

BOARD APPROVED POLICY

PLUM CREEK CONSERVATION DISTRICT BOARD POLICY
on
MODIFICATION OF AND CONSTRUCTION OR OTHER OPERATIONS WITHIN THE
DISTRICT'S EASEMENTS

WHEREAS: when originally formed, the territory within Plum Creek Conservation District was largely agricultural; and

WHEREAS: When formed the District acquire a number of easements to be a local sponsor for a small watershed floodwater control project in Texas for the Plum Creek Watershed in Hays and Caldwell Counties under US Public Law 83-566; and

WHEREAS: since acquiring the easements to act as Local Sponsor under PL 83-566 much of the territory within the boundaries of Plum Creek Conservation District has become urbanized and that trend is expected to continue; and

WHEREAS: the urbanization and a history of requests made by landowners of underlying property over which the District holds easements related to the small watershed floodwater control project has produced a need to more closely communicate with landowners about work that can be performed within the easements that were acquired by Plum Creek Conservation District to implement its responsibilities as local sponsor to the programs authorized in PL 83-566; and

WHEREAS: Plum Creek Conservation District's Board of Directors has determined that a policy should be adopted by the District related to planned work within the easements held by the District that might impact the District's ability to act as Local Sponsor the District has decided to adopt this Policy to give guidance to owners of land burdened by the District's easements about pursuing operations of various types with the easements held by the District for:

- (i) construction of improvements of various kinds or for excavation work within easements including construction of structures;
- (ii) easement area modification or release requests; and
- (iii) the platting or subdivision of property covered by the District's easements;

NOW, THEREFORE, on this _____ day of _____, 2015, the Plum Creek Conservation District Board of Directors adopts the following policies with regard to activities within, on or under the Easements held by the District:

CONSTRUCTION, EXCAVATION, OR FILLING WITHIN THE DISTRICT'S EASEMENTS

1. Initiation of any construction of any buildings, other improvements including fencing or excavation or filling activities within the area of the easements held by Plum Creek Conservation District for operation of the Small Watershed Protection Project originally constructed by the Natural Resources Conservation Commission of the United States Department of Agriculture may not begin until a communication describing the work that is planned has been submitted to the District for its review. The communication may be in any form but must be in writing and describe the area of the easement where the work is proposed, the nature of the work, show any planned excavations or filling, describe the nature of the construction or the location of any proposed fencing.
2. The review will be whether the planned work as described in the communication has the potential to impact the volume of water impounded by the related PCCD flood control structure, or has the potential to increase or enlarge the area covered by the impoundment for which the easement was obtained, or to increase the time the impounded water would remain on the easement involved or would impact the ability of the District to carry out maintenance or other operations in the area of the easement involved that is required by either the Texas Dam Safety Act provisions and rules, or by Agreements with the Natural Resources Conservation Service for maintenance of the dams associated with the constructed Small Watershed Protection Project in the Plum Creek Watershed in Caldwell and Hays Counties, Texas, and to determine whether the proposed improvements, excavation or construction will trigger questions related to the operation of Texas Statutes governing impoundment or placement of impounded water on property or will impact flood plain determinations that have been made and are in place.
3. The initial review of the communication will be made by the District. As a result of that review, the District may seek further review by the Natural Resources Conservation Service, the Dam Safety Division of the Texas Commission of Environmental Quality, and local flood plain management agencies in the appropriate county. However the sole question that will be examined by the District is the potential for the work to have an unreasonable adverse impact on the District's rights under its easements.
4. Any comments received in response to the District's inquiry about the proposed construction or use shall be made available to the landowner.
5. Should the District make a determination that the proposed work would unreasonably interfere with the District's use of its rights under its easements, notice of that determination will be mailed to the landowner who gives the District notice of the proposed Construction.
6. If such a determination is made and notice described in the previous paragraph given, the matter will then be placed on the agenda of the Board of Directors of the District for a determination of possible actions if the proposed construction or other work is not modified in a manner that addresses and removes the ability of the District to use its easement.
7. Should the District make a determination that the proposed work would likely not unreasonably interfere with the District's use of its rights under its easements based on

the information submitted, that determination will also be mailed to the landowner. That determination is not to be interpreted as “approval” of the work, but is just a notation that the District does not anticipate that a problem with use of the rights it holds.

8. If the work is commenced all construction must be in accord with the descriptions submitted to the District and all risk of adverse consequences following construction, including damages or total loss of the improvements as a result of the use of the easement to impound water by the District, shall be borne by the person who constructs or uses the improvement.

EASEMENT AREA MODIFICATION REQUESTS

1. Easement area modifications, including those requesting elevation modifications or restatement of the description of the easement will be considered and evaluated by the Board of Plum Creek Conservation District based on applications submitted in accordance with the requirements of this Policy.
2. Each request for construction on or excavation or placement of fill in, or for modification of or release, of Plum Creek Conservation District Easements will require completing a District Application Form, available on the District’s Web site, or from the Executive manager.
3. The original and three (3) copies of the completed Application Form and any required supporting documents or information, along with the required fee will be submitted to the Executive Manager.
 - Required Information: A description of the proposed construction, filling or development activity to occur within the easement area or a description of the requested modification or release of easement area;
 - A map showing the landowner’s property and the area currently covered by the District’s Easement on that property and identifying the general area of the proposed work that includes the location of any existing structures on the landowner’s property covered by the District’s easement and a description of the current uses made by the owner of the property covered by the area described in the application, including the area covered by the District’s easement, with the map of sufficient scale and with a sufficient legal description of the property to allow the District to determine the location of the appropriate flood control structure associated with the easement;
 - A copy of any proposed or pending plats for development that show plans, elevations, and other details regarding the construction of any roads, buildings or other surface or subsurface structures or of any excavations or filling proposed to be built within the District’s easements;
 - Cross-sections, copies of cut/fill calculations, and a summary of volumes of any proposed earthwork within the area of the landowner’s property covered by the District’s easement;
 - Copies of any applicable submitted and/or approved City or County Flood Plain Development Permit Applications, for any proposed construction work within the District’s easement including copies of any additional drainage studies or requirements that are made a part of any applicable City or County permitting process or a representation that no such applications are required, stating the reasons;

- Tax certificate from the County Tax Assessor-Collector showing that all real property taxes are paid on the subject property;
- If the application is for construction, excavation, filling or other modification or development activity, a proposed time schedule indicating a start date and a completion date of the proposed work, including any significant milestones of the plat or development plan. If the application is for easement area modification or release, a proposed date for action requested of the Board of PCCD to be accomplished. The time schedule or date for PCCD action must provide for at least sixty (60) days for District (Manager, Engineer, and Attorney) to review the application and for the Board of Directors to act upon the Executive Manager's recommendation;
- If the application is for construction, excavation, filling, modification or development activity within the easement area, the applicant will acknowledge that the District and the NRCS require that the construction of any inhabitable structures upstream of the District's Flood Control Structure and within the easement rights area, have its first floor elevations at or above the top of the dam elevation or at elevation required by the local flood elevation requirements, whichever is higher.
- If the application is a request for modification or release, including a partial release, of the area or elevations of the District's easement, the following should be provided with the application:
 - a statement of the basis for the request detailing calculations showing that the existing easement in the area of or to the elevation of the proposed modification or release is no longer required for the operation of the flood control project;
 - a survey showing the proposed easement elevation or modification or the area proposed to be released relative to the District's flood control easement area and specifying land surface elevations in the area proposed for release as well as the elevation of the top of nearest downstream dam. Such survey shall bear the seal of a Registered Professional Surveyor of the State of Texas; and
 - if the request is being submitted in conjunction with a proposed or planned subdivision of the property covered by the PCCD easement, then a copy of the proposed subdivision plat or a metes and bounds descriptions of the property before and after the proposed subdivision including a depiction of the location of the PCCD easements prepared by and bearing the seal of a registered land surveyor will also need to be provided; and
 - a suggested recordable form for the easement modification or release if there is an application to modify or release all or a part of a PCCD easement covering a particular property. This document should be in a format that is acceptable to Caldwell and/or Hays County for recording, and will need to be approved by the District's Attorney and the regional office of NRCS.

4. Indemnification: The applicant will be required to provide a draft of a recordable release and indemnification document or use the provide a willingness to execute such

a document in the form approved by the District's Attorney, to be recorded with any construction, development or excavation activity described in the application or associated with any platting or subdivision activity described in the application for property that is included within any of the District's easements. The indemnification will be required to recognize the existence of the appropriate impounding structure or structures that might be impacted by the proposed application and acknowledge that any damage associated with backwater flows or elevations of water associated with the existence of the structure or structures are not compensable. The document will also release the District from any such claims for damages associated with the work described in the application and be binding on successors and assigns of the property.

5. Fees: Each application will require the payment of the fee, as listed in the District's Fee Schedule, for review of the application, site inspection, and legal review for each request for proposed construction of buildings, roadways, and cuts/fills within and District flood control easement. If any construction, excavation or fill is commenced prior to formal approval by the Board of Directors of the District; then the required fee will be 150% of that Fee listed in the District Fee Schedule. Each request for modification or release of an easement area or elevation will require the payment of the fee, as listed in the District's Fee Schedule, for review of the request, site inspection, legal review, and Caldwell or Hays County filing fees for the easement modification or release. Any required fees, including estimates and deposits for unknown costs, must be paid before review of the application commences.
6. The Executive Manager will review each application for completeness. If the Executive Manager determines that the application is incomplete he will send a letter to the applicant detailing the additional required information. If the information is not submitted within 30 days following the date of the Executive Manager's letter, then the application will be returned to the applicant without prejudice for a future submission. Upon a finding by the Executive Manager of the District that the application is complete and all information has been provided the Executive Manager will forward the application to NRCS and, if necessary, to the District's Engineer for review and recommendations. A copy of the application will also be sent to the District's attorney for review. Please note that the District's review of each application will evaluate whether any of the work described in the application will change the total volume of storage capacity of the appropriate flood control structure associated with the Application submitted and will also evaluate whether the work described in the application will alter or otherwise impact the area or time of impoundment of water in the area of the appropriate structure. The evaluation will include an analysis of the reservoir associated with the structure and the design of the structure itself, including areas: (a) below the principal spillway crest elevation, (b) from the principal spillway crest elevation to the emergency spillway crest elevation, and (c) from the emergency spillway crest elevation to the top of the dam elevation to determine the impacts of the requested action.
7. During the review of the application the Executive Manager or his representative, NRCS Representatives and, if applicable the District's Engineer will inspect the site as part of the District's review. Site access of property adjacent to the District's easement will be required and, if not granted, the application will be returned to the applicant.

8. Following review a report on the actions sought and potential effects of those actions on the easements held by the District and operations of the structures in connection with the PL 83-566 Program will be prepared for submission to the District's Board of Directors. A copy of the report shall be sent to the Applicant and shall be posted on the District's web site along with the application.

BOARD OF DIRECTORS REVIEW

The General Manager will prepare a written recommendation to the Board of Directors for each application submitted to the District, after first reviewing the proposal with the District's Engineer and Attorney.

The application and the Executive Managers recommendation together with supporting documents 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 construction, excavation, filling or development in or requested modification of any easement of PCCD will be contingent on the approval of the Regional Office of the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") and by the Board of Directors of Plum Creek Conservation District that the planned activities will not adversely impact the Agreements between the District and NRCS.

No work within any District Flood Control Easement will commence prior to formal action by the Board of Directors. Any work which is commenced prior to such Board action will be entirely at the applicant's risk and may be subject to legal action by the District.

Any application, if approved, will carry provisions requiring the applicant to (a) notify the District of the date for initiating activities within the easement prior to initiating any construction work within the District's easement, (b) completely restore and re-vegetate the land of the easement affected by the construction, (c) notify the District of the date of the final inspection of the project, (d) provide "Record Drawings" of the work performed, (e) verify any cut/fill calculations based on final elevations and contours of the site following construction, and (f) an agreement for the applicant to release, hold harmless and indemnify the District for any alterations associated with the work described in the application approved. If there are deviations from the initial calculations that adversely impact the capacity, or timing of water impounded by a structure, or areas covered by water impounded by any structure maintained by the District the applicant will be required to take appropriate actions, at its own expense, to correct the deviations.

The approval will require the applicant to initiate construction within six months of the District approval of the application request or the approval will expire unless extended by action of the Board.

EFFECTIVE DATE

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

ADOPTED AT LOCKHART, TEXAS ON THIS ____ DAY OF _____, 2013.

James Holt

President, Plum Creek Conservation District Board
of Directors