BACKGROUND

There are 23 flood control structures in the Upper Brushy Creek Water Control and Improvement District (District). See attached map.

The U.S Department of Agriculture - Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service (SCS), oversaw the design and construction of these dams and is considered the “Engineer-of-Record” for the structures.

All of the District’s dams are regulated by the Texas Commission on Environmental Quality (TCEQ). Texas Administrative Code (TAC) Title 30, Part 1, Chapter 299: DAMS AND RESERVOIRS contains regulations pertaining to dams that satisfy specific size or hazard criteria. Twenty one of the District’s dams are designated by the TCEQ as high hazard dams.

These dams were constructed on private lands through easements held by the District. These easements consist of three basic components: Structure, Inundation, and Access. Most easements were prepared in the 1950’s through 1960’s, although some easements have been modified, partially released, or more clearly defined by metes and bounds and filed under separate instruments or on plats. All easements are filed with the Williamson County Clerk's office.

As easement holder and local sponsor of the dams, the District is responsible for the operation, maintenance, inspection, and modernization of these dams. These activities are funded by ad valorem taxes collected within the District and grants or other funds that may be available.

Therefore, to preserve the functionality of each dam, maintain the integrity of the flood storage as designed, and thereby protect residents upstream and downstream of the dams, the District is adopting the following policy relating to all activities within the areas under the District’s jurisdiction.

GENERAL POLICY

1. No work within any District Structure or Inundation Easement will commence prior to formal action by the Board of Directors approving such activity. Any work which is commenced prior to Board approval will be subject to legal action by the District. The District must be notified of any work within any District Easement, including Access Easements, that will restrict access to the District dams (both ends of all dams must be accessible at all time), auxiliary spillways, and pipe outlet works in any way, temporarily or permanently.
2. Easement Components:
   a. **Structure Easement** - The structure easement includes the dam, auxiliary spillway (to the outlet channel), and pipe outlet works. Although most structure easements are not defined by metes and bounds, the easement follows the toe of the dam and spillway embankments with an offset to allow access for maintenance and repair, being fifty (50) feet from the toe of the dam and twenty (20) feet from the outermost top or toe of slope of the spillway embankments.
   
   b. **Inundation Easement** – The inundation easement corresponds to the flood detention pool. This easement is not defined by metes and bounds, but by an elevation or contour line generally determined by the auxiliary spillway crest elevation plus two (2) feet unless specifically designated otherwise. *(Note: This is not the 100-year floodplain, which is determined by the Federal Emergency Management Agency (FEMA)).*
   
   c. **Access Easement** – The extent of the access easement is defined by the parent tracts on which the dam was built, unless a portion thereof has been formally released. The access easement allows the District to carry out operation and maintenance responsibilities.

3. **Access** - As specified in the **Access Easement**, the District is provided and will reserve access for the purpose of inspecting, operating, repairing, modernizing, and maintaining the structure. The District will install locks and “No Trespassing” signs on access gates as needed.

4. **Floodwater Retarding Structure** - The dam, auxiliary spillway, primary spillway/pipe outlet and related appurtenances shall not be modified in any form for any reason without prior written approval of the District and concurrence from the NRCS and/or TCEQ (as applicable).

5. **Fencing** - The fence and gates around the dam and auxiliary spillway are the property of the District. Any changes or modifications to the existing fences require prior written approval of the District. Property line fences located within the easement are not the responsibility of the District. It should be noted that the fenced-in area around the dam and auxiliary spillway is not necessarily an indicator of the "easement area".

6. **Traffic on Structures** - Vehicular travel across the top of dam and spillway areas will be limited to prevent rutting and damage to vegetation. All vehicles, including ATV's, motorcycles, and bicycles, are prohibited on the slopes of the dams, with the exception of maintenance equipment. All pedestrian trails, formal or informal, are prohibited on the slopes of the dams.

7. **Water Level** - The water level in the structure is controlled by the District. Landowner(s) who own land located within the normal pool wishing to lower the water level must have prior written approval of the District. Other landowners who own land within the normal
pool must be in agreement and submit written concurrence showing unanimous agreement before the District will consider the request.

8. **Water Use** - All surface water in Texas is owned by the State. The original landowner(s) granting easements for the floodwater retarding structure have the right to use water impounded in the normal pool for domestic or livestock use. The use of water for commercial agricultural production and other commercial or residential purposes comes under the jurisdiction of the TCEQ. Water impounded by the District dams is not available for use by anyone other than the original landowner(s) unless TCEQ has permitted that use.

9. **Utilities within District Structure Easements** – No new utilities of any kind will be allowed within District Structure Easements. All existing utilities located within a District Structure Easement that require modification or repair which would cause disturbance to District infrastructure shall be abandoned in place in a manner acceptable to the District and relocated outside of the District’s easement at the utility owner’s expense.

10. **Construction Activity near Dams** – Texas Administrative Code (TAC) identifies certain activities near dams that may warrant evaluation by a professional engineer at the request of the dam owner or the executive director of the 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 [not allowed per Item 9 above];
   (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

   The professional engineer that will perform the evaluation shall be registered in Texas. The District’s approval of the professional’s qualifications is required and shall not be unreasonably withheld.
11. Development - Development is defined as any manmade change to improved or unimproved real estate, including but not limited to, adding buildings or other structures, utilities, dredging, tilling, grading, paving, excavation, or drilling operations.

The following activities relating to Development within Structure and Inundation Easements are prohibited:

   a. Construction within Structure Easements including commercial, industrial, and residential buildings, parking lots, roads, homes, and other structures (garages, barns, utility buildings, etc.);
   b. Construction within Structure Easements of above ground, buried, or bored utilities on/beneath dam or auxiliary spillway;
   c. Construction of habitable structures within Inundation Easements.

The following activities relating to development within and adjacent to Structure and/or Inundation Easement areas require a District Development Permit:

   a. Placement of fill for any reason;
   b. Excavation within the Inundation Easement with the intent of increasing impoundment volume or detention for any purpose, including a volume that may be required by another jurisdictional entity, to satisfy stormwater detention requirements for new development upstream of the easement;
   c. Construction within the Inundation Easement including new parking lots, roads, utilities, and other structures (garages, barns, utility buildings, etc.), or modification of existing buildings or structures;
   d. Construction adjacent to Structure and/or Inundation Easements including commercial, industrial, and residential buildings, parking lots, roads, utilities, homes, and other structures (garages, barns, utility buildings, etc.);
   e. Installation of dikes, levees, ponds, or other structures within the Inundation Easement which may reduce the storage capacity of the flood detention pool;
   f. Temporary or permanent placement of objects in the auxiliary spillway that will reduce or disturb flow (i.e., fences, equipment, etc.).

All development should comply with the National Flood Insurance Program and must be approved by the appropriate floodplain administrator. The District dams are designed to impound flood water during rain events and drain slowly in order to detain flood flows and reduce flooding downstream. Dams may detain flood water beyond the inundation easement in extreme rain events.

12. Development Review Application and Permitting Process (Development Review) – When construction activity near a District dam as described in Item 10 above, or Development as defined in Item 11 above, is contemplated on land on which the District holds a Structure Easement and/or Inundation Easement, the owner shall contact the District to review the plans and their impact on the easement(s) as well as the structural integrity and/or hydraulic function of the floodwater retarding structure. This review should take place as soon as reasonably possible, usually in conjunction with other jurisdictional review processes.
13. **Special Inundation Easement Requirements** – To preserve the flood storage capacity and functionality of the District’s Floodwater Retarding Structures, the District requires that any fill placed in the **FLOOD POOL** associated with the Development be offset by **at least 25% greater volume of excavation** (compensatory cut). The compensatory cut must also be made within the **FLOOD POOL**.

Excavation in the **SEDIMENT POOL** is not prohibited, but shall not be counted as compensatory cut volume as it will not result in increased flood storage volume.

Fill in **MAXIMUM STORAGE ZONE** is discouraged, but not prohibited and does not require compensatory cut.

The vertical zones of a Flood Control Structure are the following (See Figure 1):

- **SEDIMENT POOL** - below normal pool elevation (principal spillway crest elevation)
- **FLOOD POOL** - normal pool elevation to the inundation easement elevation (normally 2 feet above auxiliary spillway crest)
- **MAXIMUM STORAGE ZONE** - inundation easement elevation to the current effective top of the dam elevation (including concrete parapet wall when applicable)

![Figure 1: Vertical Zones of a Flood Control Structure](image)

![Figure 2: Horizontal Layout of a Flood Control Structure](image)
If excavation within the FLOOD POOL is intended to provide flood water detention for new Development upstream of the easement, then the applicant must also provide engineering documentation to demonstrate to the satisfaction of the District, that the compensatory cut (at least 25% greater volume than fill to be placed within the FLOOD POOL) is sufficient to accommodate any added undetained runoff volume from said development with no rise to the reservoir’s water surface elevation under any circumstance. The District reserves the right to utilize the applicant’s data to perform hydrologic and/or hydraulic modeling to verify applicant’s results.

DEVELOPMENT REVIEW SUBMITTAL REQUIREMENTS

Each Development Review Application will require completion of the attached Application Form. A Submittal Checklist is also provided to help clarify and expedite the process.

1. General Information:
   a. Original and one (1) hard copy and one (1) electronic copy of the completed Development Review Application Form, Submittal Checklist, and all required supporting documents.
   b. A description of the proposed construction or development activity to occur within and adjacent to the easement area;
   c. A map in the same format as required by the City or County construction permitting authority, showing the District’s Structure and Inundation Easements and identifying the general area of the proposed construction or development work;
   d. A plat of the property as it exists at the time of completing the application, and a copy of any proposed or pending plats for development that show plans, elevations, and other details regarding the construction or any roads, buildings or other structures proposed to be built within and adjacent to the District’s Structure and/or Inundation Easements;
   e. Cross-sections, copies of cut/fill calculations, and a summary of volumes of any proposed earthwork within the District’s Structure and/or Inundation Easements;
   f. Copies of any submitted and/or approved City or County Floodplain Development Permit Application for any proposed construction work within the District’s easement(s) which is also in or adjacent to a designated floodplain. Also copies of any additional drainage studies or requirements that are made a part of the City or County permitting process;
   g. Any additional engineering study necessary to prove adherence to Special Inundation Easement Requirements described below;
   h. A proposed schedule indicating a start date and a completion date of the proposed construction work, including any milestones of the plat or development plan. The time schedule will provide for at least ninety (90) days from submittal of application for District (General Manager, engineer, and legal counsel) and NRCS and/or TCEQ (as applicable) to review the application and for the Board of Directors to act upon the General Manager’s recommendation. Additional scheduling details are provided on the Submittal Checklist.
   i. Payment of required application fees (see Fee Schedule).
2. **Construction Activity Requirements**

If the Development Permit Application is approved, the applicant will be required to do the following:

a. Notify the District prior to initiating any construction work within or adjacent to the District’s easement(s);

b. Payment of required application fees (see Fee Schedule).

c. Provide all-weather access to the floodwater retarding structure at all times during construction. Access plan shall be approved by the General Manager prior to initiating construction;

d. Provide monthly verification certified by a Texas registered professional engineer that construction is being performed consistent with the Development Permit and in accordance with the approved project design. If such verification is not provided, the District reserves the right to perform a monthly Construction Site Visit at the expense of the applicant (see District Fee Schedule);

e. Completely restore and re-vegetate the land affected by the construction;

f. Notify the District of the date of the final inspection of the project;

g. Provide “Record Drawings” of the work performed, and

h. Provide an “As-Built” survey of all of the cut/fill areas considered in the Development Review.

The applicant must initiate construction within six (6) months of the District approval of the application. The applicant may request an extension prior to the six (6) month expiration date.

**ACCESS EASEMENT MODIFICATION**

When development is contemplated on land on which the District holds an Access Easement, and the owner wishes to request that a portion of the easement be modified or released, the owner shall contact the District to review the plans and their impact on the easement. This review should take place as soon as reasonably possible, usually in conjunction with other jurisdictional review processes.

1. **Access Easement Design Requirements**

a. Twenty feet minimum width of access easement.

b. Twenty year usable design life for roadway and drainage improvements.

c. Twelve feet minimum width access roadway designed for all weather access, 24/7/365.

d. All weather roadway surface shall be not less than ten (10) inches compacted aggregate base (TxDOT Item 247, Type A, Grade 1, Density Control) over six (6) inch compacted subgrade (TxDOT Item 216, Proof Rolling). Roadway cross section shall be graded to drain to eliminate ponded water.

e. Adequate provisions for roadside drainage; designed to eliminate erosion caused by concentrated flows and excessive velocity.
f. Fifty foot minimum horizontal turning radii, suitable for use by truck and trailer combinations.

g. Five percent maximum vertical profile grade on access roadways.

h. The District may require six (6) inch Hydraulic Cement Concrete (TxDOT Item 412, Class A) access roadways in areas with poor soils or subject to inundation.

2. **Submittal Requirements**

Each Access Easement Modification request will require one (1) hard copy and one (1) electronic copy of the following:

a. A map, in the same format as the County or City that has planning and/or subdivision regulatory authority over the property, will be provided showing the District’s Flood Control Structure and identifying the general area of the proposed easement modification or the area proposed to be released.

b. If the property being requested for release or modification of the District’s easement is being subdivided and/or developed, then a copy of the proposed plat and development plans will also need to be provided.

c. A survey showing the proposed easement modification or the area proposed to be released relative to the District’s inundation elevation and the top of dam elevation. Such survey shall bear the seal of a Registered Professional Surveyor of the State of Texas.

d. Formal documentation for the easement modification or release. This document should be in a format that is acceptable to Williamson County for recording, and will need to be approved by the District’s legal counsel and the regional office of NRCS and/or TCEQ (as applicable).

**FEES REQUIRED**

1. Each Development Review Application will require the payment of fees, as listed in the District’s Fee Schedule, for review of the application, site inspection, engineering review, and legal review for each request for proposed development within a District Structure and/or Inundation Easement.

2. Each request for Access Easement Modification will require the payment of fees, as listed in the District’s Fee Schedule, for review of the application, site inspection, legal review, and Williamson County filing fees for the easement modification or release.

**REVIEW AND INSPECTION**

The General Manager will review each Development Review Application and Access Easement Modification Request for completeness. A copy of the complete Application or Request will be sent to NRCS and/or TCEQ (as applicable) for their review and recommendation, and a copy will be provided to the District’s legal counsel for review as appropriate. The General Manager, with the assistance of the District’s engineer will inspect the site and review all submitted documentation as a part of the District’s review of the Application or Request. Additional Construction Site Visits may be performed at the applicant’s expense if the applicant fails to
provide monthly verification that construction is being performed consistent with the Development Permit and per the latest project design, as required. A final inspection of the project site will be required for Construction Phase Closeout.

**BOARD OF DIRECTORS’ REVIEW**

The General Manager will prepare a written recommendation to the Board of Directors for each Application and Request submitted to the District, after first reviewing the proposal with the District’s engineer, the District’s legal counsel, and NRCS and/or TCEQ (as applicable). The Application or Request will be placed on the next regular Board meeting for consideration and action by the Board of Directors. The District’s approval of any request for modification of an easement will be contingent on the concurrence of the Regional Office of NRCS and/or TCEQ (as applicable).

The formal approval by the District’s Board of Directors for a Development Review Application will serve as the District Development Permit.

**POLICY MODIFICATION**

Modification to this policy must be approved by the District Board of Directors.

**EFFECTIVE DATE**

This policy will become effective upon adoption by the Board of Directors.

**AMENDED AT ROUND ROCK, TEXAS ON THIS 26th DAY OF FEBRUARY, 2016.**

[Signature]

Jeff Sawyer, President
Upper Brushy Creek
Water Control and Improvement District
DEVELOPMENT DESIGN AND CONSTRUCTION REVIEW FEES:

Fees for Development Review apply to the design and the construction phases of the proposed development. The District development policy fees are intended to pay for expenses incurred by the District for the review and management of the developments impacting District Structure and/or Inundation Easements. Fees may be adjusted by the District on an annual basis.

During the Design Phase, submit 60% design plans and 100% signed and sealed construction plans along with all required submittal documents (refer to the Submittal Checklist).

Design Phase fees:

1. Design Phase Application/Administration: $1,200.00

Design plans submitted to the District must include the Permit Application payment. The District shall determine if all checklist deliverables have been submitted within 14 calendar days.

2. Design Phase Review: $300.00/ per 10 acres of development
   (Design phase review includes cut and fill analysis, H&H modeling analysis, and impacts to easement(s) as well as the structural integrity and/or hydraulic function of the floodwater retarding structure)

Note- fees are based on total acreage of the proposed development. The Design Phase Review is paid at the delivery of the developer plans. The District shall determine if the fees paid meet policy requirements. Outstanding fees shall be paid within 7 business days. All design phase fees shall be paid prior to the issuance of a Development Permit.

   Note, payment of applicable fees does not guarantee issuance of a permit.

Construction Phase Fees:

All construction phase fees, with the exception of Additional Site Visits, must be paid to the District prior to the start of construction. Additional Site Visits will be invoiced and must be paid within 30 days of the invoice date.

1. Construction Phase Application: $400.00
2. Construction Phase Administration: $200.00/ per 10 acres of development
3. Additional Construction Site Visit: $400.00 each
   (as required if monthly verification is not provided)
4. Construction Phase Closeout: $1,200.00
DISTRICT FEE SCHEDULE (continued)

Easement Modification Fees
The District easement modification fees are intended to pay for incurred expenses to the District for the review and management of the easement modification requests. Fees may be adjusted by the District on an annual basis.

Request to Partially Release Easement: $2,000