U.S.C. Section 1342)), including:

- (1) developing and implementing controls to reduce the discharge of pollutants from any conveyance or system of conveyance owned or operated by the County that is designed for collecting or conveying storm water; and
- (2) developing, implementing, and enforcing storm water management guidelines, design criteria, or rules to reduce the discharge of pollutants into any conveyance or system of conveyance owned or operated by the County that is designed for collecting or conveying storm water; and

(b) Texas Water Code, Chapter 16, to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program, to promote public health, safety, and general welfare.

**82.912. Geographic Scope.** Subchapters H – L apply to all unincorporated areas within Travis County, including areas within the ETJ of any municipality, except subdivision development within the ETJ of a municipality that has executed an agreement with Travis County that

provides for a single office review and where a joint city/county code of subdivision regulations exists pursuant to Section 242.001(d)(4) of the Texas Local Government Code.

**82.913. Applicability.**

- (a) Subchapters H, I, K, and L apply to the review of the completeness of each new application for a preliminary plan, final plat, subdivision construction plan, residential development, single lot development, commercial development, and any development that requires a basic development permit.
- (b) Subchapters H, I, K, and L apply to the review of the completeness of each application to amend or propose revisions of an approved preliminary plan, final plat, subdivision construction plan, residential development, single lot development, commercial development, or any development that requires a basic development permit. Non-substantive revisions or minor corrections are not subject to re-submittal and re-approval of an application. A substantive revision requiring re-submittal includes those that revise the limits of construction, increases the area of land disturbance, or increases impervious cover to the project by greater than ten percent. Other substantial revisions requiring re-submittal include addition of a significantly new development activity, structures, requires a significant re-design of sediment controls, a sediment basin, permanent water quality control measures, the drainage plan, or a revision that would change a substantive term, condition, provision, or limiting parameter in an existing authorization. Revisions that are defined as redevelopment are not subject to re-submittal and re-approval of an application.
- (c) Subchapters H, I, and K apply to the construction, operation, and maintenance of private and public roadways, including rights-of-ways.
- (d) Subchapter J applies to any owner or operator of an approved development for which the County Executive has required implementation of specific water quality management practices at sites under construction.
- (e) This subchapter applies to any owner of permanent water quality controls including any owner who is required to obtain and comply with a BMP Maintenance Permit upon completion of each structural permanent water quality control required for an authorized development.
- (f) Subchapter L applies to new applications for the commercial development for a quarry or a mine and to applications to amend or propose revisions to an approved commercial development for a quarry or a mine.
- (g) Except as otherwise noted, Subchapters H, I, and K apply to the following applications:
  - (1) An application for a development permit or subdivision development that proposes 10,000 square feet or greater of impervious cover or where one acre or more of land would be disturbed;

(2) An application for development that would disturb less than one acre of land but is a part of a common plan of development where the overall development would disturb one acre or more of land; and

(3) Other development applications, including applications for utility placement, right of way construction, single lot or parcel construction, a driveway, or an on-site sewerage facility, that propose less than 10,000 square feet of impervious cover or where less than one acre of land would be disturbed which are subject to Section 82.934(a) and (b)(3) – (4), as a minimum, including following technical guidelines for erosion and sedimentation control provided by the County Executive and as described in Section 82.933.

**82.914. Environmental Review.**

(a) In addition to any number of copies required by Chapter 64 of the Travis County Code for a basic development permit application, and in addition to any number of copies required by Section 82.201(b) of this chapter, an applicant for a project for which Subchapters H – L applies must submit a copy of the application for environmental review.

(b) Development within the Lake Travis watershed is subject to the provisions of the Highland Lakes Watershed Ordinance and the Travis County Code. A person who seeks to engage in development in the Lake Travis watershed must:

(1) Submit any development application, including revisions to an application and required supporting information, to the Lower Colorado River Authority at the same time as it is provided to the County Executive; and

(2) If additional information is required to be provided to the County Executive as a part of the review process for a development application, submit the same additional information at the same time to the Lower Colorado River Authority.

**82.915. Pre-development Planning.** Before submitting an application for a development permit for a subdivision development greater than 20 acres in area or a commercial development greater than three acres in area, an applicant shall arrange a pre-development/concept plan meeting with the County staff. The meeting will focus on the proposed land plan, slopes, buffers, critical environmental features, and water quality management practices for construction activities and permanent water quality control, and may include a site investigation.

**82.916. Other Environmental Authorizations Required.** It is the responsibility of each applicant to comply with all applicable federal, state, and local statutes, rules, and regulations.

(a) Each applicant seeking a development permit shall submit documentation that demonstrates that the proposed development complies with the following statutes, rules, and regulations:

(1) the LCRA Highland Lakes Watershed Ordinance, if the application includes development in the Lake Travis watershed;

- (2) the TCEQ Edwards Aquifer requirements at 30 Texas Administrative Code Chapter 213, if the application includes development that overlies the Edwards Aquifer Recharge Zone or Edwards Aquifer Contributing Zone;
  - (3) Section 10 of the federal Endangered Species Act;
  - (4) Section 10 of the federal Rivers and Harbors Act or Section 404 of the federal Clean Water Act;
  - (5) Any applicable municipal requirements if the proposed development is located partially or wholly within an extra-territorial jurisdiction of a municipality;
  - (6) The TCEQ industrial or municipal solid waste management requirements under Chapter 361, Texas Health and Safety Code;
  - (7) Texas Pollutant Discharge Elimination System requirements under Section 402 of the federal Clean Water Act, Section 26.027 of the Texas Water Code, or Section 26.040 of the Texas Water Code, including a TCEQ permit for waste discharge into or adjacent to water in the state, a Notice of Intent along with a Storm Water Pollution Prevention Plan for the discharge of storm water associated with an industrial activity; and
  - (8) If the application includes a proposal to construct a dam to impound water, the TCEQ Dam Safety requirements set forth in 30 Texas Administrative Code Chapter 299, and City of Austin Drainage Criteria Manual Dam Safety requirements, if the proposed development is within the City of Austin ETJ.
- (b) Except as specified in subsection (c), if any of the statutes, rules, or regulations listed in Subsection (a) do not apply to the proposed development, an applicant must submit:
- (1) documentation of that fact from the respective entity with enforcement authority over the statute, rule, or regulation, or,
  - (2) if documentation of that fact from the respective entity with enforcement authority over the statute, rule, or regulation is unavailable, *bona fide* documentation of that fact from a qualified professional along with supporting information.
- (c) In an instance where a development proposal is clearly not subject to one or more of the statutes, rules, or regulations listed in subsection (a), the County Executive may accept a statement from the applicant indicating documentation from a qualified professional is not necessary.
- (d) If a receiving water of discharges associated with the development proposal is on the TCEQ List of Impaired Waters (relating to the CWA section 303(d) or subject to a Total Maximum Daily Load ("TMDL"), the County Executive may request that an Engineer's Report required by Section 82.935(b) to include additional information associated with the pollutant parameter(s) and designated or presumed use that does not meet the water quality standard, and any BMPs included in the construction plans to address these pollutants or TMDL requirements.

#### **82.917. Permanent Water Quality Control Maintenance Requirements.**

- (a) Except as provided in Subsection (j), the owner of a permanent water quality control must apply for and comply with the requirements of a BMP Maintenance Permit. An owner or the owner's legally-authorized assignee must, upon completion of the infrastructure for each structural, permanent water quality control required for the authorized development, obtain a BMP Maintenance Permit from the County Executive.
- (b) If a subsequent owner, maintenance association, or property owner's association does not accept the assignment of ownership of the permanent water quality control, the owner who developed the site shall remain subject to the terms of the BMP Maintenance Permit until an assignment occurs or until the subsequent owner, maintenance association, or property owner's association accepts responsibility for compliance with a BMP Maintenance Permit.
- (c) Along with the engineer's concurrence letter required by Section 82.953, the owner or the owner's legally-authorized assignee, shall submit a BMP Maintenance Permit application that includes the maintenance plan submitted with the permit application, revised if necessary, and the information necessary to verify that each permanent water quality control is in proper operating condition. An applicant for a BMP Maintenance Permit must remit the required, nonrefundable fee established by the Travis County Commissioners Court.
- (d) A person who has obtained a BMP Maintenance Permit must maintain the permanent water quality control in proper operating condition in accordance with the approved maintenance plan, the applicable technical criteria cited in Section 82.933, and any provisions established in the BMP Maintenance Permit.
- (e) Upon written notice from the Inspector that corrective action is needed, the owner must perform the necessary maintenance actions enumerated by the Inspector to bring the permanent water quality control into proper operating condition.
- (f) Not later than 30 days after a change in ownership or operation of a permanent water quality control, the new owner or operator must submit an application for a new BMP Maintenance Permit. When issued, the responsibility for the permanent water quality control transfers from the previous permit holder to the new permit holder.
- (g) Except for a BMP Maintenance Permit issued to a utility district, subdivision of the state, or municipality, a BMP Maintenance Permit will be issued for a term not to exceed one year. The term of a BMP Maintenance Permit issued to a utility district, subdivision of the state, or municipality is a term not to exceed three years. The owner or operator of record has the continuing obligation to apply for renewal of the BMP Maintenance Permit at least 30 days prior to the permit term's expiration. It is the obligation of the owner or operator to specify in the renewal application any necessary changes in maintenance or operation of the permanent water quality control that occurred since previous permit issuance.
- (h) Each application for renewal or change in ownership or operation of a permanent water quality control must describe all maintenance activities identified in the BMP Maintenance Permit have been completed and provide a certification from the owner that the water quality control remains in proper operating condition. Based upon

documentation or information that a permanent water quality control is inoperable or not fully functioning in accordance with its design, the County Executive may require a report from a Texas-licensed professional engineer certifying that corrective actions have restored the function and operation of a permanent water quality control.

- (i) Effective Date. The owner or operator of a permanent water quality control authorized or completed on or after August 14, 2012 shall submit an application and be approved for a BMP Maintenance Permit prior to the issuance of the final Certificate of Compliance and release of the ESC Fiscal for the project by the County. .
- (j) The County Executive will not require a BMP Maintenance Permit if the permanent water quality control is:
  - (1) located in a jurisdiction with territory that overlaps with the jurisdiction of Travis County and the jurisdiction requires a similar permit or authorization from the owner or operator, including an authorization under 30 Texas Administrative Code Chapter 213 (Edwards Aquifer) or the HLWO;
  - (2) located within the City of Austin ETJ;
  - (3) a non-structural permanent water quality control, such as a plan for pesticide management, fertilizer use, or a personnel training plan, and the owner complies with Subsection (k);
  - (4) a permanent water quality control required for residential construction on one lot or parcel, and the owner complies with Subsection (k);
- (k) The owner of the permanent water quality control identified in Subsection (j)(3) or (j)(4) must:
  - (1) submit, along with the application for a Travis County development permit, a maintenance plan, procedures, and information necessary to verify how any proposed permanent water quality control will be maintained in proper operating condition;
  - (2) maintain the permanent water quality control in proper operating condition;
  - (3) comply with the requirements of Subsection (e); and
  - (4) within 30 days after a change in ownership, submit a notification to the County Executive specifying the new owner's name, mailing address, legal lot description where the permanent water quality control is located, and an acknowledgement agreeing to maintain the permanent water quality control.

#### **82.918. Fees.**

- (a) Except as provided by subsection (c), a person who seeks to obtain or renew a BMP Maintenance Permit must include with the application the nonrefundable fee established by the Commissioners Court for the specific application. For any renewal application received by the County more than 30 days later than the expiration date of the permit, a late fee will be assessed.

(b) Within 30 days after the County notifies a permit holder of the inspection results of the County's on-site inspection of the permanent water quality control that has been determined to be either inoperable or out of substantial compliance with the maintenance plan provided by the permit holder pursuant to 82.917(c), the permit holder must pay the County the re-inspection fee established by the Travis County Commissioners Court. Failure to pay a re-inspection fee within the required timeframe or to complete the corrective actions specified by the County may result in enforcement as set forth in Section 104.010.

(c) A BMP Maintenance Permit renewal fee will be waived if a complete renewal application includes documentation of sufficient employee and public outreach efforts as described in Section 82.919.

**82.919. Outreach in Lieu of Fee.**

(a) A person who has been issued a BMP Maintenance Permit pursuant to Section 82.917 of this chapter is encouraged to publish and disseminate information to inform and educate the general public on day-to-day practices that will prevent the deterioration of water quality from sources that drain, or have the potential to drain, to the Travis County storm sewer system.

(b) The format of the outreach may be a brochure, newsletter, attachment or hyperlink in an e-mail, or similar method, so long as it is received by each residential owner within a subdivision and, in the case of a commercial development, by all owners, tenants, and employees of the establishments therein.

(c) In a residential subdivision, the information provided should focus on activities and practices of residential households that may cause water pollution if done improperly, such as motor vehicle maintenance, use of lawn and garden chemicals, trash and waste management, painting, and home repair. The information should give advice on proper methods that will prevent runoff of pollutants and the proper disposal methods that prevent pollution.

(d) In a commercial development, the information should focus on activities specific to the establishments that are being operated in the development.

(e) In both residential subdivisions and commercial developments, the outreach materials should describe the maintenance and operation responsibilities of the permit holder, the drainage relationship of individual households or establishments to the permanent water quality control structure, and the responsibility of all to minimize adverse impacts on storm water that is discharged from the control structure.

(f) Documentation must include:

(1) A copy of the outreach material disseminated, consistent with the guidelines of this section;

(2) A signed statement from the permit holder certifying the date(s) within the prior permit term when the materials were disseminated;

(3) A description of the geographic scope of the effort or the individuals, households, or business owners, as applicable, who were provided the information and the method by which the information was disseminated;

(4) For a commercial development, documentation of materials being provided to each business owner or business manager will be adequate, so long as multiple copies of any written materials provided, so that the business owner can provide one copy to each employee.

(g) If the County Executive determines that the applicant's outreach efforts were not adequate, the permit applicant shall either provide the required fee within 14 days to complete the renewal application, or will be provided 30 days to remedy the deficiency through additional outreach and provide documentation of the additional outreach efforts to the County Executive. If the County Executive finds that the additional outreach efforts are sufficient, the County will waive the renewal fee. However, if the County Executive finds that the outreach efforts are still not adequate, the applicant must submit the renewal fee within 14 days after the date the County Executive sends notification of the finding to the applicant.

**82.920. Fiscal Security.** Approval of a permit application for a commercial site development and for a subdivision development is contingent upon the execution of fiscal security in accordance with the requirements of Section 82.401 of the Code.

**82.921. Variance.**

(a) An applicant for a permit or plat may apply for a variance from the requirements of Subchapter H, I, K, or L. A variance may be sought on the basis that the imposition of the requirements of Subchapter H, I, K, or L for the issuance of a permit to the applicant constitutes an exceptional hardship or on the basis of presented data demonstrating that alternate technical criteria are justified by the site constraints and other similar factors and provide equivalent or greater water quality protection.

(b) An applicant may file a request for variance at any time before the applicant has complied with the provisions of this chapter. A request for a variance must be in writing, must be accompanied by a completed application, must include all information necessary to allow the Commissioners Court to make the findings specified in subsection (c) of this section, and must also specify:

- (1) The particular requirement from which a variance is sought;
- (2) The nature of the hardship presented by the imposition of the requirement including the estimated cost in dollars of complying with the requirement in comparison to the estimated cost in dollars of construction by the proposed alternative method, procedure, or maintenance;
- (3) The proposed alternative method, procedure, or maintenance to be utilized in lieu of the required method, procedure, or maintenance that is proposed;
- (4) How the alternative method or procedure will provide at least an equivalent level of environmental protection; and
- (5) The size, in acres, of the land area or the number of lots affected by the proposed alternative method or procedure;

(c) The Commissioners Court may grant a variance from a requirement of Subchapters H, I, K, and L if it determines that:

- (1) the requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development;
- (2) the variance:
  - (A) is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;
  - (B) is the minimum change necessary to avoid the deprivation of a privilege given to other property owners, to allow a reasonable, economic use of the entire property, and to allow a reasonable use of the entire property; and
  - (C) does not create a significant probability of harmful environmental consequences; and
  - (D) development with the variance will result in environmental protection that is at least equal to the environmental protection achievable without the variance.

(d) Mere economic or financial hardship alone does not constitute an exceptional hardship that justifies the granting of a variance.

***Subchapter I. Submittal Requirements and Water Quality Protection Standards***

**82.931. Submittal Requirements for Environmental Review.** In addition to any other requirement of the Code, an application must include the information specified in this section.

(a) For a preliminary plan or a commercial site development plan, the application must include:

- (1) Except for small construction projects, an environmental assessment as specified in Section 82.942 including a survey of critical environmental features, waterways, and proposed setbacks that comply with applicable standards;
- (2) For a preliminary subdivision plan of ten acres or greater, a plan consisting of:
  - i. Permanent water quality controls and a summary that describes how the proposed permanent water quality controls comply with applicable water quality standards and are compatible with drainage plan standards; and
  - ii. A preliminary construction storm water plan, in accordance with Section 82.939, that includes a summary describing how the storm water controls will comply with applicable SWP3 standards for the proposed construction;

- (3) For a preliminary plan, standard subdivision plat notes for a long form final plat that conform to Section 82.945; and
  - (4) The submittal requirements of this section do not apply to a commercial site development plan proposing a mine or quarry. An applicant proposing a mine or quarry must submit an application and include the information specified in Subchapter L).
- (b) For a short form final plat, an application must include the information specified in subsection (a), except that the plan set forth in Subsection (a)(2) need only be a general description of the future improvements planned for the site, if no construction improvements are included in the proposal.
- (c) For a long form final plat, the plat must show:
- (1) Subdivision boundaries, configuration, and extent and lot and easement locations and sizes, all of which must comply with all applicable standards, including all applicable setbacks regarding critical environmental features;
  - (2) The location of all critical environmental features and waterways with required setbacks and easements in accordance with Section 82.941;
  - (3) The location and dimensions of each easement to be used for placement of required permanent water quality controls, consistency with the drainage plan, and compatibility of the plat with proposed SWP3 controls for construction; and
  - (4) Standard plat notes required for the applicable site features and design as required by Section 82.945.
- (d) For a subdivision construction plan or commercial site development construction plan:
- (1) The application must include general construction notes that reference the SWP3, ESC Plan, and storm water management controls for the project in accordance with Section 82.935(g)(1) and (2) and Section 82.945;
  - (2) Except for small construction projects, the application must include:
    - (A) ESC Plan description information in standard format plan sheets or pages in accordance with Section 82.935(a), 82.935(c) - (f), and Section 82.945, except for projects disturbing less than one acre, in which case the applicant must prepare and submit an ESC Plan as set forth in Section 82.935(g);
    - (B) Site plan and detail sheets for the ESC Plan, in accordance with Section 82.935(g)(3), including other BMPs as appropriate, and Section 82.945;
    - (C) permanent BMP plan sheet(s) showing the design and details of permanent water quality controls compatible with drainage plan standards, in accordance with Section 82.935(g)(4) and Section 82.945;

- (D) fiscal surety documentation for erosion and sediment controls in accordance with Section 82.401; and
  - (E) a maintenance plan, if a BMP Maintenance Permit will be required prior to issuance of a Certificate of Compliance, as set forth in Section 82.917.
- (3) For a commercial site development that will use an OSSF, the application must include documentation that the OSSF construction area will be included in the erosion and sediment controls and SWP3 coverage for the site development project.
- (e) Residential construction submittal.
- (1) For residential construction on one lot or land parcel with one or more acres of land disturbance:
- (A) An applicant must submit a SWP3 Summary prepared in a format approved by the County Executive that includes:
    - i. The name, signature, and contact information of the primary operator, the owner, and their authorized representatives;
    - ii. the location, address, and legal description of each parcel or lot where construction disturbance will occur;
    - iii. the location where the SWP3 will be kept for inspection;
    - iv. contact information and qualifications of the person(s) who prepared the SWP3 and who will perform the SWP3 inspections;
    - v. the estimated start and end dates of the construction activities; and
    - vi. if the applicant is proposing to share coverage using an existing SWP3, the SWP3 Summary must include a statement of eligibility for such coverage from the primary operator and documentation that the authorized representative of the existing SWP3 accepts this arrangement.
  - (B) A copy of the SWP3, or an approval of the SWP3, is not required to be submitted if the SWP3 Summary is provided in accordance with Subparagraph (A), except that for proposals with the following project attributes, the SWP3, or at a minimum, the ESC and BMP plan of the SWP3 proposed to address the attribute(s) must be submitted for approval:
    - i. Land disturbance associated with one or more of the following proposed critical site improvements:
      - a. cut or fill that changes existing grade more than four vertical feet;

- b. a slope of greater than ten percent; or
    - c. improvements closer than 50 feet from the centerline of a waterway without any type of platted waterway setback, or closer than 100 feet from a critical environmental feature without any type of platted setback;
  - ii. a project proposing a yard, hiking trail, or a recharge basin in a critical environmental feature setback listed in Section 82.941(e);
  - iii. a project along Lake Travis or the Colorado River downstream from Lady Bird Lake to provide necessary access and appurtenances to a boat dock, pier, wharf, or marina, if the project complies with Section 82.941(j)(3) and is approved by the County Executive; and
  - iv. a low impact park development if it complies with Section 82.941(j)(4) and is approved by the County Executive.
- (2) For residential construction on one lot or land parcel with less than one acre of land disturbance, an applicant must submit:
  - (A) a County form on which the applicant acknowledges that the applicant will implement the proper use of ESC and BMPs to minimize water quality impacts associated with the land disturbance; and
  - (B) a SWP3 Summary and appropriate erosion and sediment measures if the development proposal will include more than 10,000 square feet of impervious cover and the area of land disturbance includes any of the project attributes identified in Section 82.931(e)(1)(B).
- (3) For residential construction on one or multiple lots located in a common plan of development, an applicant must submit the information specified in Section 82.931(e)(1)(A) – (B), except that if less than one acre of land will be disturbed and there is a single owner or operator, the applicant may submit a written request for an exemption from the requirements of Section 82.931(e)(1)(A). The County Executive may grant the exemption if the applicant provides adequate documentation of exemption status and the information specified in Section 82.931(e)(2)(A).
- (4) For single lot residential construction proposing to add 10,000 square feet or greater of impervious cover in an area outside of the City of Austin ETJ, an applicant must also submit a proposal for permanent water quality controls to meet the requirements of Sections 82.944 and 82.917(k).
- (f) Utility or Construction in Right-of-Way Permit:
  - (1) For a project with less than one acre of land disturbance, including a project that constitutes a small construction project, the applicant shall use ESC BMPs in the construction process, in conformance with Section 82.934(a) and (b)(3) – (4)

and Sections 82.970 – 82.974. An applicant for a project with less than one acre of land disturbance but that does not constitute a small construction project, must prepare and submit an ESC Plan in conformance with Section 82.935(g).

- (2) For a project with one or more acres of land disturbance, the applicant shall submit information equivalent to that provided with a site development construction plan (as set forth in Subsection (d)), along with a tree assessment, in compliance with Section 82.973.

(g) **Submittal of Notices.** In addition to the submittal requirements of subsections (a) – (f), each applicant must provide the County Executive the following notices when applicable to the project:

- (1) An applicant must submit a Construction Site Notice (CSN) with the application, if construction is to commence within 30 days of permit approval, but in no case shall the CSN be submitted later than two days prior to the start of construction activity;
- (2) An applicant must provide, with the application, a copy of the Notice of Intent (NOI) submitted to the Texas Commission on Environmental Quality if the land disturbance will be five acres or greater and if construction is to commence within 30 days of permit approval, but in no case shall the NOI be submitted later than seven days prior to the start of construction activity;
- (3) In lieu of the submittal requirements set forth in (1) or (2), the CSN or NOI may be provided to the County Executive along with notice of the pre-construction conference required by Section 82.950(d), no later than two business days prior to the pre-construction conference.

**82.932. Standards and Requirements for Technical Adequacy.** Sections 82.933 – 82.945 and Sections 82.970 – 82.974 describe the standards and requirements that apply to applications under environmental review.

**82.933. Technical Criteria.**

(a) In addition to the other requirements of this chapter, the following technical criteria manuals apply, except that any changes to the manuals subsequent to the effective date of this subsection shall not take effect until approved by the Commissioners Court:

- (1) Technical criteria for best management practices and permanent water quality controls in eastern watersheds and in the ETJ of the City of Austin are those set forth in the City of Austin Environmental Criteria Manual as of August 14, 2012.
- (2) Technical criteria for best management practices and permanent water quality controls in a Western Watershed, except within the ETJ of the City of Austin, are those set forth in the LCRA HLWO Water Quality Management Technical Manual (effective July 1, 2007), provided that to the extent of any conflict, in watersheds contributing to the Edwards Aquifer the owner may use any equivalent or more stringent technical criteria in TCEQ's Complying with the Edwards Aquifer Rules: Technical Guidance and Best Management Practices (RG-348).

- (b) The County may allow alternate technical criteria and standard details, on a case-by-case basis, in consideration of site-specific conditions.
- (c) The County may approve alternate technical criteria proposed by an applicant if it finds that the applicant has presented data that demonstrates that the alternative technical criteria are justified by the site constraints and other similar factors and provide equivalent water quality protection to the criteria described in Subsections (a) and (b).

**82.934. General Storm Water Management Requirements for Construction Activities.**

(a) Temporary and permanent best management practices shall be employed to prevent polluted storm water runoff from all construction and development activities from entering water in the State during the construction process until final site stabilization is complete. Proper storm water management requires three primary types of ESC: erosion source controls, sediment controls, and permanent erosion/soil stabilization controls, as well as applicable other controls, pollution prevention measures, and permanent water quality control design measures. ESC shall be designed to include a combination of these types of ESC in order to control storm water volume and velocity within a construction site, minimize the discharge of sediment and other pollutants, and effectively minimize or eliminate pollutant discharges.

(b) Responsibilities of an Owner and Operator.

- (1) The owner and the primary operator of a property where construction activity occurs are each responsible for implementing approved site plans, construction plans, and specifications, maintaining day-to-day operational control of construction activities, developing and implementing SWP3s, if required, and implementing BMPs in accordance with this section.
- (2) A SWP3 must be developed and implemented in accordance with this section for:
  - (A) Any construction activity or common plan of development for which a Travis County development permit is required and that disturbs one or more acres of land; and
  - (B) An individual lot in a common plan of development that disturbs less than one acre of land but is within a common plan of development that is one acre or greater in size.
- (3) Where there is less than one acre of land disturbance and neither the owner nor primary operator is required to develop and implement an SWP3, the owner and the primary operator must still implement BMPs appropriate to the scope of the construction activities in compliance with this section.
- (4) If sediment originates from construction activities on the project site and discharges off-site, the owner or operator must remove any accumulations that adversely affect off-site property and water in the State.

- (A) Accumulations must be removed at a frequency that eliminates or minimizes to the maximum extent practicable any adverse impacts, and the removal must be accomplished prior to the next rain event whenever feasible.
  - (B) If the owner or operator does not own or operate the off-site conveyance, the work must be accomplished by working with the owner or operator of the property to remove the sediment.
  - (C) The removal and remediation work for any off-site sediment impacts proposed by the owner or operator of the construction site must be approved by the off-site property owner and the County Executive, prior to such work being done.
  - (D) The proposal must demonstrate that no further adverse environmental impacts will result from the remediation work.
  - (E) If there is an accidental or intentional discharge of any pollutant that poses a significant threat or an actual impact to human health, safety, or environmental quality, the provisions and time lines specified in this paragraph do not apply and the person responsible must comply with Section 104.008. The person responsible must immediately take all necessary steps to ensure containment of a discharge source and cleanup of the released pollutants with appropriate permission from an affected landowner.
- (5) The primary operator and secondary operator of a property where construction activity occurs are responsible for complying with the conditions outlined in Part III, Section B of TPDES General Permit TXR150000 issued by the TCEQ on February 15, 2008, and these conditions as described in a subsequent renewal or amended permit. In addition to the foregoing, a secondary operator must comply with the permit requirements for primary operators if there are no other operators at the construction site.
- (6) Project Completion. The owner and primary operator are responsible for completing project construction, final grading, and final site stabilization as specified in the SWP3 and within the duration of the development permit before the project can be used or occupied. This includes following the sequence of construction, complying with the permanent erosion and soil stabilization control requirements in Section 82.936(d)(3), and the final inspection requirements in Section 82.951(b)(10), in order to complete the project in a manner that limits the exposure time of disturbed soils to the maximum extent practicable.
- (c) Qualifications for SWP3 Design and Inspection. For any project being constructed after February 14, 2014 that requires a Travis County development permit and a SWP3, the SWP3 must be designed, certified, inspected, and approved only by individuals with the proper qualifications and certifications, as described below:
- (1) Only a Texas-licensed professional engineer or a Certified Professional in Erosion and Sediment Control ("CPESC") may design and develop the ESC Plan and Engineer's Report components of the SWP3.
  - (2) For projects required by this chapter to have an engineer certification of the construction plans, only a Texas-licensed professional engineer may seal any engineering calculations that may be required for the SWP3.

(3) Only a Texas-licensed professional engineer, a CPESC, a Certified Erosion, Sediment, and Storm Water Inspector ("CESSWI"), and a Certified Inspector of Erosion and Sediment Control ("CIESC") may perform SWP3 inspections and sign SWP3 Inspection Reports required by Section 82.951.

(d) Each owner and primary operator must comply with all applicable requirements for Storm Water Pollution Prevention Plans and Best Management Practices for construction activities, as described in Sections 82.935 – 82.940 and Sections 82.970 – 82.974.

(e) Documentation of Rainfall Events. This subsection is applicable during any construction activity that disturbs ten or more acres of land at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development.

- (1) The owner or operator shall place and maintain a rainfall gage at a location on site, subject to review by the Inspector, that will collect an accurate, representative rainfall sample. The gage shall be graduated at least in one-tenth inch increments with a capacity of at least five inches.
- (2) The owner or operator shall inspect the gage within any 24-hour period during which any rainfall event has occurred at the site. The 24-hour rainfall quantity, date, time, and name of the person logging the result shall be recorded in a written log and the applicable SWP3 Inspection Report.
- (3) The inspection of the gage must take place within one hour of the time the previous day's reading was logged, whenever there are successive rainfall events lasting more than 24 hours.
- (4) The rainfall log shall be retained in the SWP3 Site Notebook and shall be readily available for review by the Inspector. At the request of the Inspector, a copy of the rainfall log shall be promptly provided.

#### **82.935. Storm Water Pollution Prevention Plan.**

(a) This subsection describes the required components and content of SWP3s as they apply to each type of proposed development activity and describes the time at which each component of the SWP3 must be submitted to the County or made available during the development approval process.

- (1) For a project that is not a small construction project, the SWP3 must include the contents specified in (c) – (h) of this section for submittals associated with a subdivision construction plan or a commercial site development construction plan. The contents of the SWP3 consists of specific items placed within:
  - (A) an ESC Plan with the construction plans;
  - (B) the Engineer's Report; and
  - (C) the SWP3 Site Notebook.

(2) For a project with one acre or more of land disturbance, the SWP3 must include the contents specified in (c) – (h) of this section for submittals associated with a utility or construction in right-of-way project. The contents of the SWP3 consists of specific items placed within an ESC Plan with the construction plans, placed within the Engineer's Report, and placed within the SWP3 Site Notebook.

(3) For a utility or construction in right-of-way project with less than one acre of land disturbance, the SWP3 content requirements are specified in section 82.931(f)(1).

(4) The contents of the SWP3 may be placed entirely within the SWP3 Site Notebook in accordance with Subsection (h) for residential and other permit applications where the submittal does not require sealed construction plans prepared by Texas-licensed professional engineer.

(5) When required by Paragraph (1) or (2), the ESC Plan and Engineer's Report must be submitted to the County Executive for approval with construction plans as part of an application for a development permit.

(6) The SWP3 Site Notebook must be prepared and completed no later than the time when the Construction Site Notice is required to be posted or Notice of Intent is required to be submitted to the TCEQ, and it must be available for review at the pre-construction conference.

(b) The contents of the SWP3 must provide equivalent or greater environmental protection than the contents required by TPDES General Permit TXR150000 issued by the TCEQ on February 15, 2008 (and any subsequent renewal or amended permit issued by TCEQ) . Each of the components of the SWP3 must meet all technical standards specified in this section, Sections 82.936 – 82.940, and Sections 82.970 – 82.974.

(c) Site and Project Description. The Engineer's Report component of the SWP3 must be consistent with the criteria specified in the City of Austin Environmental Criteria Manual Section on Water Quality Management, as well as any additional criteria required by the LCRA HLWO Technical Manual if a project is located outside of the City of Austin ETJ and within a Western Watershed. Every Engineer's Report, regardless of the location of the project, must include the following general site and project description information:

(1) A description of the nature of the construction activity and a summary of the primary and secondary construction project types and operations planned, including the major construction improvement site features planned;

(2) A summary list or table of potential pollutants, including sediment from runoff, sediment from non-storm water discharges, solid wastes from miscellaneous construction activities, petroleum hydrocarbons from vehicle and equipment maintenance and asphalt operations, and pollutants from miscellaneous industrial and construction materials, their sources, and proposed controls,. For each pollutant and source, the summary or table must specify the section or location in the construction plans or SWP3 Site Notebook where the controls for the pollutant are listed and described.

(3) A description of the intended schedule or sequence of construction activities that will disturb soil for major portions of the site, including the construction sequencing

information required in Section 82.301(c)(2)(C), the City of Austin Environmental Criteria Manual, and the following additional information:

- (A) Each construction project and each discrete major phase of a multi-phase construction project or common plan of development shall have a detailed sequence of construction and BMP implementation listed in the construction plan sheets;
  - (B) The detailed sequence of construction and BMP implementation for each project or discrete major project phase shall list major construction operations and site improvements summarized in paragraph (1) of this subsection and the implementation, phasing, and scheduling of all the ESC Plan and other BMPs required for these operations and improvement features. These include all the erosion source controls, sediment controls, temporary and permanent stabilization controls, and other controls and pollution prevention measures in the approved plans; and
  - (C) A time line describing the total months estimated from the start of construction to the completion and final stabilization of the site shall be included for the project, including each discrete major phase, if applicable.
- (4) The total number of acres of the entire property and the total number of acres within the entire property where construction activities will occur, including off-site material storage areas and stockpiles of fill, spoil, and borrow areas that are authorized under the same TCEQ Notice of Intent or Construction Site Notice and Travis County development permit;
- (5) The approximate, estimated cubic yards of excess fill material (soil, subsoil, rock) that will be generated by the project cut and fill operations that will require permanent off-site disposal, if any.
- (6) A description of existing and post-construction site conditions, including:
- (A) The existing soil types at the site, including soil information describing the principal, most extensive soil types in the areas to be disturbed, using reference information from *The Soil Survey of Travis County, Texas*, by the U.S. Department of Agriculture;
  - (B) A summary description of existing site conditions, including any existing land development features and the approximate percentage of existing vegetative cover; and
  - (C) For a subdivision or commercial site development project required to provide a drainage plan, a summary of slope gradients present, including the approximate percentage of the total site acreage proposed to be disturbed from paragraph (4) that is a zero to 15 percent grade, a 15 to 25 percent grade, a 25 to 35 percent grade, and a greater than 35 percent grade. As an alternative, composite slope gradients for the individual drainage areas in the site drainage plan may be added on the ESC Plan sheet drainage areas maps required by Subsection (g)(3)(G).

- (7) A description of any existing critical environmental feature and water in the State to which runoff or a pollutant discharge would be conveyed, either on or adjacent to the construction site, and a description of the BMPs included in the construction plans to address these areas;
  - (8) The name, and segment number, if applicable, of receiving waters at or near the site that may receive discharges from disturbed areas of the project, including the USGS stream type: ephemeral, intermittent, or perennial;
  - (9) The location, description, and authorization number or identifier of any support activity that are intended to be authorized under the owner or primary operator TCEQ Notice of Intent or Construction Site Notice for this project or Travis County development permit, including an asphalt or concrete batching operation, temporary or permanent fill or staging area, and other activities providing support to this construction site that is authorized under the TCEQ general permit; and
  - (10) Information on whether the SWP3 and construction plans are in compliance with other applicable state and local regulations and permitting requirements in addition to the requirements of the County Executive under the Travis County Code, including those authorizations identified in Section 82.916(a).
- (d) Erosion and Sediment Control Plan and BMPs. The Engineer's Report component of the SWP3 must include a summary that:
- (1) describes all of the ESCs and BMPs selected for the project that meet all applicable standards in Sections 82.933 and 82.936;
  - (2) includes each erosion source control, sediment control, and permanent erosion and soil stabilization control for the project;
  - (3) lists the individual controls selected and specifies where in the construction plan sheet(s) the details, specifications, schedule of implementation, site plans, and other relevant information for the controls are located;
  - (4) includes calculations of the volume of sediment basins; and
  - (5) if requested by the County, calculations for sediment controls other than sediment basins must be submitted to verify sizing, sediment removal performance, or appropriateness of the chosen sediment control.
- (e) Permanent Storm Water Controls. The Engineer's Report component of the SWP3 must include a summary that describes any permanent storm water control or BMP required by this subchapter that will be installed to control pollutants in a storm water discharge that may occur after construction has terminated.
- (f) Other Controls and Pollution Prevention Measures. The Engineer's Report component of the SWP3 must include a description of any other controls and pollution prevention measures selected for the project necessary to meet all applicable requirements in Section 82.937 and that will be included in the construction plans. The selected controls and measures must address each non-storm water discharge control, staging and stockpile area management, fill and spoils management and disposal and construction support activity

control. If requested by the County Executive based on the significance or location of the controls, the Engineer's Report and construction plans must also describe specifications for hazardous substance management, materials inventory and management, and spill prevention and controls.

(g) ESC Plan. The ESC Plan component of the SWP3 must include construction plan sheets showing each site plan, specifications, plan details, and implementation requirements for the ESC and other BMPs selected for the project. The construction sheets shall be consistent with Section 82.301(c), relating to Engineer's Construction Plan Requirements, the City of Austin Environmental Criteria Manual Section on Water Quality Management, as well as any additional criteria required by the LCRA HLWO Technical Manual when a project is located outside of the City of Austin ETJ and within a Western Watershed. Regardless of the location of a project, the plan sheets shall also include the following:

(1) Cover Sheet, including a site location map that meets the TCEQ General Permit requirements;

(2) General Notes Sheet:

(A) Travis County General Construction Notes for subdivision and site development construction, and special notes pertinent to the project, shall be consistent with the SWP3 Site Notebook, other sheets of the construction plans, and the Engineer's Report.

(B) The County Executive will make available additional SWP3 and ESC Plan-related standard notes for the construction plan sheets. These standard notes will be prepared and made available to applicants, and may be updated from time to time. Generally, these notes will specify requirements of inspection and maintenance, supplement the requirements of paragraph (g)(3), and will address requirements pertaining to Other Controls and Pollution Prevention Measures. The County Executive has discretion to allow modification of standard notes for customization to specific projects.

(C) The sequence of construction and BMP implementation shall meet all the requirements listed in paragraph (c)(3) and must be identical to the SWP3 Site Notebook.

(3) ESC Plan Sheets. In addition to items listed in Section 82.301(c)(3), the following items shall be included in ESC Plan Sheets in order to meet all applicable requirements of Sections 82.933, 82.936 – 82.940, and Sections 82.970 – 82.974:

(A) A Limits of Construction (LOC) line, clearly showing the areas where soil disturbance will occur;

(B) Existing and proposed slope contours before and after final grading and permanent site construction improvements;

(C) The name and location of each surface water either on, or adjacent to the site that receives storm water discharges from the disturbed areas of the site;

(D) Each structural erosion source control proposed and its location, a description of the site phasing and implementation schedule, and relevant plan notes and plan details, including drainage diversion and dissipation details. Non-structural erosion source controls applicable to the ESC and BMP sheets shall be included in plan notes, descriptions, and details.

(E) Each sediment control proposed and its location, a description of the site phasing and implementation schedule, and relevant plan notes and plan details, including each sediment pond with design information, sediment trap, perimeter controls, and interior control;

(F) Each permanent erosion and soil stabilization control proposed and its location, a description of the site phasing and implementation schedule, and relevant plan notes and plan details, including: temporary stabilization measures, permanent vegetative stabilization measures, and permanent structural erosion control measures;

(G) Drainage area boundaries, the acreage of each drainage area, and flow arrows from the project's proposed drainage plan must be included on the site plan maps for structural erosion source controls, temporary sediment controls, and permanent erosion and soil stabilization controls;

(H) Each permanent water quality control, other permanent BMPs, areas of waterway or critical environmental feature setbacks, and permanent site improvement proposed for the project;

(I) Other controls and pollution prevention measures proposed for which a location on the site plan is necessary and a description of the implementation schedule, plan notes, and plan details as applicable, including each stabilized construction entrance, concrete wash out area, vehicle maintenance and washing area, fuel tankage; dewatering controls for any pond, stream crossings, excavations, and other non-storm water controls.

(J) If known, depiction of each construction support activity and associated controls on-site or directly adjacent to the site, including each staging and stockpile area, haul road, temporary storage and permanent disposal area for fill and spoil, and asphalt or concrete batching.

(K) Each storm water outfall (existing and planned) and other points, where discharges associated with the construction activities site will occur; and

(L) A complete legend for each symbol used on the plan sheet for the various controls and BMPs, and standard and special specification details and plan notes.

(4) Drainage Layout, Plan and Profile, Detention Water Quality Control Structure, and Construction Detail Sheets. Plan sheets showing drainage layout, plan and profile, detention and water quality pond, and construction detail shall include additional technical standards, setback boundaries, notes, and details necessary for constructing all applicable permanent erosion controls, permanent storm water management and

water quality BMPs required by this subchapter. Design details must incorporate all applicable technical criteria requirements set forth in Section 82.933.

(h) SWP3 Site Notebook.

(1) The SWP3 Site Notebook shall be maintained on-site and updated by the owner or operator during the construction of a development project, along with a copy of the approved construction plans and County development permit.

(2) SWP3 contents required by this section which are not provided within the construction plan sheets or Engineer's Report approved with the development permit shall be provided by the owner or operator before the start of construction in the SWP3 Site Notebook.

(3) A master checklist shall be included in the SWP3 Site Notebook that cross references the location of all required contents of the SWP3. A cross reference must be included of where the details, specifications, schedule of implementation, drainage plans, and site plans for individual controls are located in the construction plan sheet(s).

(4) The SWP3 Site Notebook must include a description of all Other Controls and Pollution Prevention Measures selected to meet the requirements of Section 82.937. This includes specified controls listed in subsection (f) and described in the Engineer's Report, or included in the construction plans, as well as controls and measures for solid waste and hazardous substance management, materials inventory and management, and spill prevention and control.

(5) The SWP3 Site Notebook must include either an original or a copy of the following:

(A) the TCEQ General Permit, each TCEQ notice, signed SWP3 inspection reports, inspection and revision logs, and all adjustments, modifications, and official plan revisions to the approved SWP3 and ESC construction plan sheets and BMPs that occur after the start of construction.

(B) Day-to-day operator and secondary operator information; qualified inspector information; owner and operator SWP3 certifications or delegation letters, if executed; operator site personnel qualifications and training records, if required.

(C) Any additions or modifications to the SWP3's Other Controls and Pollution Prevention Measures, including: non-storm water discharge controls, site materials inventories and records, spill prevention and control procedures, and related records.

(6) In the event of any conflicts between the content in the SWP3 Site Notebook and the content in construction plans approved by Travis County with the development permit, the content of the construction plans shall take precedence.

(7) Maintenance and Inspection Description. The SWP3 Site Notebook must include a summary that describes how the maintenance, training, and inspection

requirements for the SWP3 meets the applicable requirements of this chapter. The summary shall include:

- (A) The general SWP3 implementation and maintenance responsibilities of each responsible primary and secondary operator, including the name and contact information of the responsible part(ies) for the primary operator(s);
  - (B) The name, qualifications, and contact information of each qualified individual who has been designated by the owner to conduct SWP3 inspections;
  - (C) The schedule for SWP3 monitoring inspections and reports;
  - (D) The maintenance and inspection procedures for SWP3 inspection milestones, including: pre-construction, site monitoring, post-rainfall, SWP3 revisions, permanent drainage and water quality system inspections, complaint response, non-compliance, final inspection and final stabilization; and
  - (E) The SWP3 Site Notebook must include the name and contact information for the primary operator with day-to-day operational control of the construction site and the qualified SWP3 inspector and, if the name and contact information are not available at the time of permit application review, it shall be provided at or before the pre-construction conference required under Section 82.950.
  - (F) The applicable training requirements for the site personnel who are responsible for implementing the various requirements of the SWP3 during construction, including each person to be trained on their roles and responsibilities, the type and content of the training to be received by each person, and the training schedule and records for each person.
- (i) Revision of the SWP3.
- (1) The SWP3 must include an implementation schedule for revisions that complies with this section and all revisions and adjustments must be documented by the operator's qualified SWP3 inspector in the SWP3 Site Notebook.
  - (2) The owner or operator must revise or update the SWP3 whenever any of the following circumstances occur:
    - (A) A change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants and that has not been previously addressed in the SWP3;
    - (B) A change in site conditions based on updated plans and specifications, amendment of an approved development permit, a new operator, a new area of responsibility for an operator, or a change in a BMP;
    - (C) An investigation or inspection conducted by the operator, as required by Section 82.951 indicates that the SWP3 is ineffective in eliminating or significantly minimizing pollutants in discharges; or

- (D) A result from an investigation or inspection by an Inspector that indicates the SWP3 is proving ineffective in eliminating or significantly minimizing pollutants in discharges.
- (3) Revisions to the SWP3 must be completed within seven calendar days following an inspection or within a shorter timeframe as specified by the Inspector.
- (4) Minor revisions and adjustments to the SWP3 may be approved in the field by the Inspector during construction.
- (5) SWP3 revisions which require formal County plan review and approval including those which require additional engineering calculations or engineered design changes, although the County Executive reserves the right to require formal plan revisions on construction plan changes or SWP3 changes, based upon site-specific characteristics, ESC and BMP performance issues, and similar factors.

#### **82.936. ESC Plan Best Management Practices**

(a) General. Temporary and permanent ESC and BMPs implemented in an ESC Plan must include both structural runoff controls and non-structural management practices, and must comply with the design standards described in this section. All control measures must be properly selected, installed, and maintained according to the manufacturer or designer specifications and the approved Travis County development permit, and plans. The construction plans must identify the locations, specifications, and timing or sequence for BMP implementation within the schedule of the construction activities.

(b) Design Storm Standards. ESC Plan BMPs must be developed and implemented in the SWP3 to prevent and minimize off-site discharge of sediment and other pollutants. The design must ensure retention of sediment and other potential pollutants associated with the construction activity on-site, in accordance with the required design storm standard, to the maximum extent practicable.

(1) A sediment basin must provide sufficient storage to contain a calculated volume of runoff from a 2-year, 24-hour storm until final stabilization of the site.

(2) Flows from stabilized areas and on-site or off-site undisturbed areas are not required to be included in the basin calculations if the flows are diverted around the disturbed areas of the site and the sediment basin.

(3) Design of the ESC Plan BMPs must be consistent with the approved technical criteria established for the site location as set forth in Section 82.933.

(c) Site Specific Criteria for ESC Plan Design. For each construction site, the site specific factors identified in paragraphs (1) – (5), where applicable, must be given primary consideration and priority in selecting the:

- (i) Erosion and sediment controls set forth in subsection (d);
- (ii) Applicable BMPs set forth in Section 82.937 ; and

(iii) ESC Plan standards for roadways and drainage channels set forth in Section 82.970

(1) Special Definitions. In this Chapter:

(A) "Critical Site Characteristics" means the primary site-specific topographic factors that must be evaluated and considered in the design of an ESC Plan and must be addressed with suitable measures and BMPs; these factors include the total area disturbed in combination with the slope steepness, the slope lengths, the soil erosiveness, the run-on drainage, the total drainage area size, and the proximity to water in the State.

(B) "Critical Site Improvements" means specific construction features that are prone to greater erosion and sediment discharge and therefore require greater amounts and types of ESC for sediment control and final stabilization in the ESC Plan design; these include:

(i) construction features in areas with priority critical site characteristics as described in paragraph (2);

(ii) cut slopes and fill embankment slopes exceeding ten percent grade, including side slopes of permanent storm water ponds;

(iii) designed drainage channels, swales and concentrated flows;

(iv) stream crossings, bridges, culverts, and the runoff discharge from the approaches on each side; and

(v) storm water outfalls and any features contributing excessive sediment load or pollutants to the outfall discharge.

(2) Priority Critical Site Characteristics. ESC Plan design measures must address and correspond to the critical site characteristics of a disturbed soil area and minimize the potential adverse off-site discharge impacts to the maximum extent practicable. In particular, increased levels of ESC measures will be required to address disturbed soil areas with any of the following priority critical site characteristics:

(A) Slopes greater than ten percent, slopes between five and ten percent with slope lengths greater than 50 feet, and slopes between two and five percent with lengths greater than 100 feet;

(B) Areas located within a distance of 150 feet from the centerline of a waterway (including ephemeral, intermittent, or perennial surface waters) or a critical environmental feature; and

(C) For all disturbed soil areas, as the level and combination of the critical site characteristic factors increase, erosion and off-site sediment discharge potential also increases, requiring increased amounts and types of ESC in the ESC Plan design.

(3) Construction Project Type. The type of project being constructed must guide the applicant in the selection of the ESC Plan BMP controls that are the most effective for the characteristics of the site and typical industry practices common to each primary type of construction project. Primary construction project types include: site construction including buildings and parking areas; residential homes; construction support areas; construction maintenance activities; and linear construction, including streets, drainage, and underground utilities.

(4) Construction Features and Critical Site Improvements. Construction features that must be considered in the ESC Plan design include: all disturbed areas, fill embankments, cut slopes, temporary and permanent stream crossings, roadways, underground utilities, residential lots, bridges, culverts, storm sewer systems, channels, inlets, basins, outfalls; temporary entrances, roads, and stockpiles. All critical site improvements must be addressed as required in the ESC Plan design.

(5) Construction Duration, Phasing, and Sequence. The length of time from start of construction to final stabilization, the construction site phasing, and the construction sequence for each phase must be considered for each construction project. Projects extending over longer periods of time will typically require increased site phasing and construction sequence considerations in the ESC Plan design, especially larger and more complex construction projects, and projects with increased levels of critical site characteristics and critical site improvements.

(d) Primary ESC Categories and Functions. Each ESC Plan must include the three primary types of ESC: erosion source controls, sediment controls, and permanent erosion/soil stabilization controls. All ESC Plans shall be designed to include a combination of all three primary types of ESC in order to control storm water volume and velocity within the construction site, minimize the discharge of sediment and other pollutants, and effectively perform the following functions.

(1) Erosion Source Controls. Each ESC Plan must include structural and non-structural erosion source controls in order to minimize the amount of soil particles that can potentially become mobilized by erosion during construction activities. The erosion source controls listed in (A)-(E) must be included in the ESC Plan, where feasible, and implemented to the maximum extent practicable to reduce erosion and increase the effectiveness of the sediment controls and permanent erosion/soil stabilization controls in the ESC Plan:

(A) Minimize Soil Disturbance and Compaction. Soil disturbance shall be minimized in areas with critical site characteristics. Required setbacks for protection of all streams, floodplains, and critical environmental features shall remain undisturbed. Within a developed or disturbed area of the site, existing vegetation and desirable environmental features must be preserved where feasible. Disturbance of steeper and longer slopes should be minimized. Soil compaction must be minimized and surface roughening or texturing must be undertaken in disturbed soil areas where appropriate.

(B) Phase Soil Disturbance and Stabilization. The total amount of disturbed soil exposed at one time shall be limited through phasing of major portions of the construction project, to the maximum extent practicable. Temporary protection or permanent stabilization of disturbed soil areas must be

accomplished as required by paragraph (3), and as specified in the detailed construction sequence for each project or project phase.

(C) Managing Staging Areas, Site Grading, and Fill Material. The staging and stockpile area management requirements set forth in Section 82.937(b)(3) must be used to minimize discharges from staging and stockpiling areas during the construction process. The fill and spoils management and disposal requirements set forth in Section 82.937(b)(4) must be used to effectively manage the soil material excavated, transported, and placed on or off the construction site to minimize it as a source of sedimentation. During the site grading process, the operator shall implement placement of temporary soil grades, sumps, and berms that will act to inhibit runoff and promote infiltration on site to the maximum extent practicable, in addition to required structural controls.

(D) Drainage Diversion. Run-on drainage to disturbed soil areas shall be diverted around disturbed areas, whenever feasible through temporary or permanent structural diversions, or through the use of other BMPs, including construction of all or parts of the permanent drainage conveyance systems and structures designed for the site as early as possible in the sequence of construction.

(E) Drainage Dissipation. Storm water discharges, including both peak flow rates and total storm water volume, shall be controlled to dissipate drainage flow, minimize erosion within the site and at drainage outlets, and to minimize downstream channel and stream bank erosion. Velocity dissipation devices are to be used as site interior controls and must slow velocities, spread out flows, and promote sedimentation. Velocity dissipation devices at drainage discharge locations and along the length of any outfall channel must provide a non-erosive flow velocity from the structure to a water course. Velocity dissipation devices must prevent degradation of natural physical and biological characteristics and functions.

(2) Sediment Controls. Structural sediment controls must be designed to protect all disturbed soil areas from discharging sediment off of the construction site. Sediment control structures must capture and temporarily detain the required storm water runoff volume and must effectively retain sediment from the range of soil particle sizes expected to be present at the construction site, to the maximum extent practicable. In addition, sediment controls must meet the following standards:

(A) Drainage volume calculations for sediment controls shall be prepared in accordance with the guidelines in the Austin Drainage Criteria Manual.

(B) Sediment control structures are to be redundant and placed at perimeter and interior locations within the construction site to maximize sediment trapping areas and temporary runoff capture volume to maximize sedimentation and address all applicable site factors and priorities described in subsection (c) of this section.

(C) Each structural sediment control shall be designed and placed so that runoff flows, including flows exceeding the design storm, will discharge or

overtop the structure in a controlled manner at planned outlet points, without breaching of the sediment control structure, without causing uncontrolled discharge, and without causing flooding of adjacent property. Longer lengths of structural sediment controls will typically require perpendicular dissipation structures, especially when such controls cannot be placed along the contour. Low points in the sediment control structure which develop into runoff outlet points must be further redesigned or reinforced as necessary before the next runoff event to prevent breaching and uncontrolled discharges. Where feasible within the limits of construction, storm water should be directed to vegetated areas to increase sediment removal and maximize infiltration.

(D) Primary Types of Structural Sediment Controls. The primary types of Structural Sediment Controls include:

(i) Sediment basin. Unless a sediment basin is not feasible due to the factors listed in a., a sediment basin is required for disturbed drainage areas of five or more acres in order to minimize sediment discharges. If a site design includes a permanent water quality control pond, the pond must be used as a temporary sediment basin during construction, unless it is not feasible due to the factors listed in a.

a. Feasibility. Factors in determining whether a sediment basin is necessary or appropriate include critical site characteristics, as well as the available area, public safety, precipitation patterns, site geometry, site location, site vegetation, infiltration capacity, geotechnical factors, depth to groundwater, and other similar considerations. If a sediment basin is not feasible, the applicant shall document the reason and utilize equivalent control measures, which may include a series of smaller sediment basins or traps, increased perimeter and interior sediment controls, and other ESC BMPs.

b. A sediment basin and outlet shall be designed to maximize sedimentation, including sedimentation of the finest sediment particles to the maximum extent practicable and shall have a reinforced spillway for overflow discharges. Sediment must be removed from the sediment basin no later than the time that design volume has been reduced by greater than ten percent. Basin de-watering must comply with Section 82.937(b)(1)(C).

c. Disposal of sediment removed from a basin may require special handling, in accordance with TCEQ requirements, if coagulants, flocculants, or other treatment chemicals are used.

d. Sequence. A temporary sediment basin or permanent water quality control pond serving initially as a construction sediment basin, must be installed first during the sequence of construction.

(ii) Sediment traps. A sediment trap is a small sediment basin or impoundment area located at strategic areas on the construction site where the runoff volume can safely be temporarily detained to increase capture volume, to maximize sedimentation effects, and to retard runoff velocity.

(iii) Perimeter Sediment Controls. Silt fencing or equivalent sediment controls are required for all down slope boundaries of the disturbed construction site area where runoff can discharge off-site.

(iv) Interior Sediment Controls. Structural sediment controls of various types shall be placed at locations within the construction site interior to address critical site characteristics, construction project type, construction site features and critical site improvements, and construction length, phasing, and sequence.

(v) Temporary sediment control structures must be maintained in accordance with the plans and specifications throughout the construction process and removed along with accumulated sediment when final site stabilization is completed for the entire site or the site phase.

(3) Permanent Erosion and Soil Stabilization Controls. Each permanent structural and vegetative erosion control design specified in the ESC Plan must prevent long term erosion of site improvements, reduce runoff velocities, and achieve full, permanent vegetation coverage and final site stabilization, including prioritizing the stabilization of critical site improvements. When phasing and implementing site stabilization in the SWP3, the operator must adopt the following priorities and meet the following standards and minimum schedule of initiation and completion:

(A) The operator must give first priority for stabilization to portions of the construction site that have critical site improvements. These critical site improvements will typically require greater amounts of permanent erosion control measures to achieve effective final stabilization, such as mulch, soil retention blankets, or riprap, as appropriate. If feasible, the operator must also implement stabilization of other portions of the construction site early in the sequence of construction. Re-vegetation must be initiated and completed for all of the remainder of the construction site as soon as practicable before submittal of the engineer's concurrence letter.

(B) Topsoil meeting the applicable technical criteria in Section 82.933 and the approved plans shall be placed as required prior to permanent seeding and mulching activities for re-vegetation. Existing native site topsoil shall be stockpiled and reused for this purpose whenever it is feasible. The County can consider approval of minimizing topsoil placement or other alternate final stabilization measures for selected areas with very high levels of critical site characteristics and high erosion potential, on a case-by-case basis.

(C) Seed, mulch, soil retention blankets, fertilizer, irrigation for vegetation establishment, and other measures used for re-vegetation of disturbed areas shall meet the applicable technical criteria in Section 82.933 and shall be specified in the approved plans. The primary operator must follow irrigation

schedules and methods that will result in successful and rapid germination and growth of the seeded or planted vegetation.

(D) Stabilization of disturbed areas must be initiated by the primary operator immediately whenever an applicable milestone in the approved sequence of construction has been reached, or whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. The primary operator may not delay final stabilization of completed site sections or critical site improvements solely for the purpose of mobilizing re-vegetation operations for the entire site at a later date.

(E) The primary operator must take advantage of optimum seasonal planting dates, times-of-day, and temperatures to the maximum extent practicable in accordance with the applicable technical guidance to complete permanent re-vegetation of required site areas in a timely manner. The primary operator shall plan for early spring as the first priority planting date for required permanent vegetation, to the maximum extent practicable, unless otherwise specified in the approved plans. The primary operator may be required to cut back the height of temporary annual vegetation if it is necessary to allow the specified permanent, perennial vegetation to successfully establish.

(F) Except as allowed by (G), if the irrigation water supply and irrigation schedule are restricted as a result of drought conditions, vegetative stabilization measures must be initiated by the primary operator as soon as practicable but no later than the 14<sup>th</sup> day after construction activity has temporarily or permanently ceased in portions of the site.

(G) Successful stabilization initiated for a portion of the site identified in either the approved sequence of construction or by the actual cessation of earth disturbing activities described in subparagraph (D) of this paragraph must be completed by the primary operator within the following time periods from the required date of initiation, as identified during construction by the Inspector or the qualified SWP3 inspector and documented in the SWP3 Inspection Report:

(i) Initial Stabilization Activities. Non-vegetative stabilization controls and initial vegetative seeding activities in the identified portion of the site must be substantially completed within seven days of the required date of initiation.

(ii) Temporary stabilization must be substantially completed either in accordance with the approved sequence of construction, if applicable; within seven days after the date of initiation for non-vegetative controls, such as mulch, or within 60 days after the date of initiation for temporary vegetation growth from seeding.

(iii) Permanent final stabilization must be substantially completed either in accordance with the approved sequence of construction, if applicable, within ten days after the date of initiation for sodding, or within 120 days after the date of initiation for permanent seeding.

(iv) The County Executive will consider requests for extensions to the initiation or completion time periods listed in clauses (i) – (iii) only if the operator can demonstrate that they are justified by the applicable technical criteria of Section 82.933 or by truly exceptional circumstances, including: time delays to reach optimal warm or cool season planting dates, exceptional characteristics of an individual site, extended periods of exceptionally severe heat or cold, official declaration of a water restriction of the primary irrigation water supply, or use of approved alternative vegetation or seed mixes. A request for a time extension must include interim stabilization or protection measures that will adequately prevent discharges during the extension period, including additional measures necessary for critical site improvements.

(H) The operator must achieve final stabilization of the entire site in accordance with the approved plans, specifications, and applicable technical criteria, including the required vegetation cover percentage, prior to submittal of the engineer's concurrence letter required by Section 82.953 and termination of the SWP3 permit coverage, unless the project meets the criteria described in paragraph (4) of this subsection for a developer's contract. Temporary stabilization measures may not be substituted for required final stabilization measures. The County may consider alternate final stabilization measures for future building pad areas of two percent grade or less if equivalent stabilization is achieved. Fiscal security for erosion control shall be refunded only upon completion of final stabilization, including removal of all temporary sediment controls and accumulated sediments.

(4) Developer's Contract.

(A) A separate, written agreement to ensure final stabilization, known as a developer's contract, may be executed between the County Executive and an owner if maintenance responsibility for constructed facilities is accepted for County maintenance, or if the County Executive approves an owner's request for temporary use or occupancy of a project, facility, or building before the required re-vegetation coverage is complete.

(B) A developer's contract, unless extended in writing by the County Executive, is effective for up to 120 days after the date it is executed by the County Executive and the owner, and must be secured by fiscal surety that the County will use for final site stabilization if the owner fails to achieve final stabilization within the contract period. After performance of final stabilization at the site in accordance with the contract, the fiscal surety is then refunded by the County Executive to the owner.

(C) To be considered for a developer's contract, an owner must have:

(i) followed the approved plan for phasing and sequence of construction;

(ii) followed the approved plan for temporary and permanent stabilization;

(iii) substantially completed all permanent water quality controls and other inspection punch list items;

(iv) initiated permanent re-vegetation in all required areas; and

(v) submitted the engineer's concurrence letter required by Section 82.953.

**82.937. Other Controls and Pollution Prevention Measures for Construction Activities.**

(a) In addition to ESC Plan BMPs for construction activities, an owner must design, install, implement, and maintain other controls and pollution prevention measures in accordance with this section. These controls and measures must eliminate and effectively minimize the off-site transport of pollutants from the construction site by means other than direct storm water runoff. An owner must address activities that can cause contamination on-site and increase the potential for subsequent pollutant discharge from runoff with other controls and pollution prevention measures.

(b) Other controls and pollution prevention measures include:

(1) Non-Storm Water Discharge Controls. Non-storm water discharge controls must be described in the SWP3 and be consistent with the following standards:

(A) Vehicle Tracking. Controls and measures must minimize the off-site vehicle tracking of sediments and the cleanup of any public roads or off-site areas adversely affected.

(B) Dust Control. Controls and measures must minimize the generation and migration of dust.

(C) De-Watering. Controls and measures for de-watering must minimize the offsite transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water from the site, including from sediment ponds. When discharging from a basin or impoundment, an outlet structure that withdraws water from the surface must be used whenever possible. A discharge from dewatering activities, including a discharge from dewatering of a trench or excavation, is prohibited unless effective sedimentation, collection and disposal, or a similarly effective treatment occurs prior to discharge.

(D) Work in Surface Waters. Controls and measures for working in or directly adjacent to a waterway must prevent and minimize discharges into such water, including the location of a temporary or permanent stream crossing.

(E) Concrete Wash-out. Controls for wastewater discharges from concrete washout and water well drilling operations must contain wash outs on land surfaces without discharge to water in the State. Concrete wash out without appropriate pollution prevention measures is prohibited.

(F) Wash Water. Controls must completely prevent the discharge of wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials. Pollution prevention measures

must include collection, storage, and off-site disposal of these wastes in accordance with all TCEQ requirements.

(G) Vehicle Washing. Controls for vehicle washing must minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge; discharges of soaps or solvents used in vehicle and equipment washing are prohibited.

(H) Any additional, anticipated non-storm water discharges must be listed in the SWP3 and the ESC Plan must specify the BMP measures selected. All non-storm water discharges are subject to the requirements of Chapter 104 of the Code and TCEQ discharge requirements.

(2) Solid Waste and Hazardous Substance Management. A description must be provided in the SWP3 of construction solid waste and hazardous substances expected to be generated or stored on-site. Controls and measures must be implemented to eliminate and prevent pollutant discharges from solid waste and hazardous substance handling, including recycling and disposal as appropriate. In preparing the SWP3, an applicant shall consider how to eliminate and prevent pollutant discharges from materials such as the following: trash, litter, construction or demolition debris, residual or surplus construction materials of all types, surplus containers of chemical or hazardous substances, soil contaminated from an oil or hazardous substance spill, cut or uprooted vegetation such as trees and brush, and waste from sanitary facilities provided for personnel.

(3) Staging and Stockpile Area Management. Staging areas include all areas necessary for equipment, materials, fill storage and stockpiles, temporary offices, vehicle parking, vehicle maintenance, and the associated haul roads for these areas and the construction site. Controls and measures for these areas shall include:

(A) Restricting the size of these areas to the minimum necessary for the operator to perform the typical industry practices necessary and appropriate to the primary construction project type, in accordance with approved construction plans and as revised and approved during construction by the Inspector;

(B) Locating the area(s) within the approved limits of construction and not within setback areas for waterways and critical environmental features, floodplains, tree drip lines, areas with pass-through drainage, or steep slopes; and

(C) Using structural controls such as run-on drainage diversion and sediment controls and appropriate non-structural BMPs.

(4) Fill Management and Disposal. In addition to the cut and fill requirements of Section 82.943, designated areas for excavated soil fill and spoils material from the construction site (topsoil, subsoil, rock) shall be planned, designed, and described in the SWP3. The owner must use a reasoned estimate of the quantity of net cut and fill balance to determine how much and how many areas to reserve on site for temporary storage and permanent disposal and to plan for any necessary off-site fill disposal or

the importing of any necessary fill material required for the site. Excavated fill material must be handled using the following minimum controls and practices:

(A) Temporary Stockpiling. Fill material temporarily stockpiled in place as excavation occurs shall be located in areas protected by sediment controls and shall use erosion source controls whenever feasible, such as fill placement using existing topography and excavated features to minimize erosion and runoff potential. Stockpiling within the FEMA-designated 100-year flood plain is prohibited; however, temporary fill placement is allowable in situations where the fill quantity is less than the increase in floodplain capacity caused by a mining project. Applicable temporary stabilization requirements described in Section 82.936(d)(3) must be implemented for temporary stockpiles.

(B) Removal and Disposal. Fill material must be removed from the point of excavation to the designated temporary storage or permanent disposal area described in the approved plans and SWP3 as soon as feasible after excavation occurs.

(C) Permanent Fill Disposal. Fill material shall be permanently disposed of as described in the approved plans and SWP3 and must comply with Section 82.943(d), which, among other things, prohibits solid waste from being mixed or buried with fill material. No person may engage in off-site disposal of fill material in Travis County unless the person has received a Travis County development permit that specifically authorizes the off-site disposal. Before engaging in off-site disposal of fill material, a person may have to obtain other applicable development or regulatory permits, an additional SWP3 or, revisions to an existing SWP3.

(5) Materials Inventory and Management. Measures are required to be developed and implemented to minimize the exposure of the following materials to precipitation and storm water runoff: building materials, building products, construction waste, landscape materials, fertilizers, pesticides, herbicides, detergents, petroleum products, automotive fluids, sanitary waste, and other construction and industrial materials present on the site.

(A) Each material and hazardous substance that will be on the site during the construction activities, from the start of construction to the final stabilization and final inspection release, must be listed and described along with the management practices to be followed for each. These material management practices shall include: limiting inventory to the minimum necessary, storage in a secure site location with compatible materials, storage in original containers, proper disposal of surplus materials and containers, inspection monitoring, and training of personnel handling the materials

(B) A description of storage, management, and maintenance practices is required for each petroleum product at a construction site, including: on-site fuel, oil, other motor vehicle fluids, and asphalt. Discharges of fuels, oils, and other pollutants used in vehicle and equipment operation and maintenance are prohibited

(6) Spill Prevention and Control. The SWP3 shall include a description of spill prevention measures, and spill response, clean-up, and reporting procedures to prevent and minimize the discharge of pollutants, to the maximum extent practicable, from spills and leaks of oil and hazardous substances on the site. The plan must follow all TCEQ and local regulations. Spill response procedures must include personnel training on product and safety information, and procedures must be adjusted as necessary for improvement and to prevent particular types of spills from reoccurring. Spill clean-up materials must be used, spills must be cleaned up, and waste residue must be properly disposed of. Reporting must occur whenever a spill threshold quantity is exceeded.

(7) A description of potential pollutant sources from areas on the project site, other than construction areas, is required in the SWP3. These other sources include construction support and maintenance areas and activities dedicated to construction site operations, including dedicated asphalt and concrete batch operations, when applicable. A description of controls and measures that will be implemented for these activities shall detail how pollutant discharges will be prevented and eliminated.

**82.938. Erosion and Sediment Control Maintenance Requirements for Construction Activities.**

(a) All ESC, BMP, and protective measures identified in the approved plans, the ESC Plan, and SWP3 must be maintained by the primary operator in effective operating condition. If, through inspections or other means, the owner, primary operator, or Inspector determines that a BMP is not operating effectively, then the owner or primary operator shall perform maintenance as necessary to make the storm water controls effective.

(b) The owner or primary operator shall carry out the inspection requirements of Section 82.951 to ensure the ESC Plan BMPs are implemented and maintained in compliance with the approved plans and SWP3 throughout construction.

(c) The owner or operator must promptly take any corrective action specified in the Inspector's findings to ensure proper maintenance of ESC Plan BMPs. Items requiring corrective action must be corrected by the owner and operator within timeframes specified by the Inspector. If corrective actions are not performed as required, the County Executive will consider use of further measures, including a stop work order and progressive enforcement.

(d) Necessary corrective actions must be accomplished within seven days or as specified in the inspection report prepared by the Inspector. When consecutive runoff events occur within 24 to 48 hours, corrective actions must be accomplished prior to the next rain event, to the maximum extent practicable. If maintenance prior to the next anticipated storm event is impracticable, the reason shall be documented in the Operator SWP3 inspection report and maintenance must be scheduled and accomplished as soon as practicable. ESCs that have been intentionally disabled, run-over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.

(e) Whenever it is discovered that a control or BMP has been used incorrectly, is performing inadequately, or is damaged, then the owner or primary operator must immediately replace or modify the control or BMP. Revisions to ESC Plan BMPs must be coordinated with the Inspector and performed in accordance with Section 82.935(i).

**82.939. Preliminary Construction Storm Water Plan.** The preliminary construction storm water plan required pursuant to Section 82.931(a)(2)(ii) for a preliminary plan shall include a SWP3 summary describing the proposed construction phase of the project. The summary must be consistent with the ESC and BMP technical standards described in Sections 82.936 – 82.938, 82.940, and 82.970. The SWP3 summary shall describe the following items, with a plan view map where applicable:

- (1) The ESC and BMPs to be used to address site specific considerations including critical site characteristics; construction project type; the construction site features and critical site improvements; and the construction length, phasing, and sequence.
- (2) The ESC measures and BMPs to be used in the ESC Plan to meet the requirements for erosion source control, sediment control, and permanent erosion and soil stabilization control for the construction activities.
- (3) The other controls and pollution prevention measures to be used to limit the off-site transport of pollutants that have the potential to discharge by means other than direct storm water runoff, and activities that can cause on-site contamination and increase the potential for pollutant discharge from runoff.
- (4) A plan view map of the proposed site improvements with the location and description of applicable proposed measures, including drainage area boundaries, acreage, flow paths, and outfalls.

**82.940. Effluent Quality. [Reserved]**

**82.941. Setbacks from Critical Environmental Features and Waterways.**

(a) Drainage patterns for a development must be designed to protect all critical environmental features and waterways from the effects of runoff from developed areas, and to maintain the catchment areas of recharge features in a natural state. Controls shall be sufficient to avoid the effects of erosion, sedimentation, and high rate of flow.

(b) Except for crossings or activities approved as set forth in Subsection (j), setbacks for critical environmental features and waterways shall be included within protective, platted easements and shall not be within areas disturbed by construction activities.

(c) The following minimum setbacks are established around each critical environmental feature, except as provided by paragraph (4):

- (1) For a cave, sinkhole, spring, and wetland, the minimum width of the setback is 150 feet from the edge of the critical environmental feature.
- (2) For a point recharge feature, the required setback coincides with the topographically defined contributing surface drainage area to the feature, except that the width of the setback from the edge of the critical environmental feature must not be less than 150 feet and the setback need not extend greater than 300 feet, depending on the boundaries of the surface drainage area.
- (3) For a bluff or canyon rimrock feature, the minimum setback must be 50 feet.

- (4) The width of a critical environmental feature setback for an Edwards Aquifer karst or recharge feature may be reduced if evidence is provided by the applicant that the TCEQ has approved of the lesser width in accordance with the requirements or guidance specified for the Edwards Aquifer Protection Program.

(d) Except as provided in subsection (e) below, within a critical environmental feature setback:

- (1) the natural vegetation cover must be retained to the maximum extent practicable;
- (2) construction and related activities are prohibited; and
- (3) wastewater disposal and irrigation are prohibited.

(e) Subsection (d) does not apply to a yard, hiking trail, or a recharge basin designed to discharge to a point recharge feature without polluting ground water if the yard, hiking trail, or recharge basin is located at least 50 feet from the edge of the critical environmental feature.

(f) The setback from a bluff or rimrock shall not apply adjacent to the Pedernales River if:

- (1) all lots fronting the Pedernales River have a minimum frontage of 200 feet and a minimum size of one acre and best management practices are employed to achieve a level of water quality and environmental protection equivalent to the 50 foot setback; or
- (2) the County Executive grants an exception allowing a setback of no less than 25 feet based on a demonstration that a level of water quality and environmental protection equivalent to the 50 foot setback will be achieved through enhancement of natural vegetative cover within the setback, low impact site design, or other best management practices.

(g) Waterway Setbacks in an Eastern Watershed. The following setbacks apply in an eastern watershed and within the City of Austin ETJ in a western watershed, except as specified in subsection (j):

- (1) Waterways are classified as follows:
  - (A) A minor waterway has a drainage area of at least 64 acres and not more than 320 acres;
  - (B) An intermediate waterway has a drainage area of more than 320 acres and not more than 640 acres;
  - (C) A major waterway has a drainage area of more than 640 acres

- (2) A protected zone is established along each classified waterway as a waterway setback. A setback for a waterway shall be included within protective, platted easements.
- (A) For a minor waterway, the boundary of the setback is located 100 feet from the centerline of the waterway.
  - (B) For an intermediate waterway, the boundary of the setback is located 200 feet from the centerline of the waterway.
  - (C) For a major waterway except for the Colorado River downstream from Lady Bird Lake, the boundary of the setback is located 300 feet from the centerline of the waterway.
  - (D) For the Colorado River downstream from Lady Bird Lake, setbacks of 300 feet are established along and parallel to the shorelines of each bank of the river, beginning at the ordinary high water mark, as defined by Title 33, Code of Federal Regulations, Section 328.3. The setbacks also include the inundated areas that constitute the Colorado River.

(h) Waterway Setbacks in a Western Watershed. The following setbacks apply in a western watershed that is outside the ETJ of the City of Austin, except as specified in subsection (j):

- (1) Except as described in paragraph (2), a waterway setback shall comply with either option 1 or option 2, as described in subparagraphs (A) and (B).
  - (A) Option 1: Distance-Based Setback.
    - (i) Creeks or swales draining 40 or fewer acres but more than five acres, excluding roadside swales, shall have a minimum setback width of 25 feet from the centerline of the creek or swale.
    - (ii) Creeks or swales draining 128 or fewer acres but more than 40 acres shall have a minimum setback width of 75 feet from the centerline of the creek or swale.
    - (iii) Creeks draining 320 acres or fewer acres but more than 128 acres shall have a minimum setback width of 100 feet from the centerline of the creek or swale.
    - (iv) Creeks draining 640 or fewer acres but more than 320 acres shall have a minimum setback width of 200 feet from the centerline of the creek or swale.
    - (v) Creeks draining more than 640 acres shall have a minimum setback width of 300 feet from the centerline of the creek or swale.
  - (B) Option 2: Floodplain-based Setback.

- (i) For creeks or rivers draining 40 square miles or less but more than five acres, excluding roadside swales, the setback shall extend a minimum of 25 feet from the 100-year floodplain boundary paralleling each side of the creek or swale. The 100-year floodplain shall be based on the fully developed conditions using the LCRA Technical Manual standards.
    - (ii) For creeks or rivers draining more than 40 square miles, the setback shall be considered equal to the 100-year floodplain as designated by Federal Emergency Management Agency or by an engineered floodplain study approved by LCRA, using the LCRA Technical Manual standards.
  - (2) The shoreline boundary of the waterway setback for Lake Travis coincides with the 681.0 foot mean sea level contour line. The width of the setback, measured horizontally inland, is 100 feet, or, for a detached single-family residential use, 75 feet.
- (i) **Limitation of Activity in Waterway Setbacks.** The following requirements apply to waterway setbacks established in subsections (g) – (h) of this section:
- (1) Setbacks shall remain free of construction, development, and other alterations except for approved utility and roadway crossings.
  - (2) Wastewater collection lines and lift stations are prohibited from running within the setback zone parallel or sub-parallel to the waterway.
  - (3) No golf courses, on-site wastewater systems or wastewater irrigation shall be located in a waterway setback.
  - (4) Before reaching a setback area, drainage patterns from a development shall be designed to prevent erosion, maintain infiltration and recharge of local seeps and springs, attenuate the harm of contaminants collected and transported by storm water, and dispersed into a sheet flow pattern. Whenever possible, the natural drainage features and patterns must be maintained.
  - (5) No part of a residential lot with a lot size of 5,750 square feet or less may be located within a waterway setback.
- (j) **Exceptions to the Waterway Setbacks.** All requests for exceptions to waterway setbacks must be included as a part of the application submittal required by Section 82.931. Exceptions that may be approved include:
- (1) The County Executive may approve limited utility and roadway crossings. However, the number of crossings through a setback zone shall be minimized according to the guidance located in the LCRA Technical Manual or City of Austin Environmental Criteria Manual, as applicable to the watershed.

- (2) The County Executive may approve a necessary waterway crossing of a wastewater line in a waterway setback in accordance with the following procedures and guidelines:
    - (A) An applicant must provide an environmental assessment that concludes the alignment is the most appropriate alternative, based on an evaluation of the effects of alternative wastewater line alignments.
    - (B) The depth of a wastewater line crossing and location of associated manholes shall not be constructed within a City of Austin Erosion Hazard Zone where erosion is predicted to affect the structure.
    - (C) Except for a necessary crossing, a wastewater line in a waterway setback must be located outside the two-year floodplain.
  - (3) The County Executive may approve necessary access and appurtenances to a boat dock, pier, wharf, or marina, along the Colorado River downstream from Lady Bird Lake and along Lake Travis, except along the Lake Travis shoreline in the setback of a swale, creek, or river. The access and appurtenances must follow a route through the setback area and a design that minimizes short-term and long-term erosion and runoff impacts, minimizes the clearing of vegetation, and minimizes additional impervious cover.
  - (4) The County Executive may approve a low impact park development that is limited to trails, picnic facilities, open space not used as a parking lot, and similar construction that does not significantly alter the existing vegetation and drainage patterns or increase erosion. A low impact park development cannot include a stable or corral for animals.
  - (5) Drainage retention basins and floodplain alterations are permitted in a waterway setback if they comply with the requirements of Chapter 64 of the Code.
  - (6) In an eastern watershed:
    - (A) A reduction of the setback width, up to a minimum of 50 feet from a minor waterway, may be permitted so long as the overall surface area of the setback is the same or greater than the surface area that would be provided without this exception.
    - (B) Innovative permanent water quality controls, as specified in Section 1.6.7 of the City of Austin Environmental Criteria Manual, may be placed within the outermost one-half of the setback of an eastern waterway.
- (k) An application for development is also subject to the requirements of Chapter 64 of the Code, relating to development restrictions in a floodplain.

#### **82.942. Environmental Assessment.**

- (a) An applicant shall submit an environmental assessment for any proposed development that is:

- (1) a residential subdivision development of ten acres or greater and proposing ten or more lots or a non-residential subdivision development of ten acres or greater;
- (2) a commercial, utility, or right-of-way development of three acres or greater;
- (3) a commercial, utility, or right-of-way development of less than three acres and greater than 10,000 square feet impervious cover, in which case only (b)(1) of this section applies.
- (4) for a residential or non-residential subdivision development of less than ten acres and greater than 10,000 square feet impervious cover, in which case only (b)(1) of this section applies.

(b) Except as otherwise provided in Subsection (a), each environmental assessment provided by an applicant must:

- (1) identify critical environmental features and waterways, and propose protection measures for the features;
- (2) identify any habitat of a federally-listed endangered species or Texas-threatened species within the area to be developed as well as within 500 feet outside the property line;
- (3) provide an environmental justification for spoil disposal locations and roadway alignments;
- (4) propose methods to achieve overland flow and justify enclosed storm sewers;
- (5) include a hydrogeologic report that:
  - (A) describes the topography, soils, and geology of the site;
  - (B) identifies springs and significant point recharge features on the site;
  - (C) demonstrates that proposed drainage patterns will protect the quality and quantity of recharge at significant point recharge features; and
  - (D) includes a water well survey of the site and properties adjacent to the site for a radius of 150 feet, inclusive of recorded water wells and a field survey of the area.
- (6) include a vegetation report describing existing site vegetation, the site's dominant plant communities (such as grassland, riparian, woodland, palustrian, or savanna), a list of the scientific and common names of the dominant species of identified communities, demonstrating that the proposed development preserves to the maximum extent practicable the significant trees and

vegetation on the site and provides maximum erosion control and overland flow benefits from the vegetation; and

- (7) include a wastewater report that provides an environmental justification for any sewer line proposed to be located in a waterway setback described in Section 82.941, and describes construction techniques and standards for wastewater lines.

(c) If an applicant is required to prepare a tree assessment pursuant to Section 82.973, the applicant shall submit it as a part of the environmental assessment required by this section.

#### **82.943. Cut and Fill.**

(a) Land Balancing. Except as provided by subsection (b) of this section, a proposal for cut and fill land balancing must comply with the following requirements:

- (1) All cut and fill land balancing is limited to a maximum of eight vertical feet. This includes eight vertical feet maximum of excavated cut, eight vertical feet maximum placement of fill, or an eight vertical feet maximum combination of cut and fill.
- (2) Applicable fill containment, temporary controls, and permanent stabilization standards specified in Sections 82.936, 82.937, and 82.970 must be followed.
- (3) A retaining wall over five feet in height shall be detailed in the construction plans sealed by a Texas licensed professional engineer and submitted with the development permit application for a commercial site development, multi-family dwelling, or subdivision.
- (4) Cut and fill located on a slope with a gradient of more than 15 percent must include appropriate BMPs to prevent erosion, including diversion of surface water runoff; use of terraces; soil retention blankets, mulch, riprap or structural containment; establishment of mixed vegetation (such as forbs, shrubs, trees); or similar controls.
- (5) Cut and fill may not be located within 100 feet of the centerline of a waterway with 64 or more acres of drainage.
- (6) Every cut and fill proposal must be designed so that it complies with the requirement in Chapter 64 of the Code that flood plain storage must not be reduced.
- (7) The design and structural integrity of fill areas associated with residential lot construction must be consistent with the U.S. Department of Housing and Urban Development guidelines established in Data Sheet 79g entitled "Land Development with Controlled Earthwork" (1973). The County Executive may require that a proposal for fill for a residential construction project that includes critical site improvements as defined in section 82.936(c)(1) include design plans and specifications prepared and sealed by a Texas-licensed professional engineer.

(b) There are no limitations to the maximum height of cut or fill for the construction of permanent water quality controls, storm water detention ponds, streets, a building or parking structure's footprint, or driveways, so long as the requirements of (a)(2), (a)(3), and (a)(4) are followed. Additional requirements for the construction of a dam may apply.

(c) Fill Disposal.

- (1) No fill or excess fill from a construction site may be placed on any lot or land parcel unless the placement of the fill is authorized in an approved subdivision construction plan or development permit. Development permit applications must provide accurate site plan information regarding the location, size, boundaries, depth, grading, and erosion control measures for proposed filling activities.
- (2) This subsection does not apply to the placement of fill or topsoil less than twelve inches deep as part of an existing residential home landscaping activity that does not:
  - (A) Alter existing on-site or off-site drainage or the FEMA 100-year floodplain; or
  - (B) Encroach upon or affect rights-of-way, easements, other platted setbacks, waterways, or adjoining properties.
- (3) All temporarily placed fill shall be removed prior to acceptance of streets and drainage in a subdivision and in accordance with the approved construction plan, SWP3, and development permit.
- (4) Before removing fill from a permitted construction site, the owner or operator shall notify the Inspector of the destination of the fill.
- (5) A development permit application that proposes permanent disposal or temporary storage of fill material covering one acre or more as the primary construction activity, and that is not associated with a separately permitted primary construction project underway with a coordinated projected completion date for both permitted activities, is subject to the following special requirements:
  - (A) The permittee shall submit annual reports no later than the date of each one-year anniversary of the permit's issuance documenting:
    - (i) the dates of receipt of fill material, each source of the fill, and the estimated quantity of material received during the past one year period;
    - (ii) the estimated quantity of material still required to complete the fill and the approximate date at which time the fill site will be completed; and
    - (iii) ESC needs and BMPs appropriate to the size of area still un-stabilized; and

- (iv) for projects required to implement a SWP3, the SWP3 updated to reflect current site conditions, including current SWP3 inspection reports in accordance with Subchapter J.

(B) It is cause for revocation of the Basic Development Permit, in accordance with Section 64.071(c), if the County Executive finds that an annual report has not been provided, the annual report provides incomplete or inaccurate information, site management in accordance with the SWP3 is inadequate, or in consideration of the project's lack of compliance with the development permit and the requirements of this section.

(C) Upon written notice of revocation, the permittee must complete all final stabilization activities for all disturbed areas, in accordance with the requirements of Section 82.936(d)(3) and within the timeframe set forth in the notice of revocation.

(6) Applicable fill containment, temporary controls, and permanent stabilization standards specified in Sections 82.936, 82.937, 82.970, and the retaining wall requirements of (a)(4) and (a)(5) of this section must be followed for all fill disposal activities.

(d) Quality of Fill material. Only uncontaminated earthen material and inert construction rubble may be used as fill. Protruding metal must be removed from concrete and rubble. The use of garbage, new asphalt, non-weathered asphalt, or soils containing non-weathered asphalt residue, or any material other than industrial solid waste that is Class 3 waste is strictly prohibited. All fill material must be inert and essentially insoluble. The applicant may be required to submit chemical analyses from a NELAC-certified laboratory to verify the fill material is inert, if the fill material has an odor, texture or appearance indicating that it is not inert and essentially insoluble.

#### **82.944. Permanent Water Quality Control.**

(a) Every proposed development in an area outside the City of Austin ETJ that includes the addition of greater than 10,000 square feet of impervious cover, every proposed subdivision, and every proposed commercial site must include permanent water quality controls for storm water in accordance with the standards applicable to its watershed location. Each application for a preliminary plan must include a storm water management plan that demonstrates permanent water quality structural and non-structural BMPs which will comply with this section and shows their locations and dimensions. The storm water management plan may be included as part of a drainage plan under Section 82.207.

(b) Western Watersheds. This subsection applies to development that is located in a western watershed and outside the ETJ of the City of Austin:

- (1) Water Quality Volume. Each development project shall provide water quality volume in accordance with the approved BMPs found in the LCRA Technical Manual. The minimum required water quality volume is based on the one-year, three-hour storm runoff volume as defined in the LCRA Technical Manual. In addition, development projects can use low impact development methodologies as identified in the LCRA Technical Manual to reduce or avoid storm water storage volume.

- (2) In the Lake Travis watershed, the owner of a project for which a Travis County development permit is required must also obtain a LCRA BMP Maintenance Permit in accordance with Section 4, Subchapter A, Paragraph (d) of the LCRA HLWO effective March 1, 2007.
  
- (3) Alternate Standards. A subdivision development project that meets the criteria in (A) and a commercial development project subject to this section that meets the criteria in (B) need not comply with paragraphs (1) – (2), except as specified in paragraph (4).
  - (A) Subdivision Preliminary Plans, Subdivision Final Plats, and Subdivision Construction Plans.
    - (i) The gross impervious cover is 15 percent or less and the cluster development sections have 20 percent or less gross impervious cover, as defined in the LCRA Technical Manual.
    - (ii) A street and drainage network is designed to include the use of open-roadway sections, ribbon curb, maintenance of sheet flow, and employs the applicable permanent erosion control and stabilization standards specified in Sections 82.936, 82.937, and 82.970.
    - (iii) Impervious cover credit by use of porous pavement, rainwater harvesting, native landscaping and other methods will be considered during the application review to gain compliance as defined in the LCRA Technical Manual.
  - (B) Commercial Site Development.
    - (i) Projects less than three acres in area that use vegetated filter strips and flow spreading methodologies as identified in the LCRA Technical Manual.
    - (ii) Impervious cover credit by use of porous pavement, rainwater harvesting, native landscaping and other methods will be considered during the application review to gain compliance as defined in the LCRA Technical Manual.
  
- (4) The County Executive may require that the water quality volume specified in paragraph (1) of this subsection be provided for a portion or portions of a development utilizing the alternate standards of paragraph (3), if a proposed project would create localized points of erosion or pollutant discharges sources and if the County Executive determines there are factors that may affect water quality such as the added volume of runoff, lot sizes in the subdivision, the location and proximity of impervious cover sections of the development to the 691 foot mean sea level contour line, the extent to which the development site is able to preserve or achieve sheet flow and sustain

effective permanent site stabilization and vegetative cover, and the intensity of slopes to be developed at a site.

(c) Eastern Watersheds. This subsection applies to development that is located in an eastern watershed or within the ETJ of the City of Austin:

- (1) Each permanent water quality control must be designed in accordance with the City of Austin Environmental Criteria Manual. The permanent water quality control must provide at least the treatment level of a sedimentation / filtration system described in the City of Austin Environmental Criteria Manual.
- (2) A permanent water quality control must capture, isolate, and treat the water draining to the control from the contributing area. A permanent water quality control must be constructed if 10,000 square feet or greater of impervious cover is proposed. The required capture volume is:
  - (A) the first one-half inch of runoff; and
  - (B) for each ten percent increase in impervious cover over 20 percent of gross site area, an additional 0.1 inch of runoff.
- (3) The location of a permanent water quality control:
  - (A) must avoid recharge features to the greatest extent possible; and
  - (B) must be shown on the slope map, preliminary plan, site plan, subdivision construction plan, or development permit application, as applicable.

(d) Operation and Maintenance. In both an eastern and a western watershed, the owner or operator shall maintain all permanent water quality controls in a proper manner that is consistent with County and other applicable standards, including the BMP Maintenance Permit requirements of Section 82.917.

#### **82.945. Subdivision Plat Notes.**

(a) The following plat notes related to requirements in this Subchapter shall be included on each final subdivision plat. Additional notes may be required to more accurately reflect individual subdivision plat conditions.

- (1) No cut or fill on any lot may exceed eight feet, excluding driveways, a building structure's footprint, or a parking area footprint, in accordance with the Travis County Code.
- (2) As depicted on the plat, each protective easement from a critical environmental feature, including a cave, sinkhole, point recharge feature, bluff, canyon rimrock feature, wetland, and spring must remain in its existing, undeveloped, natural state. Natural vegetative cover must be retained. Construction activities, wastewater disposal, and wastewater irrigation are prohibited within a protective easement. A residential

lawn or hiking trail is allowed if it is located at least 50 feet from the edge of a critical environmental feature in accordance with the Travis County Code.

(3) As depicted on the plat, the setback area identified for each waterway is a protective easement that must remain undeveloped and activities must be limited within the easement. The protective easement must remain free of construction, development, and other alterations except when specifically approved in a Travis County development permit.

(4) Before beginning construction activities on a subdivision lot, the owner must obtain a Travis County development permit and, when applicable, implement a Storm Water Pollution Prevention Plan (SWP3). The SWP3 requires implementation of temporary and permanent Best Management Practices, including erosion and sediment controls, for protection of storm water runoff quality, in accordance with the Travis County Code.

(5) The owner is responsible for maintaining and operating all permanent water quality controls in compliance with all applicable standards and requirements of the Travis County Code. See Document \_\_\_\_\_.

(6) An activity that may adversely affect a tree of eight inches or more in trunk diameter (measured at four feet height above the ground) in a right-of-way accepted for maintenance by Travis County must comply with all standards and requirements in the Travis County Code.

(b) The subdivision final plat must depict the following information related to the requirements of this chapter:

(1) Clearly marked and labeled, the location and dimensions of each protective easement pertaining to a setback from any critical environmental feature;

(2) Clearly marked and labeled, the location and dimensions of each protective easement pertaining to a setback from any waterway;

(3) Clearly marked and labeled, the location and dimensions of any waterway or karst buffer zone easement required by the Texas Commission on Environmental Quality, Edwards Aquifer Protection Program, pursuant to 30 Texas Administrative Code, Chapter 213;

(4) Clearly marked and labeled, the location and dimensions of any easement for placement of a permanent water quality control required by the Travis County Code, or required by another jurisdiction;

(5) The locations listed in paragraphs (1) – (4) shall be integrated into the drainage, floodplain, and other easements.

### ***Subchapter J. Storm Water Pollution Prevention Plan Inspections***

#### **82.950. SWP3 Pre-Construction Conference Required.**

(a) Except as described in Subsection (g), the SWP3 pre-construction conference requirements of this section apply to every project for which a SWP3 must be submitted to the County for approval.

(b) The requirements of this section are in addition to any applicable pre-construction conference requirements of Section 82.603(d).

(c) The owner of a project, or owner representative, shall participate in a pre-construction conference with the designated Inspector before starting construction under an approved site plan or subdivision construction plan.

(d) The owner or owner's designated representative shall provide notice of the SWP3 pre-construction conference and a copy of the approved plans for the development to the following persons or entities at least two business days before the conference:

- (1) primary operator with operational control of the plans and specifications;
- (2) designated Inspector(s);
- (3) design engineer or representative for the approved plans and SWP3;
- (4) contractor(s) and primary operator(s) with day to day operational control of the construction site;
- (5) designated qualified inspector for the operator responsible for preparing the SWP3 inspection reports
- (6) municipal development review representatives, as appropriate; and
- (7) affected utility representatives.

(e) The SWP3 pre-construction conference may be a discrete meeting or a subset of a larger project pre-construction conference, but must include an on-site inspection and approval by the Inspector of the installation of the first phase of the project's erosion and sediment controls before the construction activities can commence. Participants must evaluate the adequacy of the SWP3 utilizing a SWP3 Operator Compliance Checklist available from Travis County summarizing the storm water management tasks which must be performed by the operator during construction. The Inspector shall briefly explain and discuss the SWP3 requirements with the participants. The conference shall include discussion of the following items in the approved permit, plans, and SWP3:

- (1) the approved phasing of the project, the non-structural erosion source controls, the detailed sequence of construction and BMP implementation, start dates, and schedule of events;
- (2) sediment control installation, phasing of the various perimeter and interior controls throughout construction, including structural erosion source controls such as diversion and dissipation, and maintenance requirements;
- (3) the adequacy of the initial installation and future control phases to address site conditions;

- (4) temporary and permanent stabilization and re-vegetation requirements and phasing schedule throughout construction, including critical site improvements and priority re-vegetation areas;
- (5) on or off-site temporary and permanent spoil and fill disposal areas, haul roads, and staging areas;
- (6) permanent water quality structural controls and related grading and drainage construction;
- (7) special conditions or provisions of plans or specifications, such as future homebuilding on lots, protection of waterways, critical environmental features, and trees to be saved;
- (8) observation and documentation of existing site conditions adjacent to and downstream from the limits of construction prior to soil disturbing activities, including waterways and potential outfall discharge routes, rights-of-way and easements, buffer zones, and critical environmental features;
- (9) site supervision of the SWP3 implementation by the Primary Operator's designated on-site project manager, including roles, responsibilities, and coordination when more than one operator is charged with tasks in implementing a shared SWP3;
- (10) monitoring inspections of the SWP3 by the operator's qualified inspector, and SWP3 inspections by the Inspector, and a schedule for submittal of the SWP3 Inspection Reports;
- (11) rain gage location or rainfall information source to be used during construction and reporting, when applicable;
- (12) the potential necessity for adjustment and revision of the ESC Plan and SWP3 controls;
- (13) exchange of telephone numbers and other contact information for the primary and secondary operators, designated qualified SWP3 inspector for the owner, and designated Inspector; and
- (14) final inspection and acceptance requirements.

(f) The owner's consulting engineer shall prepare and distribute notes, key decisions, and follow up from the preconstruction conference to all participants within three business days after completion of the conference.

(g) The requirement for a pre-construction conference does not apply to construction on a single family residential lot, unless so specified in a Travis County development permit, based upon the potential impact on water quality of the activities approved for construction.

**82.951. Owner and Primary Operator SWP3 Inspections.**

(a) General. The requirements of this section are in addition to the applicable technical criteria in Section 82.933 and the requirements in Section 82.601.

(b) Owner and Operator SWP3 Inspection Responsibilities. An owner or operator shall comply with the following requirements in the implementation and inspection of construction projects and associated recordkeeping subject to a SWP3 and Travis County development permit:

(1) The owner or operator shall post at the construction site a copy of the TCEQ Construction Site Notice ("CSN") and, if the project disturbs five or more acres a copy of the TCEQ Notice of Intent ("NOI"). No later than two days before the start of construction, the owner or operator must provide the County Executive a copy of the TCEQ CSN. No later than seven days before the start of construction, the owner or operator must provide to the County Executive a copy of the TCEQ NOI, if any.

(2) The owner or operator shall designate an on-site project manager and personnel with the necessary experience, qualifications, and training who will be responsible for performing and monitoring the SWP3, ESC Plan BMPs, and construction activities to ensure specified practices and structural controls are continuously implemented and maintained in effective operating condition throughout construction. The owner or operator must perform any ongoing inspections, monitoring, and actions necessary to maintain compliance, including preparing a signed SWP3 Inspection Report on the schedule described in paragraph (4) of this subsection. Any necessary corrective action identified shall be recorded on the SWP3 Inspection Report. The owner or operator shall ensure any corrective action is promptly performed in accordance with the SWP3 and requirements of this Chapter.

(3) The owner or operator shall designate a qualified inspector familiar with the SWP3 and possessing the required certification as specified in Section 82.934(c) to conduct an SWP3 inspection of the site and prepare the signed SWP3 Inspection Report. The designated project manager and the qualified SWP3 inspector are to coordinate with the Inspector on a regular basis during construction to help ensure the SWP3 controls and measures are properly implemented.

(4) SWP3 Inspection and Report Schedule. From the start of construction site soil disturbing activity until the entire site is temporarily or finally stabilized, the SWP3 inspections shall be conducted at least once every seven calendar days on a specifically defined day. In addition, a SWP3 inspection shall be conducted within 48 hours of the end of a storm event of 0.5 inches or greater, unless the seven day inspection falls within the 48-hour period. Information from this post-storm event inspection shall be included in the signed SWP3 Inspection Report.

(5) When the entire site has been finally or temporarily stabilized, inspections must be conducted at least once every month until final inspection release. This also applies to discrete areas or phases of a larger active site which are finally or temporarily stabilized. Unfinished sites finally or temporarily stabilized but inactive for three months or longer must be inspected once every two months as a minimum.

(6) Long, narrow, linear construction activities where access is limited may be inspected on an alternative schedule, with representative inspections in accordance with

the TCEQ General Permit, if the owner or operator submits supporting documentation to the County and the County approves the alternative schedule.

(7) In the event of flooding or other uncontrollable situations which prohibit access to the inspection sites, the inspection must be conducted as soon as access is practical.

(8) The SWP3 inspection must include inspection of the site for compliance with all applicable SWP3 requirements. Areas of the construction site that must be inspected and items to be included in the SWP3 Inspection Report are described in Subsection (c).

(9) The SWP3 must be revised as necessary based on any inspection result by the primary operator or Inspector for Travis County, in a manner that will eliminate or minimize, to the maximum extent practicable, the discharge or potential discharge of pollutants in runoff. The owner or operator must revise the SWP3 as necessary in accordance with Section 82.935(i).

(10) Final Inspection and Certificate of Compliance. The owner or operator shall schedule a final inspection with the Inspector when all SWP3 and related construction plan requirements are completed. Completion of the SWP3 includes final site stabilization, removal and proper disposal of all sediment controls and accumulated sediment, and proper construction of each permanent storm water management control and drainage system. When required for the project, the final inspection must be preceded by submittal of the design engineer's concurrence letter, as required by Section 82.953.

(A) If the findings of the inspection demonstrate to Travis County that the SWP3 and construction plan requirements have been fully completed, a Certificate of Compliance will be issued for the project and any fiscal security for erosion and sedimentation controls or permanent storm water management facilities shall be released. The primary operator must not submit a Notice of Termination until after the primary operator has obtained a Certificate of Compliance for the project from Travis County.

(B) If re-vegetation coverage is not fully completed, a Developers Contract as described in Section 82.936(d)(4) may be issued at the discretion of Travis County for eligible projects with fiscal security posted for erosion and sedimentation controls, as a conditional acceptance until the required vegetative coverage is attained.

(C) The requirement for a final inspection and certificate of compliance does not apply to construction on a single family residential lot, unless so specified in the Travis County development permit, based upon the potential impact on water quality of the activities approved for construction. Regardless, residential lot construction must comply with all applicable SWP3 and ESC Plan measures and requirements of this Chapter prior to submission of the Notice of Termination, including construction sequence, final completion schedule, and final site stabilization.

(c) SWP3 Inspection Areas and Report Contents.

(1) SWP3 inspections must cover all areas of the construction site to determine whether SWP3 and ESC Plan BMPs are fully implemented and operating as required, and to determine if there is evidence of, or the potential for, pollutants entering the drainage system and discharging off-site. Areas of the construction site that must be inspected include each:

(A) disturbed area and approved limits of construction, and evaluation of all disturbed areas and critical site improvements for compliance with requirements for initiation of temporary or permanent stabilization based on the approved sequence of construction or cessation of construction activities;

(B) area undergoing temporary stabilization measures or permanent vegetation establishment;

(C) area used for storage of materials and equipment that is exposed to precipitation;

(D) temporary or permanent fill and spoil storage or disposal area;

(E) outfall discharge location and the area immediately downstream of each outfall location;

(F) structural control, including any sediment pond, sediment trap, and drainage diversion;

(G) perimeter and interior sediment control measure;

(H) haul road and location where vehicles enter or exit the site, and each adjacent roadway for evidence of off-site sediment tracking;

(I) waterway crossing and each area adjacent to a surface water or critical environmental feature; and

(J) concrete wash out area, non-storm water discharge control, and any other control or pollution prevention measure applicable, including control measures for dust, solid waste, de-watering, material spills, vehicle maintenance and washing, and wash water discharges.

(2) For each scheduled SWP3 inspection required by subsection (b), the designated, qualified inspector shall prepare and sign a SWP3 Inspection Report, certifying whether the site is in compliance with the SWP3, and describing any corrective actions necessary. The SWP3 Inspection Report shall contain notations on inspection findings, the site's compliance status with the BMPs in the SWP3, and the approved ESC plan for the areas listed in paragraph (1), including:

(A) compliance with applicable erosion source controls, including site phasing, sequence of construction, drainage diversion, temporary and permanent fill disposal and stockpile management;

(B) compliance with sediment controls, including perimeter and interior controls, sediment traps and basins;

(C) compliance with permanent erosion and soil stabilization controls, including initiation of temporary or permanent stabilization based on the sequence of construction or cessation of construction activities, including stabilization of critical site improvements;

(D) compliance with applicable other controls and pollution prevention measures;

(E) all locations of discharge of sediment or other pollutants from the site and each disturbance beyond the approved limits of construction;

(F) all locations of a BMP that requires maintenance, including any BMP location identified in the previous SWP3 Inspection Report needing maintenance or revision that was not accomplished;

(G) all locations of a BMP that failed to operate as designed or proved inadequate for a particular location;

(H) all locations where an additional ESC or BMP is needed;

(I) rainfall dates and amounts, in accordance with Section 82.934(e) if required by that section, and if not required by Section 82.934(e), then based upon accurate rainfall data in close proximity to the site; and

(J) all corrective actions required for any non-compliant items and the schedule of completion for these items.

(3) SWP3 Site Notebook and Records. The SWP3 Site Notebook and contents, as described in Section 82.935(h), shall be maintained by the primary operator or the qualified inspector at the construction site, and it shall be readily available upon request. All SWP3 records must be kept by the owner or primary operator for a minimum of three years after site completion.

**82.952. Submittal of SWP3 Operator Inspection Reports.** At the request of the Inspector, the owner or operator shall periodically submit each SWP3 Inspection Report that is required by this subchapter. Each submittal shall be in a format and at a frequency agreed upon by the owner or operator and Inspector.

**82.953. Submittal of Engineer's Concurrence Letter.** This section applies to a development proposal that requires sealed plans prepared by a Texas-licensed professional engineer. At the time of substantial completion of construction in accordance with the approved construction plan, SWP3, and Travis County development permit, a Texas-licensed professional engineer shall submit a concurrence letter to Travis County and the owner which states the project has been substantially completed in conformance with the approved plans and development permit. The concurrence letter shall request a final inspection and approval that the project is complete. The concurrence letter must address completion of final stabilization as required by Section 82.936(d)(3)(H). These requirements are in addition to any applicable requirements of Section 82.604.

## ***Subchapter K. Roadways and Rights of Way***

### **82.970 ESC Plan Standards for Roadways and Drainage Easements.**

(a) Temporary and permanent ESC Plan design for roadway right-of-way and drainage easement areas must comply with the technical criteria and standards in Sections 82.933, 82.936, 82.937, and 82.940, as well as the additional requirements outlined in this section. These standards apply to the construction of new roadways, improvements to existing roadways that require disturbance of land, and construction of utilities within existing roadway rights-of-way.

(b) The temporary ESC plan during construction must minimize the discharge of sediment and pollutants to prevent sedimentation of drainage structures, off-site areas, surface waters, adverse impacts to aquatic life, reduced flow capacity, excessive stream bank erosion, erosion around structures, or damage of adjoining property.

(c) The permanent erosion control and stabilization plan design shall be in conformance with the Austin Drainage Criteria Manual and Environmental Criteria Manual requirements for velocities to be below erosive values for the particular soil conditions. All structures must be designed and constructed to withstand the forces of the 25-year, 24-hour storm event.

(1) The plan provisions must ensure permanent stabilization of all disturbed soil areas with permanent vegetation, including the following special considerations for slopes and embankments:

(A) Disturbed roadside slopes in excess of ten percent grade must be covered with temporary mulch or soil retention blankets or equivalent methods in addition to seeding to achieve permanent vegetative stabilization, if the slope's length and runoff volume have the potential to result in substantial erosion of the slope during or after the vegetation establishment period.

(B) The methods specified in (A) shall also be used on disturbed slopes associated with culvert and bridge crossings.

(2) The plan provisions must prevent erosion from runoff velocity exiting at an outlet of a culvert, bridge, storm sewer, and channel through use of a dissipater, rip-rap, level spreader, lining, gabion, or similar BMP, and include erosion control protection of the inlets to such structures where necessary;

(3) The plan provisions must prevent gully and scouring of a roadside or outfall open channel from high shear stress, through vegetation, lining, soil retention blankets, a permanent berm structure, a drop structure, or similar BMP, both during and after the vegetation re-establishment period;

(4) The plan must include provisions that address impacts from the slope of an open channel, as follows:

(A) An open channel with a flow line grade of two percent or greater must be protected from erosion using temporary or permanent soil cover measures in addition to seeding to achieve permanent soil stabilization.

(B) Adequate soil cover measures in addition to seeding must be used to achieve permanent soil stabilization in an open channel less than two percent grade where the channel geometry, volume, velocity, or shear stress will result in erosion during or after the vegetation establishment period.

(C) Structural hardening for flow line protection in addition to the measures described in subparagraph (A) must be considered for open channels with flow line grades between two to five percent if flow volume, velocity, and shear stress will result in channel erosion both during and after the vegetation establishment period.

(D) The considerations of subparagraph (C) are mandatory if the open channel grade exceeds five percent.

(E) If heterogeneous soil conditions or stratigraphy are present in the open channel, such as exposed bedrock or subsoil layers of varying hardness, the additional measures or alternatives specified in (A) – (C) must be used to achieve effective final stabilization.

(F) Channel volume, velocity, and shear stress calculations may be performed by the engineer to propose alternate channel stabilization measures, and these calculations are mandatory for channels required to be designed using the Austin Drainage Criteria Manual.

(5) The plan provisions must protect the integrity of any structural improvement and prevent excessive continuing sedimentation from an unstable right-of-way area into any drainage structure and roadside channel; and

(6) The plan provisions must stabilize a driveway approach to prevent erosion and achieve proper drainage conveyance on a rural design roadside, using a standard driveway approach detail in accordance with Section 82.302(g) and the corresponding exhibits or using an alternative driveway approach that is approved by the County Executive.

(c) A stream crossing design for a roadway shall employ spanning, bridging, structural containment, or similar design methods to the maximum extent practicable to minimize the amount and the proximity of erodible fill soil for roadside embankments, approaches, and slopes adjacent to the stream crossings. Design and alignment for a proposed crossing of a waterway through a waterway setback may require approval of an exception in accordance with Section 82.941. Sediment controls and permanent erosion control design considerations for all stream crossing construction shall follow the applicable standards of this section and Sections 82.936 and 82.937.

#### **82.971. Low Impact Development Design.**

(a) The County Executive may approve the use of alternative design criteria for selected roadside areas and local roadways to support the use of low impact development (“LID”) techniques for enhanced water quality and runoff mitigation if the design can substantially meet the traffic safety and drainage conveyance design standards in Section 82.302 and can be maintained on a long-term basis. Design criteria and LID techniques must comply with the applicable technical standards in section 82.933. Alternate design criteria that may be approved

include: ribbon curb without roadside drainage swales; grassed roadside drainage swale systems instead of curb and gutter; vegetative filter strips; storm water infiltration techniques; storm water wetlands; natural area preservation; reuse of native topsoil; native grasses and vegetation; and soil amendment and conservation landscaping. Alternative and LID designs must also demonstrate long-term maintenance feasibility.

(b) **Applicability of Standards.** The use of the alternative design criteria set forth in Subsection (a) may be applied to Travis County improvements and maintenance to County-owned or leased land, easements, and rights-of-way, including County road, park, or facilities operation and maintenance activities. Additionally, the criteria may be applied to development permit and plat applications of any type.

**82.972. Native Vegetation.** The applicant should consider the use of native plants and grass cover for the re-vegetation of construction areas wherever it is feasible

(a) In determining whether to use native vegetation for re-vegetation and landscaping, an applicant shall consider the existing site conditions and planned uses of the area; the degree of urbanization versus the undeveloped, natural character of the area; the limitations of the available water supply for irrigation, and the owners and parties responsible for ongoing maintenance of the area

(b) An applicant should consider selected native vegetation and grass cover for areas that are more rural and natural in character, less urbanized and developed, and areas where regular landscape maintenance is less practicable and more suited to native vegetation, as well as any areas where it is desired to achieve a more natural, low-maintenance landscape condition.

(c) Seasonal native wildflowers should be considered for the roadsides and open spaces of Travis County, if it is feasible.

(d) An applicant should consider the use of sustainable designs with native plants to maintain or reduce long-term maintenance costs.

(e) County right-of-way areas being regularly maintained by the property owners directly adjacent to such areas shall implement the native vegetation standards specified in this section whenever feasible, but may generally follow the landscape character and maintenance standards of the adjacent developed areas, or as agreed upon by local residents or neighborhood associations, or in accordance with any maintenance or license agreements entered into with Travis County.

**82.973. Tree Preservation.**

(a) **Applicability.** This section applies to Travis County improvements and maintenance to County-owned or leased land, easements, and rights-of-way. This includes capital improvement projects or any construction improvements to County roads, bridges, parks, drainage, utilities, buildings, and parking facilities. This also includes County road, park, and facility operation and maintenance activities, including maintenance construction. This section also applies to applications for development permits and plats as described in subsection (c) below.

(b) **County Project Implementation.** The County is responsible for ensuring the design and implementation of an applicable project is completed in conformance with the requirements of

this section. The person responsible for the County project must prepare and submit a tree assessment to the County Executive for review.

(c) **Development Application Requirements.** Development permit and plat applications of any type that include proposed development activities affecting trees in an existing or proposed County right-of-way shall follow the standards in this section. The applicant must prepare and submit a tree assessment in accordance with subsection (d), when applicable, as part of the development permit review process.

(d) **Tree Assessment.**

(1) The applicant or the applicable Travis County department proposing a development must submit a tree survey and tree assessment that evaluates areas proposed for development on County-owned land, County-leased land, and County road right-of-way. The detailed tree survey area extent in the tree assessment must include the proposed right-of-way and easement areas on the site as a minimum. The assessment must include explanations of any alternate right-of-way corridor options considered to save any particularly valuable trees, and the rationale and feasibility of the corridor selected.

(2) The tree assessment must be consistent with the guidelines of the City of Austin *Environmental Criteria Manual, Section 3 – Tree and Natural Area Preservation* as of August 14, 2012. The assessment must include a tree survey, identification of significant trees, proposed measures to preserve significant trees, and mitigation measures for significant trees that would not be preserved.

(3) A tree survey must be certified by a Texas-registered professional land surveyor and conducted in accordance with the most current land surveying practice pertaining to topographic, easement and boundary surveys. The tree assessment must be prepared by a person qualified in the identification of trees present in Travis County and tree condition.

(4) When a tree assessment is required, a development permit applicant proposing activities affecting trees in a right-of-way or right-of-way easement shall submit tree assessment information that includes: trunk location and diameter, tree species, proximity of the proposed construction activities to a tree(s), proposed pruning or removal activities, and proposed protection measures. Subdivision and commercial site development construction shall include tree assessment information as part of the engineered, surveyed construction plan submittal.

(e) The tree assessment will be reviewed as a part of the application review process, or in response to a County departmental request. A determination will be made as to whether the tree assessment:

(1) is sufficiently complete and prepared consistent with the City of Austin *Environmental Criteria Manual* guidelines;

(2) identifies significant trees and sufficiently avoided them in the development design;