12

MANUAL FOR ENCROACHMENTS WITHIN DISTRICT EASEMENTS OF FLOODWATER RETARDING STRUCTURES

NAVARRO COUNTY SOIL & WATER CONSERVATION DISTRICT

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Table of Contents

Section 1 Introduction

The Navarro County Soil & Water Conservation District is a governmental subdivision of the State of Texas and a public body corporate and politic. The Certificate of Organization for the District was signed by the Secretary of State of the State of Texas in 1939. It was originally established as the Navarro-Hill County Soil & Water Conservation District. Later Navarro and Hill Counties separated, leaving the Navarro County Soil & Water Conservation District.

The United States Congress passed the Flood Control Act of 1936 and directed US Department of Agriculture – Soil Conservation Service to develop their national, small watershed concept. In 1944 Congress passed Public Law 76-534 that authorized eleven watershed projects in the nation, and the construction of the small watershed dams began. The US Department of Agriculture - Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service (SCS), oversaw the design and construction of earthen flood control dams in Navarro County, Texas, and is considered the "Engineer-of-Record" for the structures. The Navarro County Soil & Water Conservation District (District) is the primary local sponsor of these dams. Co-sponsors of these dams include the Navarro County Commissioners Court and the Navarro County Water Control and Improvement District #1 (WCID). The WCID only has sponsorship pertaining to the dams located within the Caney Creek Watershed.

These floodwater retarding structures, or dams, were constructed on private, rural, agricultural lands through easements held by the District. Most easements were prepared in the 1950's through 1960's, and are considered blanket easements, although some easements have been modified, partially released, or more clearly defined by metes and bounds descriptions and filed under separate instruments or on plats. Easements are perpetual. All easements are filed with the Navarro County Clerk's office.

As part of a national inventory of dams, all the District's structures are regulated by the Texas Commission on Environmental Quality (TCEQ), the agency that oversees dam safety in the state. Texas Administrative Code (TAC) Title 30, Part 1, Chapter 299: DAMS AND RESERVOIRS contains regulations pertaining to structures that satisfy specific size or hazard criteria. Five (5) of the District's structures are now designated by TCEQ as High-Hazard dams, four (4) of which were all originally constructed by NRCS as Low-Hazard dams. There is also the potential for additional structures to be redesignated from Low-Hazard to High-Hazard Structures.

When activity is contemplated which will impact a District Easement, the District shall be contacted to review the plans and their impact on the easement. All activities within District Easements are prohibited without an executed agreement with the District, reviewed on a case-by-case basis. District approval is at the sole discretion of the District Board of Directors. The District's approval of any request for modification of any easement area will be contingent on the concurrence of the USDA-NRCS and/or TCEQ (as applicable).

The District will use the following Manual to control encroachments within the District Easements to preserve the functionality of the structures and maintain the flood storage as originally designed to protect residents upstream and downstream of the dams.

Section 2 District Authority to Regulate Encroachments

The District is a political subdivision of the State of Texas organized under the provisions of Texas Soil Conservation Law of 1939. It operates pursuant to Title 7, Chapter 201 of the Texas Agriculture Code with regulatory oversight from the Texas Commission on Environmental Quality, specifically Title 30, Part 1, Chapter 299 of the Texas Administrative Code.

All of the District's dams were constructed in conjunction with the United States Department of Agriculture, and most were constructed in the 1950's, 1960's and early 1970's. The easements granted to the District specifically state that the District shall have the right, privilege, and authority to utilize the property for the installation, operation, maintenance, and inspection of the dams. Additionally, each easement includes language that states the District has all rights that may be necessary, useful, or convenient for the full enjoyment of the easement conveyed. The District has consistently and vigorously protected these easement rights.

As easement holder and local sponsor of the structures, TCEQ considers the District as "owner" of the dam. The District is responsible for the operation, maintenance, inspection, and potential rehabilitation of these structures.

The District's review and approval authority is solely focused on ensuring that the District easement rights are fully protected or are otherwise remediated for the benefit of the District. Consequently, the District's review of any development near or within the easement boundaries is limited to the protection of the easement.

Section 3 Glossary of Terms and Definitions

The following definitions will be used throughout this District Manual.

(1) Activity

Any manmade change, manipulation and/or modification to improved or unimproved real estate, including but not limited to, adding buildings or other structures, utilities, dredging, filling, grading, paving, excavation, or drilling operations. Temporary activities, including the storage of spoils, are also controlled. Also see **Encroachment**.

(2) Blanket Easement

The original, perpetual easements granted to the District with the initial dam construction which is defined by the parent tract on which the dam was built or as otherwise defined. These easements run with the land and are recorded in land records. Areas within the Blanket Easement are defined below.

(a) Access Easement Area

Unless amended, the Access Easement Area covers the entire Blanket Easement to preserve any and all access required to inspect, operate, repair, modernize, and maintain all elements of the dam. Both ends of the dam must always be accessible from a public access point.

(b) Flood Pool Easement Area

A portion of the Blanket Easement allotted to the temporary storage of floodwater or impoundment area. The maximum flood pool storage areas or upper limit is the top of dam elevation. *(Note: This is not the 1% AEP floodplain, which is determined by the Federal Emergency Management Agency (FEMA)).*

(c) Structure Easement Area

A portion of the Blanket Easement encompassing the Dam, Auxiliary Spillway (to the outlet channel), and outlet works. The limits of the Structure Easement Area are defined by a fifty (50) foot offset from the toe of the Dam embankment, fifty (50) foot offset from the outermost edge of the spillway embankments (top or toe of slope, whichever is furthest) and a fifty (50) foot offset from all sides of the Principal Spillway and outlet works.

(3) Conservation Pool Level

Principal Spillway elevation or low flow port elevation, whichever is lower. The Conservation Pool area is considered the permanent or normal pool elevation (before evaporation) or the maximum sedimentation area. In these structures, the conservation pool level is equal to the sediment pool elevation and typically the same as the principal spillway crest elevation. This area refers to water that lies below the maximum normal operating level. For reservoirs with a flood storage function, the maximum normal operating level also corresponds to the bottom of the flood pool.

(4) Dam

An embankment, together with its Auxiliary Spillway, Principal Spillway structure, outlet works and related appurtenances that can impound water for the purpose of storage or control of runoff storm water. Also known as the complete **Structure**.

(5) Encroachment

In real estate, any construction, alteration, or modification either partially or wholly, within the District's easement without an agreement. Also see **Activity**.

(6) **Floodwater Storage Capacity**
The volume, in acre feet, of stormwater designed to be held in the reservoir below the crest of the emergency spillway and above the conservation pool level or sediment storage area. Maximum flood storage is to top of dam elevation.

(7) **Flood Pool**
Volume above the Conservation Pool Elevation. Maximum flood pool storage is to top of dam elevation.

(8) **Gate**
A slide gate, located at the bottom of the inlet tower, which can be opened to lower the water level for maintenance and repairs. Only sponsors have the authority to change the water level.

(9) **Habitable Structure**
A structure intended to be used as a temporary or permanent facility for living, sleeping, eating, or cooking.

(10) **Landowner**
The individual or company that has owner's rights to the property the Dam or District Easements are located on.

(11) **Owner of the Dam**
TCEQ considers the District as owner of the structure including the dam and all spillways and outlet area.

(12) **Sediment Storage**
Volume below Conservation Pool Elevation that is allocated for storage of sediment expected to be deposited over a certain period of time. Sediment reserve pool and conservation pool are not mutually exclusive.

(13) **Spillway**
A structure over or through which flow is discharged from a reservoir. If the rate of flow is controlled by mechanical means, such as gates, it is considered a controlled spillway. If the geometry of the spillway is the only control, it is considered an uncontrolled spillway.

(a) **Auxiliary Spillway (Emergency Spillway)**
A secondary spillway outlet designed to carry runoff in excess of that carried by the principal spillway. This secondary spillway is designed to operate only during exceptionally large flood events and is typically a grass-lined earthen channel designed for water to flow past the dam into the downstream channel to reduce reservoir storage for dam safety and/or flood protection purposes.

(b) **Principal Spillway**
The primary spillway outlet for a floodwater retarding structure over or through which most impounded water releases past the dam. The spillway pipe, designed and sized to regulate the allowable discharge from the structure, usually consists of a riser (inlet) structure in combination with an outlet conduit, which extends through the dam embankment.

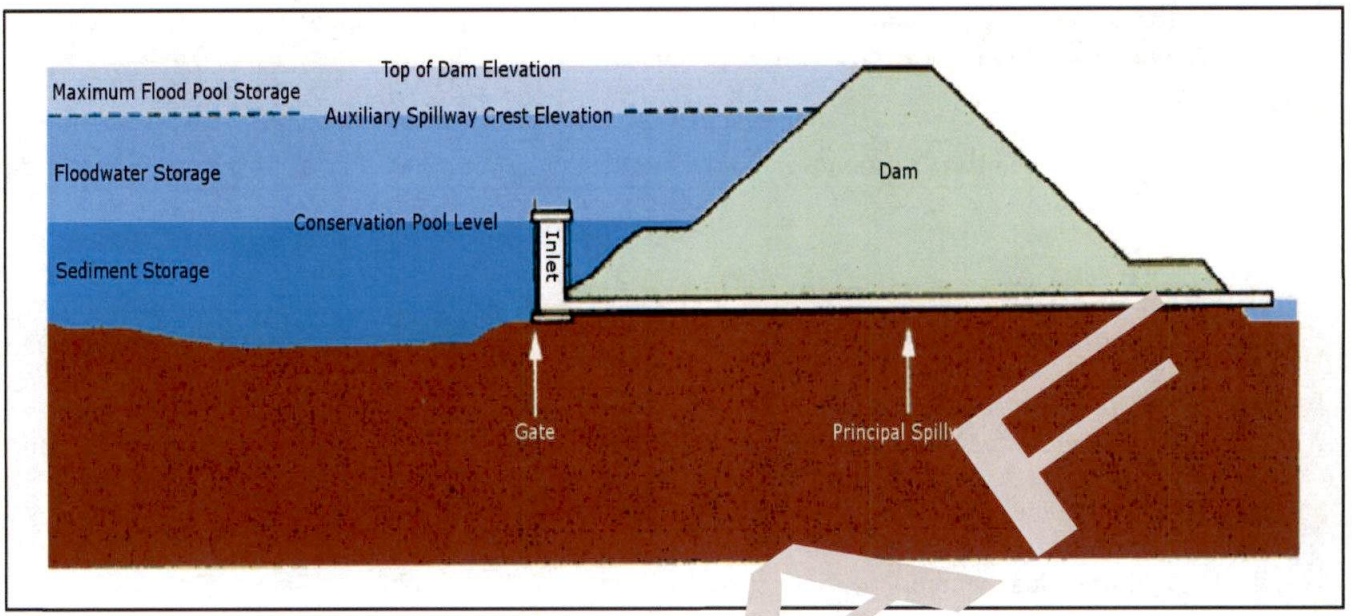

Fig. 1 – Vertical Zones of m Structure

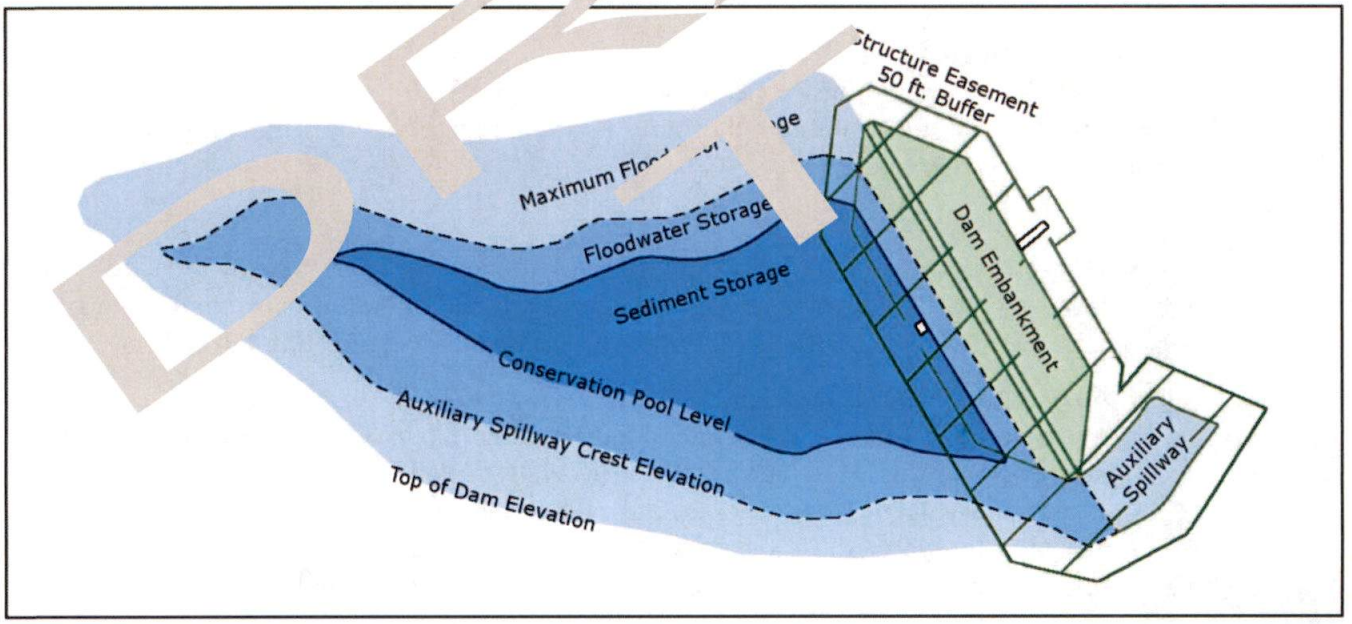

Fig. 2 – Horizontal Zones of Dam Structure

Section 4 Construction Activity Near Dams

Texas Administrative Code (TAC) 299.16(d), as amended, identifies activities near dams that may warrant evaluation by a professional engineer, registered in the State of Texas, at the request of the dam owner or the executive director of the Texas Commission on Environmental Quality (TCEQ). The District reserves the right to request such an evaluation for all work that falls within the criteria listed below.

TAC 299.16(d):

When a person proposes one of the following activities near the owner's dam, the owner or the executive director may request that the person have a professional engineer perform an evaluation to determine if the integrity of the dam would be compromised. If the person has a report prepared by a professional engineer, the person shall submit the evaluation report to the executive director and the owner for review and approval before any work is performed for a proposal to:

(1) dredge the reservoir within 200 feet of the dam;

(2) install a utility line or pipeline in the dam or in the spillways that requires significant excavation in the dam or spillways;

(3) construct a road across the dam or spillways or within 200 feet of the dam;

(4) drill oil or gas wells, perform horizontal drilling or fracturing, or perform oil or gas exploration within 500 feet of the dam and spillways; or

(5) blast within 1/2 mile of the dam.

Section 5 Encroachment Application Procedure

The Encroachment Application submittal and review should take place as soon as practicable, usually in conjunction with other jurisdictional review processes. See Appendix A for policy and fees. This Encroachment Application procedure must be completed for all activities within the District's Easements. Strict adherence to the Encroachment Application procedures will be required. In a given case, the District reserves the right to require additional information when considering a request for encroachment. The District reserves the right to deny all encroachment requests.

Pre-Submittal Meeting: A meeting with District representative(s) is strongly recommended prior to submission of the Easement Encroachment Application Form to identify specific information and coordination needed prior to submittal.

Submittal: Each submittal will require completion of the Easement Encroachment Application Form and Submittal Checklist (Appendix B) and all necessary documentation. **Fees will not be required (or accepted) until after completeness check.**

Completeness Check: The District representative(s) will check the Easement Encroachment Application and Checklist for completeness and notify the applicant of outstanding or additional submittal items. The applicant has fifteen (15) calendar days to provide the outstanding items and fee, or the application will be voided.

Review and Approval: The review of the Easement Encroachment Application submittal will not begin until fees are received. The District's approval of any request for encroachment within an easement will be contingent upon technical review and comment of the Texas State Office of the United States Department of Agriculture-Natural Resources Conservation Service (NRCS) and possibly other agencies.

Upon receiving the review by NRCS and/or other agencies, the District will attempt to provide comment within fifteen (15) days. Upon resolution of all comments, the District Board of Directors will act on the submittal in an official meeting to determine approval. Final approval of any encroachment project is at the sole discretion of the District Board and requires Board action in an official meeting.

The Encroachment Application will expire six (6) months after comments from NRCS review are provided OR after three (3) rounds of comments, whichever comes first, prior to final consideration by the District Board of Directors.

Administrative fees collected by the District in no way determines the amount of time NRCS has to review the proposed plan impacting the District Easements, nor do they have any bearing on the operations of NRCS or any other partner agency that may need to review the application. Administrative fees do not guarantee approval of the application.

Construction: If the Encroachment project is approved, the applicant will do the following:

(a) Schedule a Pre-Construction Meeting with the District no more than one (1) month prior to initiating any construction work within District Easements;

(b) Notify the District at least 72 hours prior to initiating any construction work, including installation of erosion and sedimentation controls, within District Easements;

(c) After notification of construction, provide a written monthly update to the District by the **first of each month**. The District reserves the right to perform periodic construction site visits as necessary; and

(d) Provide continuous all-weather access to the structure **at all times** during and upon completion of construction. Access plans shall be approved by the District prior to initiating construction. Access points may not be altered without prior District approval.

The applicant must initiate construction within twelve (12) months of the effective date of the Encroachment Project Approval. The applicant may request one twelve (12) month extension prior to the expiration date.

Construction Close-out: To close out an approved application, the applicant will be required to do the following:

(a) Completely restore and re-vegetate the land affected by the construction per TCEQ requirements; (The District recommends working with the local NRCS field office to determine suitable grasses and forbs for this county to be used in revegetated areas.)

(b) Notify the District of the date of the final inspection of the project;

(c) Provide digital "Record Drawings" of the work performed; and

(d) Provide both a digital and hard copy of the "As-Built" survey and revised calculations of all cut/fill areas, based on final elevation and contours of the site following construction, within District Easements to verify no loss of flood storage has occurred.

Section 6 Partial Easement Release or Modification Procedure

A Partial Easement Release and/or Modification request to define the easements by metes and bounds survey should occur as soon as practicable, usually in conjunction with other jurisdictional review processes. See Appendix A for policy and fees.

Pre-Submittal Meeting: A meeting with District representative(s) is recommended prior to submission of the Partial Easement Release and/or Modification Application Form & Checklist (Appendix C) to identify specific information and coordination needed prior to submittal.

Submittal: Each submittal will require completion of the Application Form and Submittal Checklist and all necessary documentation. **Fees will not be required (or accepted) until after completeness check.**

Completeness Check: The District representative(s) will check the Partial Easement Release and/or Modification Request Form & Checklist for completeness and notify the applicant of outstanding or additional submittal items. The applicant has fifteen (15) calendar days to provide the outstanding items and fee, or the application will be voided.

Review and Approval: The review of the Partial Easement Release and/or Modification Request Form submittal will not begin until fees are received. The District's approval of any request for a partial easement release and/or modification may be contingent upon technical review and comment of the Texas State Office of the United States Department of Agriculture- Natural Resources Conservation Service (NRCS) and possibly other agencies. All requests for a Partial Easement Release and/or Modification will be reviewed by the District's legal counsel.

Upon receiving the review by NRCS and/or other agencies and legal counsel, the District will attempt to provide comment within fifteen (15) days. Upon resolution of all comments, the District Board of Directors will act on the request in an official meeting to determine approval. Final approval of any Partial Easement Release and/or Modification is at the sole discretion of the District Board and requires Board action in an official meeting.

The Partial Easement Release and/or Modification request will expire six (6) months after comments from NRCS and legal counsel reviews are provided OR after three (3) rounds of comments, whichever comes first, prior to final consideration by the District Board of Directors.

Administrative fees collected by the District in no way determines the amount of time NRCS has to review the request impacting the District Easements, nor do they have any bearing on the operations of NRCS or any other partner agency that may need to review the request. Administrative fees do not guarantee approval of the application.

Execution: Partial Easement Release and/or Modification legal documents must be filed with land records in the office of the County Clerk of Navarro County. No partial release or modification is valid until it has been appropriately filed.

Appendix A
Easements Encroachment Policy

NAVARRO COUNTY
SOIL & WATER CONSERVATION DISTRICT #520

EASEMENT ENCROACHMENT POLICY

The Navarro County Soil & Water Conservation District (District) is responsible for the operation and maintenance of floodwater retarding structures (dams) including preserving the functionality, storage capacity, and safety of each dam. This Policy serves to clarify aspects of the District easements and standardize the consideration of encroachments related to those easements. Each request for encroachment or modification of a District Easement will require completing the appropriate application form(s) and paying the fees associated with the request.

A) GENERAL POLICY

The dams, emergency spillways and reservoirs were built on private property after the Navarro County Soil & Water Conservation District #52 and Commissioners Courts secured permission from the landowners involved. These easements are perpetual. The structures were built with federal money but are not federal property.

All surface waters in Texas are owned by the State. However, landowners are not required to let the general public cross private property to gain access to this state-owned water area. Unauthorized access to water areas is trespassing.

District Easements are defined by documents recorded in the land records of the office of the County Clerk of Navarro County, Texas, and generally described below:

(1) No activity that could alter, impact, obstruct or otherwise compromise the District's full enjoyment of their easement rights may occur within the District easements without prior approval of the District, as described in (5).

(2) Any activity in violation of District easements is subject to legal action by the District.

(3) All activity shall comply with applicable State and Federal dam and dam-related regulations including those of Texas Commission on Environmental Quality (TCEQ) Dam Safety Program, USDA - Natural Resources Conservation Service (NRCS), Federal Emergency Management Agency (FEMA), and United States Army Corps of Engineers (USACE).

(4) This Policy works in conjunction with and is part of the "Manual for Encroachments within District Easements of Floodwater Retarding Structures".

(5) For this Policy, "District Approval" is solely through "Board Action" and requires the District Board of Directors to take action at a Board meeting, and the action be recorded in the minutes.

(6) The District has the sole right to control the water levels in the structure.

(7) Any variance to this policy, or to areas downstream, is at the discretion of the Board and must be individually reviewed and approved by the District.

(8) When development is planned immediately downstream of a floodwater retarding structure, the District recommends that the owner employ a professional engineer to conduct

appropriate studies (i.e. breach flow analysis) to identify the areas impacted in the event of dam failure. Caution should also be taken so as not to restrict, impede or divert channel flow in the downstream area. On structures with a breach flow analysis completed, it is required that development and other improvements be restricted within the floodplain established by the breach flow analysis from the dam to the downstream limit of the dam breach impact. The District may require the preparation of an Emergency Action Plan. All development shall comply with the National Flood Insurance Program. Future modifications to structures may also increase downstream breach inundation areas and should be considered when planning downstream development. It is highly recommended that developers who are considering developing downstream from a structure contact the District to assess the extent to which the structure and any potential future reclassifications may impact downstream development. **EASEMENT ENCROACHMENT POLICY**

B) GENERAL POLICY FOR AGRICULTURAL AND RURAL USE

(1) The District permits controlled grazing of the grass cover on the dam and emergency spillway provided that at least a four-inch stubble of grass is maintained at all times. All grazing shall be prohibited when the structures are wet or during dry weather conditions. Livestock may not be confined on the fenced structure. Fences are the property of the District and are to remain intact so that grazing can be controlled. Fences must not be altered or removed without prior written consent of the District.

(2) The District permits the development of land adjoining the structures provided the dams, drainage areas and emergency spillways are not damaged or modified in any manner and provided the floodwater storage capacity of the detention reservoir is not decreased. No net loss of flood storage will be allowed. Placing any obstruction, building, improvement or in any other way altering the dams, auxiliary spillways, drainage or principal spillways is prohibited unless written consent is given by the District. Human dwellings are <u>not</u> to be built within the dam crest elevation upstream of the dams. The dam crest elevation for each dam shall be five (5) feet above the top of the dam. In cases where dams need to be upgraded to meet TCEQ high hazard standards, first floor finished elevations may need to be higher. Other buildings (sheds, boat houses, small barns, etc.) may be allowed within the dam crest elevation based on the District's sole discretion. All improvements must be anchored. **The District assumes no responsibility for floodwater damages to any building and other private improvements. The risk of loss shall always rest with the Landowner.** Landowners <u>must</u> request approval from the District for plans to construct any improvements or enhancements within the dam crest elevation, and approval must be received by the landowner prior to any improvements or enhancements occurring. See Section D of this policy (Cut & Fill Activity) for urban development.

(3) Use of the structures for creek crossings and access roads is permitted. However, the dam slopes and emergency spillway cuts were not built to be used by off-pavement recreation vehicles (jeeps, motorcycles, dune buggies, ATV's/UTV's, etc.). Landowners must keep these vehicles off the slopes at all times. These vehicles cause rutting which develops into gully erosion of the dam and the emergency spillway cuts. If these activities occur, landowners

may be required to pay for damages and/or repairs.

(4) The District permits the landowners and operators involved in the structures the right to use the water for domestic, livestock, or family-size garden (non-commercial) irrigation purposes. Landowners and operators may enjoy recreational activities on these structures (fishing, canoeing, kayaking, etc.) however, motorized boats or jet skis, or any activity creating wave action, is prohibited. Swimming in these structures is highly discouraged. **The District assumes no responsibility for these activities.**

(5) In addition, structures and improvements that are proposed to be placed on District Easements that may increase or alter erosion or water runoff (solar farms, wind farms, etc.) must follow the Encroachment Application process.

(6) The District permits the sale of water or donation of water for such purposes as sprinkling roads, drilling wells and commercial uses, other than irrigation, provided all landowners of the floodwater detention reservoir are in accord and provided that any and all rules and regulation of the state, county and/or other local entities are obeyed regarding such use.

(7) The District permits the use of or sale of water for commercial irrigation provided rules and regulations of the State of Texas are obeyed. Irrigation permits must be obtained from the Texas Commission on Environmental Quality (TCEQ). Also, the detention structures must not be damaged as a result of this use. The landowners having sediment pool areas (permanent water) must all be in agreement on the use of the water for irrigation.

(8) In the event encroachment is permitted by the District, the Landowner shall be responsible for establishing and maintaining both temporary and permanent access for the District to both sides of all structures and dams.

(9) In the event the landowner desires to encroach in order to facilitate the construction of solar or wind power facilities, the District may request that the landowner cause the District to be named as a third party beneficiary on any restoration security to be obtained in order to restore the property to its prior condition. In addition, the District will require that developers of solar and wind projects agree to remove any and all improvements once the solar/wind project ceases to operate.

C) POLICY FOR AREAS WITHIN THE ACCESS EASEMENTS

(1) Access easements preserve the District's rights and ability to inspect, operate, maintain, repair, and modernize all elements related to the dam and associated flood pool. Original easements preceding dam construction generally grant the District blanket access rights across any and all lands contained within the parent tract (and in some cases adjacent lands owned by the parent tract owner).

(2) The District shall retain ingress/egress right-of-way, with no restrictions. Landowner shall ensure that the District's access is not impaired by any encroachment. All gates or openings in the access areas must be at least thirty (30) feet wide to allow equipment to enter. Any activity within District Easements that will restrict access, in any way, to the District dams, auxiliary spillways, and/or pipe outlet works, either temporarily or permanently, requires District approval. Both ends of all dams must always be accessible from a public

access area.

(3) Access Easement Area modification and/or partial release requests are reviewed on a case-by-case basis and approval is at the District's sole discretion via an executed agreement by Board action.

(4) In a given situation, the District reserves the right to demand information in addition to that required on the application if the District believes the additional information might be helpful.

EASEMENT ENCROACHMENT POLICY

D) POLICY FOR CONSTRUCTION IN THE FLOOD POOL (CUT & FILL ACTIVITY)

(1) District easements preserve the District's rights and ability to impound flood water during rain events and slowly release that water downstream. The original easements preceding dam construction generally grant the District the authority to impound water in the flood pool area (temporarily or permanently), collect sediment, etc. The dam may detain flood water beyond these limits in extreme rain events.

(2) Any and all encroachment activity, manipulation, fill, or any changes of natural ground within the Flood Pool Area and District Easements, including aerial and sub-terranean utilities, requires District approval before any activity begins.

(3) Construction of habitable structures within the Flood Pool Area and up to five (5) feet above the top of dam elevations, is prohibited. All habitable structures must have first floor finished elevations above five (5) feet above the top of dam elevation, at a minimum. In cases where dams need to be upgraded to meet TCEQ high hazard standards, first floor finished elevations may need to be higher.

(4) Flood Pool Area Impacts - The District requires that any fill and/or encroachments of any kind below existing top of dam elevations be offset to preserve the floodwater storage capacity and anchored to protect functionality of the dams.

a. Compensatory Cut - required excavation of at least 25% greater volume than that of any fill and/or encroachment placed in the Flood Pool Area.

b. The Compensatory Cut excavations must be made within the Flood Pool Area at or below the elevations of the fill.

c. Improvements within the Maximum Flood Pool Storage Area shall be anchored or otherwise contain facilities, materials, trash, etc. to minimize potential clogging of the principal spillway and contamination of the flood water.

(5) Landowner shall provide a recordable n document in a form approved by the District's legal counsel indemnifying the District from any and all claims arising out of any encroachment activity, to be recorded with any platting or subdivision activity for property that is included within any of the District's easement rights. The landowner may also be required, at its cost, to remove dispose of any damaged improvements from the area in order to avoid damage to the structures and spillways and to avoid obstructions.

(6) The Conservation Pool Level (non-flood, normal water level) is controlled solely by the District. Owner(s) desiring an adjustment to the Normal Pool level must obtain written approval from all other Owners who own land within the Normal Pool and submit written concurrence showing unanimous agreement before the District will consider the request.

(7) All surface water in Texas is controlled by the State. The use of water is under the jurisdiction of the TCEQ. Water impounded by District dams is not available for commercial use unless TCEQ has permitted that use.

(8) All other activities within the District's Easements that may increase erosion or affect water runoff

(solar and wind farms, etc.) require District approval before any activity begins.

EASEMENT ENCROACHMENT POLICY

E) POLICY FOR AREAS WITHIN THE STRUCTURE (DAM & SPILLWAYS)

(1) Structure easements preserve the District's rights and ability to operate, maintain, repair, and modernize all elements of the dam including the embankment, spillways, and outlet works. TCEQ considers the District as owner of the structure and all its parts. The limits of the Structure Area are defined as offsets of:

(a) Fifty (50) feet from the toe of the dam embankments,

(b) Fifty (50) feet from the outermost edge of the spillway embankments (top or toe of slope, whichever is furthest), and

(c) Fifty (50) feet from all sides of the primary spillway and outlet works.

(2) Activity within the Structure Easement is prohibited without an executed agreement with the District. Requests for activity and/or encroachments within the Structure Easement will be reviewed on a case-by-case basis and approval is at the District's discretion by Board action.

(3) No dam shall be modified in any form for any reason without prior Board action and concurrence from TCEQ and Natural Resources Conservation Service (NRCS), as applicable.

(4) No new utilities or trenching operations of any kind will be allowed within the Structure Easement Areas.

(5) Any activity near the structure must be in accordance with Texas Administrative Code (TAC) 299.16(d).

EASEMENT ENCROACHMENT POLICY

F) POLICY FOR CONSIDERING A PARTIAL RELEASE OF BLANKET EASEMENT (MODIFICATION)

(1) District easements preserve the District's rights and ability to inspect, operate, maintain, repair, and modernize all elements related to the structure and associated flood pool areas. They also allow the District ingress/egress right of way to access the structure, as needed, and easements grant the District the authority to impound water in the flood pool area (temporarily or permanently), collect sediment, etc. The District will consider, in its sole discretion, requests for partial releases of blanket easements. The District reserves the right to demand information from the landowner in addition to that required on the application. As a matter of policy, Releases are generally disfavored by the District.

(2) Application forms for defined easement boundaries may only be submitted by current landowners. Landowners may be asked to show proof of ownership.

(3) Limits for Partial Release:

a. For dams that may need to be upgraded to meet high hazard standards as defined by TCEQ, the District will not consider releasing any easements, upstream of the dam, at elevations lower than five (5) feet above current top of dam elevations, at a minimum.

b. For dams that have already been rehabilitated, the District will maintain easements at elevations at least equal to top of dam elevations or higher.

c. All structure easements will remain intact with a fifty (50) foot buffer around all aspects of the structure.

d. The District will retain ingress/egress right-of-way with no restrictions. Ingress/egress easements may be defined as long as full access is not limited from a public access area to the structure from both ends of the dam. All gates, openings, gaps, etc., must be a minimum of thirty (30) feet wide to allow equipment to enter.

(4) Landowner shall furnish the District with a metes and bounds description of the area based upon the approved mean sea level (MSL) elevation and/or the structure with off-set buffer areas, including a map or plat of the described area, and referencing the approved MSL elevation and/or buffer distance. The survey shall be done by a Texas Registered Professional Land Surveyor (RPLS).

(5) In the event that development is planned in phases, a complete plan for all development must be reviewed and approved by the District prior to any Partial Release of Easement and/or Modification is granted.

(6) Landowner shall furnish a legal easement document to be reviewed by the District's legal counsel, signed, and filed with the land records at the office of the County Clerk of Navarro County, Texas. This easement shall state the elevation determining the defined easement area.

(7) Landowner shall provide a recordable indemnification document in a form approved by the District's legal counsel, to be recorded with any platting or subdivision activity for property that is included within any of the District's easement rights.

EASEMENT ENCROACHMENT POLICY

G) FEES

Fees assessed by the Navarro County Soil & Water Conservation District are intended to cover expenses incurred by the District for the review and management of the activity impacting District Easements. Payment of these fees does not determine review time by any outside agency, nor do they guarantee approval of any application or request. The District reserves the right to waive or reduce any fees. If any construction work is commenced prior to formal approval by the Board of Directors of the District, then the required fees will be 150% of the fee listed in the Fee Schedule below:

Encroachment Request w/Cut & Fill **Submittal Fee = $15,000**
Application Review and Processing. Each submittal requires the payment of Easement Encroachment fees. Applications failing to resolve the District's comments within three (3) rounds or six (6) months may require an additional fee payment.

Encroachment Request w/NO Cut & Fill **Submittal Fee = $5,000**
Application Review and Processing. Each submittal requires the payment of Easement Encroachment fees. Applications failing to resolve the District's comments within three (3) rounds or six (6) months may require an additional fee payment.

Partial Release/Modification of Blanket Easements **Submittal Fee = $3,000**
Each submittal will require the payment of Easement Modification fees. Applications failing to resolve the District's comments within three (3) rounds or six (6) months may require an additional fee payment.

H) EFFECTIVE DATE

This policy will become effective upon adoption by the Board of Directors. All new applications submitted after the effective date shall be subject to the new policy. Any submittals before the effective date may request to move forward to the new policy.

EASEMENT ENCROACHMENT POLICY

I) POLICY MODIFICATION

The above regulations and policies shall remain in force until such time or condition should arise causing this policy to be amended, deleted, or added to, for proper care of Floodwater Retarding Structures within the Navarro County Soil & Water Conservation District. Modification to this policy must be approved by the District Board of Directors, Navarro County Commissioners Court.

ADOPTED ON THIS THE _____OF _____ 2022

Navarro SWCD Chairman **Date**

Navarro SWCD Secretary **Date**

Navarro WCID #1 Chairman **Date**

Navarro WCID #1 Secretary **Date**

9-23-24

Navarro County Judge **Date**

Reviewed to form:

County Attorney **Date**

Appendix B

Easement

Encroachment

Application

District Easement Encroachment

Application Form

1. **Project Name:** _____

   Project Acreage: _____ District Dam#: _____ Hazard Classification (TCEQ)_____

   Jurisdiction:_____ Previous Application #:_____

2. **Landowner (Name/Title):** _____

   Company:_____

   Address:_____

   Telephone:_____ Email: _____

3. **Applicant/Engineer (Name/Title):** _____

   Company:_____

   Address:_____

   Telephone:_____ Email: _____

4. **Description of proposed activity to occur within the Easement Area:**

   _____

   _____

5. **Compensatory Cut:**

	Total fill (cy)	Total cut (cy)
a. Sediment Pool	_____	_____
b. Flood Pool	_____	_____

Landowner's Acknowledgement

- The District does not receive or review submittals made to any other jurisdictions and additional permits may be necessary from other entities.
- Any revisions that change the civil site plans based on other entity review or for any other reason must be resubmitted to the District for acceptance.
- I acknowledge that all fees required are my responsibility.
- I hereby authorize the applicant indicated above to represent me in matters pertaining to this application.

_____ _____

Signature of Landowner **Date**

_____ _____

Signature of Applicant **Date**

District Use Only:

Permit #:_____ Date Fee Received:_____ Cash/Check No.: _____

District Easement Encroachment

Submittal Checklist

The following are required to be included with the District Easement Encroachment Application within all District Easements for a submittal to be considered complete.

Submittal Requirements:

- ❑ Encroachment Application Form and Submittal Checklist
- ❑ Complete Construction Plans for entire subject tract
- ❑ CAD Files of existing and proposed grading (3D files)
- ❑ Plat(s) of the property (existing and/or proposed)
- ❑ Easement Encroachment Submittal Packet
  - ❑ FCSWCD Site Plan
  - ❑ Drainage Area Map
  - ❑ Maximum Flood Pool Storage Map
  - ❑ Proposed Construction Schedule
  - ❑ Drainage Report

Easement Encroachment Submittal Packet:

- ❑ **FCSWCD Site Plan**
  - ❑ Single sheet (if possible) at legible scale showing all proposed improvements
  - ❑ All District Easements or Blanket Easements located on property are shown and identified
  - ❑ All proposed impervious cover is clearly indicated
- ❑ **Drainage Area Map**
  - ❑ Existing and proposed drainage areas encompassing entire subject tract
  - ❑ Delineated drainage basins with contours
  - ❑ Existing and proposed impervious cover
  - ❑ Existing and proposed runoff coefficients
  - ❑ Existing and proposed time of concentration path delineations
- ❑ **Maximum Flood Pool Storage Map**
  - ❑ Limits of Maximum Flood Pool Storage (Area)
  - ❑ Limits of proposed fill with dimensions (one-foot increments)
  - ❑ Limits of proposed compensatory cut volume with dimensions (one-foot increments)
  - ❑ Cross sections of all cut and fill locations w/elevations directly correlating to the dam as-built drawings
  - ❑ Table summarizing total fill volume calculations (in cubic yards)
- ❑ **Proposed Construction Schedule**
  - ❑ Date proposed activity within District Easement (Area) will begin
  - ❑ Date proposed activity within District Easement (Area) will end
  - ❑ Expected date of completion for entire project
- ❑ **Drainage Report**
  - ❑ Report is signed and sealed by a Professional Engineer
  - ❑ Summary of project including a description of any project phasing
  - ❑ Summary of method of analysis and modeling software and origin
  - ❑ Hydrologic support including but not limited to: rainfall data; Curve Number calculations including soils map and land use map; impervious cover; and time of concentrations paths and calculations
  - ❑ Summary table of existing and proposed volume of runoff for the 24-hr 1% AEP
  - ❑ Project phasing table (Phase Number, fill volume, impervious cover area, runoff volume, compensatory cut volume required and provided)
  - ❑ Digital copy of the hydrologic model

Appendix C

Partial Easement Release

or

Modification Request

Application

Partial Easement Release or Modification Request

Application Form and Submittal Checklist

1. **Project Name:** _____

   Project Acreage: _____ District Dam#: _____ Hazard Classification (TCEQ)_____

   Jurisdiction:_____ Previous Application #:_____

2. **Landowner (Name/Title):** _____

   Company:_____

   Address:_____

   Telephone:_____ Email: _____

3. **Applicant/Engineer (Name/Title):** _____

   Company:_____

   Address:_____

   Telephone:_____ Email: _____

Landowner's Acknowledgement

- I acknowledge that any activity or encroachment in the modified easement requires separate application.
- I acknowledge that all fees required are my responsibility.
- I hereby authorize the applicant indicated above to represent me in matters pertaining to this application.

_____ _____

Signature of Landowner **Date**

_____ _____

Signature of Applicant **Date**

The following are required to be included with the Partial Easement Release or Modification Request Application for a submittal to be considered complete.

Submittal Requirements:

- ☐ Partial Easement Release or Modification Request Application Form and Submittal Checklist
- ☐ Plat(s) of the property (existing and proposed)
- ☐ Contour maps showing the following:
  - o Three feet (3') above current top of dam elevations (highest point)
  - o Top of dam elevations (highest point)
  - o Auxiliary spillway crest elevations
  - o Principal spillway crest elevations
  - o Conservation pool elevations (water surface)
- ☐ Metes and bounds survey describing the defined easement area or the area to be released (RPLS) based on defined MSL elevation including a map or plat
- ☐ Delineation of ingress/egress access areas from a public rights-of-way, if applicable
- ☐ Indemnification document
- ☐ Legal document to be reviewed by legal counsel, signed by the District, and filed with Navarro County Clerk

District Use Only:

Permit #:_____ Date Fee Received:_____ Cash/Check No.: _____