



Encroachment Below 1,000 Foot Contour

***Presented by
Michael McClendon
Upper Basin Regional Manager***

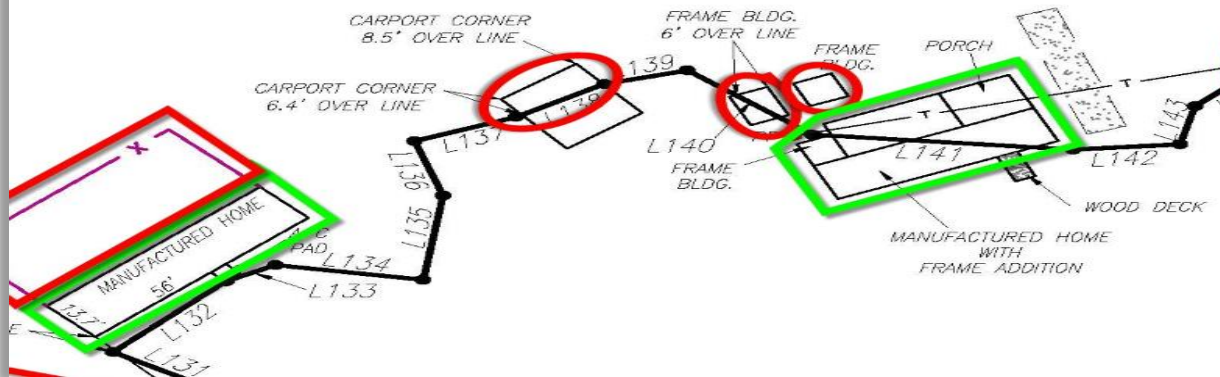
Encroachments below 1,000' Contour (Lakebed)

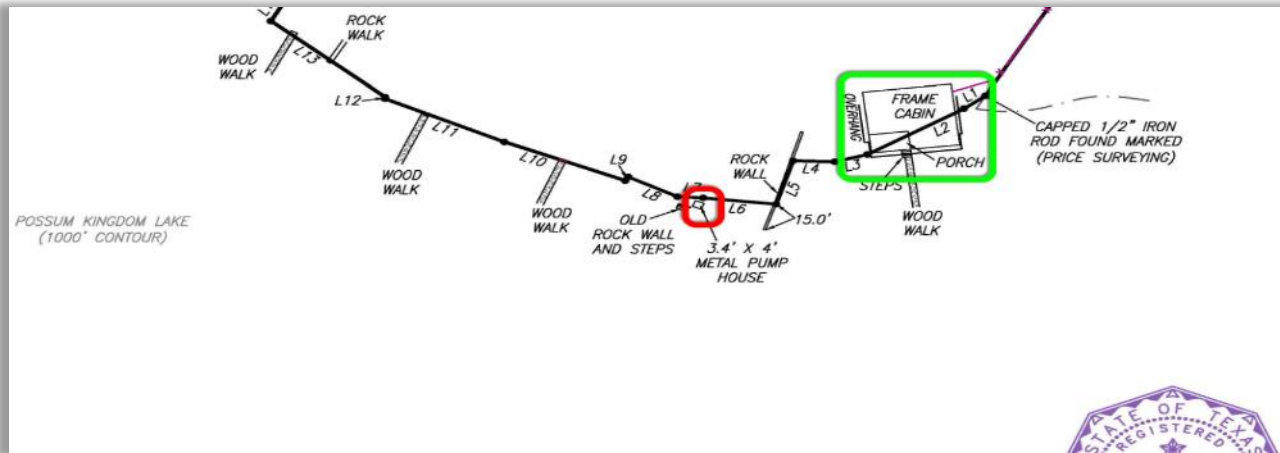
- Comprehensive Survey Completed
 - 11 residential encroachments
 - Contractual agreement with Commercial Lessee
- Encroachments are prohibited
 - All must be removed; generally
 - Enclosed, habitable, residential structures and improvements to and part thereof (i.e. porch or deck)
 - Not allowable: boat house, dock, fence, shed, retaining wall
- To Remain
 - Execute Agreement (Assume responsibility & liability)
 - Non-residential must conform to bottom of lakebed and no hazard to navigation
 - Fee (\$0.10/sq. ft. \$50 minimum)
 - BRA retains right to require removal



POSSUM KINGDOM LAKE
(1000' CONTOUR)

L14.







WHEREAS, the Brazos River Authority owns the property below the 1,000 foot contour at Possum Kingdom Lake for the purpose of maintaining an inundation area for the reservoir (the “Lakebed”), and also owns land above the 1,000 foot contour, which it leases for residential and commercial purposes (the “Leased Land”); and

WHEREAS, the 1,000 foot contour is a meandering line that changes naturally over time with erosion and accretion, and is the lakeside boundary for most of the Leased Land; and

WHEREAS, in conjunction with a legislatively mandated sale of these residential and commercial leases, the Brazos River Authority conducted a survey of the Leased Land, including a survey of the 1,000 foot contour, which survey recorded improvements encroaching into the Lakebed from the Leased Land, including residential structures, retaining walls, concrete pads, fences, sheds, pump houses, and other similar structures; and

WHEREAS, the Brazos River Authority does not permit single family residential (“Residential Lessee”) and Commercial Leased Property (“Commercial Lessee”) encroachments into the Lakebed; and



WHEREAS, notwithstanding such requirement, and taking into consideration the nature of the legislatively mandated sale process, the financial and environmental aspects of removing a residential structure, and potential hazards to navigation on the lake, the Brazos River Authority is amenable to allowing certain Lakebed encroachments to remain in place, subject to the specific requirements set forth herein; and

WHEREAS, at its October 25, 2010, Board of Directors meeting, as part of the first round of divestiture, the Brazos River Authority adopted a similar policy regarding Lakebed encroachments, and desires to maintain consistency with this previous policy; and

WHEREAS, the Board of Directors intends that the policy regarding encroachments below the 1000' contour adopted October 25, 2010, be superseded and replaced by the new policy regarding encroachments below the 1000' contour set forth herein.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Brazos River Authority hereby adopts the following policy regarding improvements encroaching into the Lakebed:



- 1) **Encroachments in General.** Except as provided in paragraphs 2 and 3 below, all improvements encroaching into the Lakebed must be removed.
- 2) **Residential Lakebed Encroachments.** Enclosed, habitable, residential structures that cannot be easily physically removed from their current position and those improvements attached to and part of the residential structure, such as porches or decks (this does not include other Lakebed encroachments not attached to the residential structure such as boat houses, on-water facilities, fences, sheds, or retaining walls) encroaching into the Lakebed on January 25, 2016 (“Residential Lakebed Encroachments”), may remain in place subject to the following:
 - a. **The Residential Lakebed Encroachment must be associated with one of the following:**
 - i. **A property subject to a residential lease agreement with the Brazos River Authority in effect as of January 25, 2016 (“Residential Property”), the owner of which, including any successor in interest, shall hereinafter be referred to as a “Residential Licensee”;**



- ii. A property subject to a commercial lease agreement with the Brazos River Authority in effect as of January 25, 2016 (“Commercial Property”), which subleases tracts of land for residential purposes. The owner of a Commercial Property, including any successor in interest, shall hereinafter be referred to as a “Commercial Licensee”. The Commercial Licensee’s sublessee, who owns or otherwise occupies the Residential Lakebed Encroachment associated with the Commercial Property shall hereinafter be referred to as a “Commercial Sublessee”; or
 - iii. An Agreement Regarding Encroachments Below 1000’ Contour Line in effect as of January 25, 2016 (“Currently Licensed Property”), the owner of which shall hereinafter be referred to as a “Current Licensee”. Successors in interest to a Current Licensee shall be considered Residential Licensees under this Policy;
- b. Residential Licensees and Commercial Licensees must execute the Brazos River Authority’s Agreement Regarding Encroachments Below 1000’ Contour Line (“Encroachment Agreement”), which Encroachment Agreement shall be revocable by the Brazos River Authority, and shall require the Residential Licensee and Commercial Licensee (as applicable) to assume all responsibility and liability for the Residential Lakebed Encroachment, including, but not limited to, flooding;



- c. **Current Licensees shall remain subject to the terms of their current Encroachment Agreement, but shall otherwise comply with and be subject to the terms of this policy related to Residential Licensees;**

- d. **Residential Licensees and Commercial Licensees shall be responsible for ensuring that the Residential Lakebed Encroachment associated with their property is maintained and repaired, and that the portion of the Residential Lakebed Encroachment that is in the Lakebed is not expanded, altered, rebuilt, replaced or otherwise modified;**

- e. **Residential Licensees and Commercial Licensees shall be subject to the payment of an annual encroachment fee for the right to maintain the Residential Lakebed Encroachment in the Lakebed. The current annual encroachment fee is \$0.10 per square foot (\$50 Minimum), which is applied to that portion of the Residential Lakebed Encroachment that encroaches into the Lakebed. This fee shall be subject to change at any time and from time to time, and payment shall be due and payable on an annual basis.**



- f. If a Residential Licensee desires to transfer the Residential Property, the Residential Licensee's Encroachment Agreement shall automatically terminate upon such transfer and the new owner must execute a new Encroachment Agreement within ninety (90) days of transfer of ownership, or the Residential Lakebed Encroachment shall be subject to removal at the sole discretion of the Brazos River Authority and at the new owner's sole expense;**

- g. If a Commercial Licensee desires to transfer the Commercial Property or if the Commercial Sublessee desires to transfer their sublease, the Commercial Licensee's Encroachment Agreement shall automatically terminate upon any such transfer and the new owner of the Commercial Property (if the Commercial Property was transferred) or the Commercial Licensee (if only the sublease was transferred) must execute a new Encroachment Agreement within ninety (90) days of transfer of ownership, or the Residential Lakebed Encroachment shall be subject to removal at the sole discretion of the Brazos River Authority and at the sole expense of either the new owner of the Commercial Property (if the Commercial Property was transferred) or the Commercial Licensee (if only the sublease was transferred);**



- h. Regarding Commercial Licensees, in the event the sublease agreement associated with the Residential Lakebed Encroachment terminates, expires, or is otherwise discontinued, and such lease is not extended or renewed within one year from the date of such termination, expiration, or discontinuation, then such Residential Lakebed Encroachment shall be subject to removal at the sole discretion of the Brazos River Authority and at the Commercial Licensee's sole expense. In the event the Commercial Licensee desires to partition the Commercial Property, such that the Commercial Sublessee would become the owner of their sublease, the Commercial Sublessee shall have no right to enter into an Encroachment Agreement with the Brazos River Authority, and the Brazos River Authority shall have no obligation to enter into an Encroachment Agreement with the Commercial Sublessee and may require the removal of the Residential Lakebed Encroachment at its sole discretion and at the sole expense of the Commercial Sublessee;**
- i. On or before the ninetieth (90th) day following the effective date of an Encroachment Agreement executed after January 25, 2016, the Residential Licensee or Commercial Licensee (as applicable) shall cause such Encroachment Agreement to be filed of record in the county appraisal district for the county in which the property associated with the encroachment is located; and**



- 3) Miscellaneous Encroachments. Retaining walls and concrete pads that conform to the bottom of the Lakebed which encroach into the Lakebed as of January 25, 2016, and which the Brazos River Authority determines in its sole discretion do not create a hazard to navigation, may remain in place subject to the following:**
- a. The continued presence of any such structure shall not give the adjacent land owner or lessee any right, title or interest in the area occupied by or surrounding such structure; and**
 - b. The structure may not be repaired or maintained without the prior written consent of the Brazos River Authority; and**
 - c. The Brazos River Authority reserves the right to require the removal of such structure at its sole discretion.**



BE IT FURTHER RESOLVED that any Brazos River Authority residential or commercial lessee who has a Residential Lakebed Encroachment associated with their residential or commercial lease must execute an Agreement Regarding Encroachments Below 1000' Contour Line on or before June 1, 2016, or such Residential Lakebed Encroachment shall be subject to removal at the sole discretion of the Brazos River Authority and at the residential or commercial lessee's sole expense; and

BE IT FURTHER RESOLVED that the Board of Directors hereby directs that the Brazos River Authority's Agreement Regarding Encroachments Below 1000' Contour form be modified to conform to the requirements of the new policy set forth herein; and

BE IT FURTHER RESOLVED that this Policy hereby supersedes and replaces the previous policy regarding encroachments below the 1000' contour adopted by the Board on October 25, 2010.



Brazos River Authority