



Encroachments onto Retained Brazos River Authority Lands

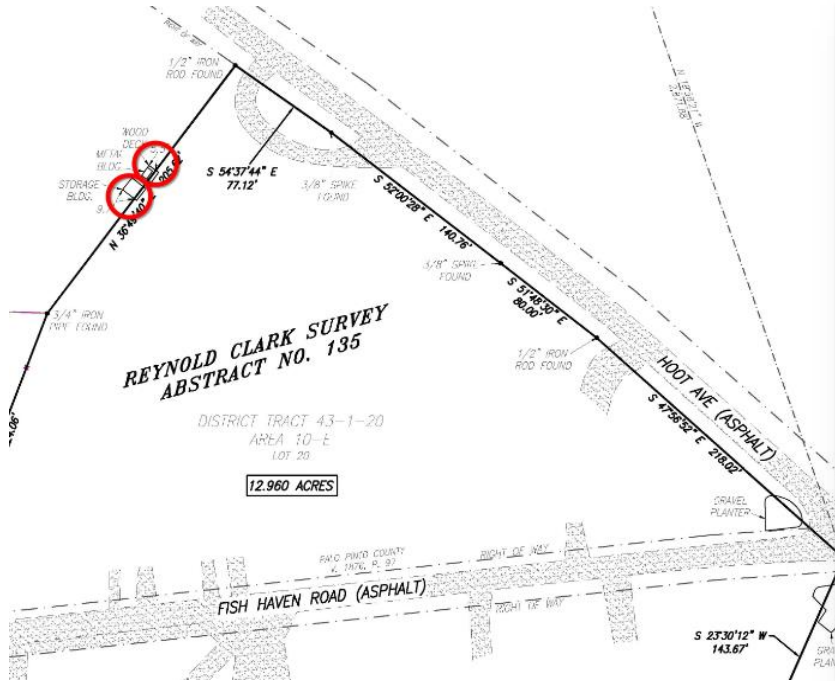
***Presented by
Michael McClendon
Upper Basin Regional Manager***

Encroachments onto Retained BRA Lands

- **Comprehensive Survey Completed**
 - 19 Encroachments onto Retained Land
 - ~ 6 may remain
 - ~13 will require removal
- **To Remain**
 - Execute Agreement
 - Fee (\$0.10/sq. ft. \$50 minimum)
 - 1st Divestiture: 11 executed agreements totaling \$1,300/yr
 - BRA retains right to require removal



Encroachment on Retained Land to be Removed



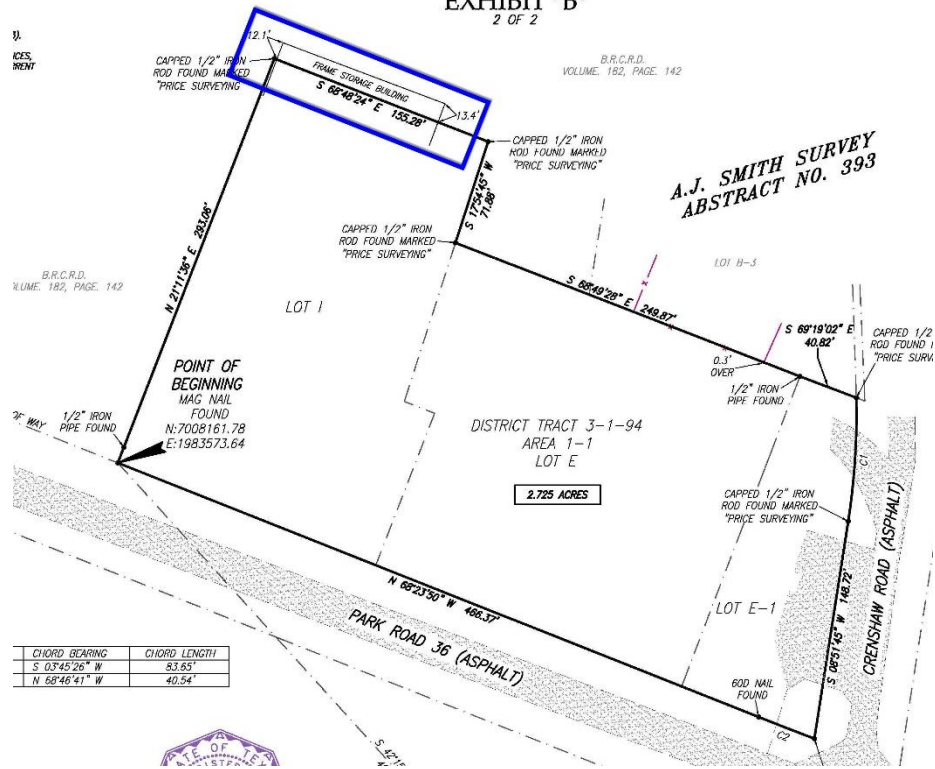
Meeting Date: January 25, 2016

Encroachment Remain if Agreement Executed



Brazos River Authority

EXHIBIT "B" 2 OF 2



Meeting Date: January 25, 2016



WHEREAS, the Brazos River Authority, in accordance with the Texas Legislature, is in the process of divesting certain residential and commercial leases adjacent to Possum Kingdom Lake (the “Leased Land”); and

WHEREAS, the Legislative intent was to remove the Brazos River Authority from the land management business to the greatest degree possible; and

WHEREAS, in conjunction with the mandated sale, the Brazos River Authority conducted a survey of the Leased Land, which survey recorded many improvements, including residential structures, fences, sheds, on-site sewerage facilities, and other similar structures (“Encroachments”), encroaching from the Leased Land onto land the Brazos River Authority is not selling (the “Retained Land”); and

WHEREAS, Encroachments onto the Retained Land should be removed to the greatest extent possible, as the continued presence of such Encroachments will ultimately burden the Brazos River Authority with additional monitoring and land management responsibilities; and

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

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WHEREAS, notwithstanding the foregoing, the Brazos River Authority recognizes that the substantial nature of some Encroachments, such as houses, garages, and on-site sewerage facilities, makes removal difficult and creates a hardship, and is therefore, willing to allow such substantial 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 Encroachments onto Retained Land, and desires to maintain consistency with this previous policy; and

WHEREAS, the Board of Directors intends that the policy regarding Encroachments onto Retained Land adopted October 25, 2010, be superseded and replaced by the new policy regarding Encroachments onto Retained Land set forth herein.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Brazos River Authority hereby adopts the following policy regarding Encroachments onto the Retained Land:



- 1) Except as provided in paragraphs 2 and 3 below, all Encroachments onto the Retained Land must be removed.**
- 2) The following types of Encroachments onto the Retained Land as of January 25, 2016, may remain in place at the sole discretion of the Brazos River Authority, and subject to paragraphs 3 through 11 below:**
 - a. 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;**
 - b. Other enclosed substantial structures that have been permanently affixed to the ground, such as garages, workshops, warehouses, and barns. This does not include structures such as sheds, greenhouses, kennels, or chicken coops, or structures that are portable or otherwise readily removable; and**
 - c. On-site sewerage facility systems and related infrastructure.**



- 3) The Encroachment must be associated with one of the following:**
- a. 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”;**
 - b. A property subject to a commercial lease agreement with the Brazos River Authority in effect as of January 25, 2016 (“Commercial Property”). The owner of a Commercial Property, including any successor in interest, shall hereinafter be referred to as a “Commercial Licensee”. A Commercial Licensee’s sublessee, who owns or otherwise exercises control over an Encroachment associated with the Commercial Property shall hereinafter be referred to as a “Commercial Sublessee”; or**
 - c. An Agreement Regarding Encroachments onto Brazos River Authority Retained Land 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;**



- 4) **The Residential Lessee or Commercial Lessee which has an Encroachment must execute the Brazos River Authority's Agreement Regarding Encroachments onto Brazos River Authority Retained Land ("Encroachment Agreement"), which Encroachment Agreement shall be revocable by the Brazos River Authority, and shall require the Residential Lessee and Commercial Lessee (as applicable) to assume all responsibility and liability for the Encroachment, including, but not limited to, flooding;**

- 5) **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;**

- 6) **Residential Licensees and Commercial Licensees shall be responsible for ensuring that the Encroachment associated with their property is maintained and repaired, and that the portion of the Encroachment that is on the Retained Land is not expanded, altered, rebuilt, replaced or otherwise modified;**



- 7) Residential Licensees and Commercial Licensees shall be subject to the payment of an annual encroachment fee for the right to maintain the Encroachment on the Retained Land. The current annual encroachment fee is \$0.10 per square foot (\$50 Minimum), which is applied to that portion of the Encroachment that encroaches onto the Retained Land. 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.**

- 8) 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 Encroachment shall be subject to removal at the sole discretion of the Brazos River Authority and at the new owner's sole expense;**



- 9) **If a Commercial Licensee desires to transfer the Commercial Property or if a 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 such 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);**



- 10) Regarding Commercial Licensees, in the event a sublease agreement associated with an 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 the Encroachment associated with the sublease 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 Encroachment at its sole discretion and at the sole expense of the Commercial Sublessee;**

- 11) 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**



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

BE IT FURTHER RESOLVED that upon transfer of a lease or property with an Encroachment, the Residential or Commercial Lessee must execute a new Agreement prior to such transfer, or such 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 onto Brazos River Authority Retained Land form be modified to conform with 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 onto Retained land adopted by the Board on October 25, 2010.



**Brazos
River
Authority**