



United States Department of Agriculture



TAWS-Sponsor Land Rights Workshop

Mark J. Northcut USDA-NRCS

9 November 2023

Natural
Resources
Conservation
Service

nrcs.usda.gov/

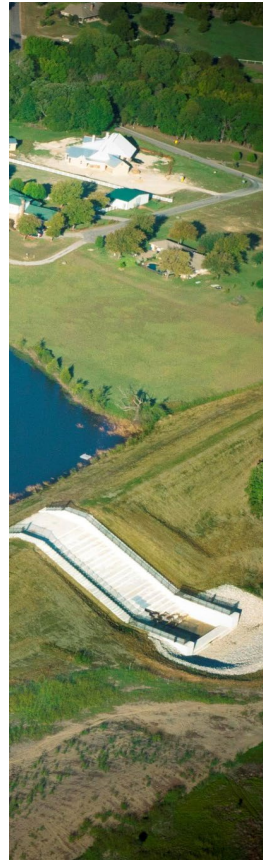
Engineering Design and Construction

Brian Wenberg – State Conservation Engineer
Karen Green – Dam Safety Engineer
Ronald Gardner – Dam Safety Engineer
Zachary Welch – Civil Engineer Technician
Vacant – State Hydrologist

Daniel Little – State Design Engineer
Shawn Higgins – Design Engineer
Gary Geraci – Design Engineer
Shon Owens – Civil Engineer Technician
Vacant – Design Engineer
Vacant – Design Engineer

Bryan Moffatt – Geologist
Michael Jungle - Geologist

Shane Ice – State Construction Engineer
Joseph Forrester – Project Engineer
Vacant – Project Engineer



Natural
Resources
Conservation
Service

nrcs.usda.gov/



Landscape Planning



Mark J. Northcut – Staff Leader

Rocky Ingram – Soil Conservationist

David Sullivan – Civil Engineer

Michael Robison – Civil Engineer

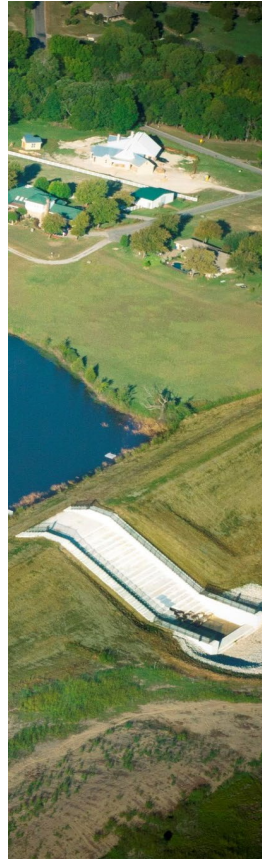
Vacant – Economist

Dawson Lilly – Wildlife Biologist

Christopher Albanesi – Management Analyst

Angela Moody – Archeologist (shared staff with Soils)

David Buland – Economist (shared staff with FPAC Business Center)



Natural
Resources
Conservation
Service

nrcs.usda.gov/



Watershed Programs



Watershed and Flood Prevention Operations (WFPO)

New Projects

Backlog Projects

Remedial (Repair) Projects

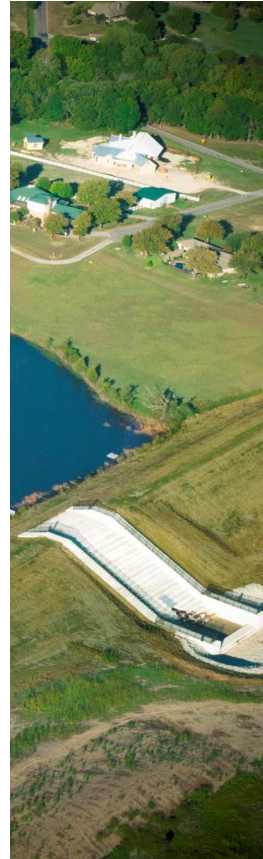
Watershed Rehabilitation (WSRP)

High Hazard Dams

Assessments

Emergency Watershed Protection (EWP)

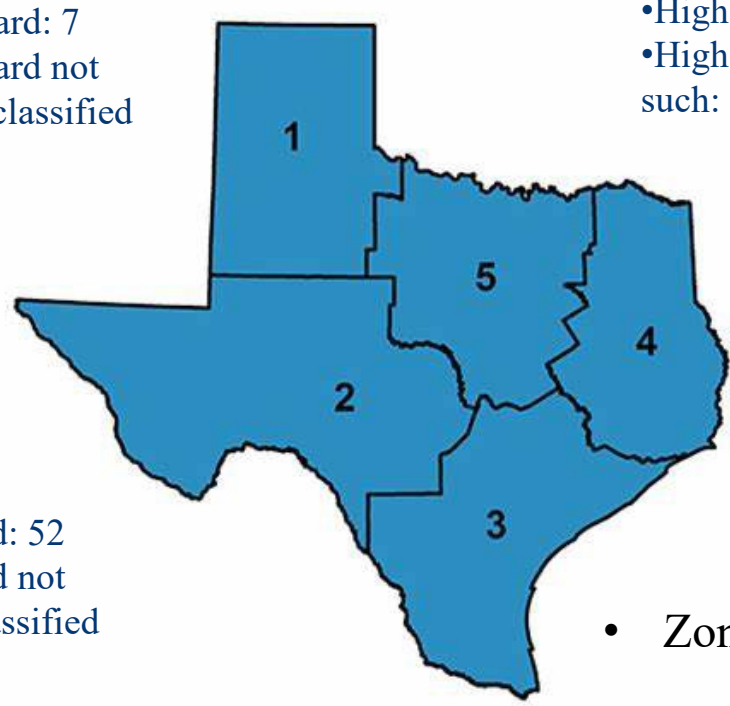
Natural Disaster Assistance



Natural
Resources
Conservation
Service



Watershed - Information



- Zone 1

- Dams: 108
- High Hazard: 7
- High Hazard not originally classified as such: 6

- Zone 5

- Dams: 1441
- High Hazard: 385
- High Hazard not originally classified as such: 336

- Zone 2

- Dams: 190
- High Hazard: 52
- High Hazard not originally classified as such: 29

- Zone 4

- Dams: 110
- High Hazard: 17
- High Hazard not originally classified as such: 10

- Zone 3

- Dams: 149
- High Hazard: 93
- High Hazard not originally classified as such: 63

- Total

- Dams: 2,004
- High Hazard: 560
- High Hazard not originally classified as such: 450



Program / Policy Update

Current

National Watershed Program Manual (NWPM) –
Title 390, 4th Ed., Apr 2014

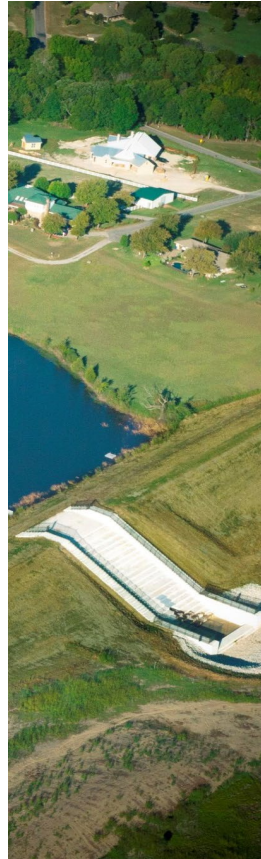
National Watershed Program Handbook (NWPH) –
Title 390, 2nd Ed., Apr 2014

Circular –
M 390 Cir 390-21-1 (Attachments A, B & C)

Pending

National Watershed Program Manual (NWPM) –
Title 390, 5th Ed., August 2023

*National Watershed Program Handbook (NWPH) –
Title 390, 3rd Ed., ?? 202?*



Natural
Resources
Conservation
Service

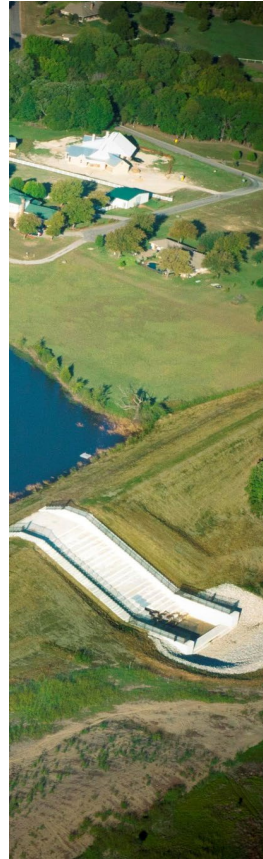
nrcs.usda.gov/



Sponsor Eligibility and Responsibilities

Watershed Program plans and implements watershed project actions. A project action is a formally planned undertaking that is carried out within a specified area by sponsors for the benefit of the general public (7 CFR pt. 650.4 (h)).

Project sponsors (also referred to as Sponsors, local organizations and local sponsors) are local organizations (as defined in 16 U.S.C. § 1002) (SLOs) that have the legal authority and resources to install, operate, and maintain works of improvement. See 390 NWPM § 500.11 A for SLO eligibility requirements.



Natural
Resources
Conservation
Service

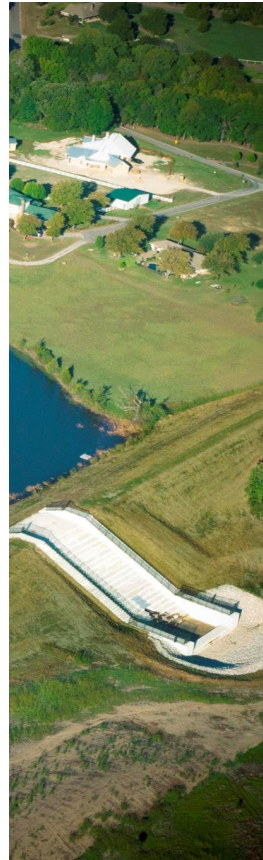
nrcs.usda.gov/



Sponsor Eligibility and Responsibilities

The STC must require and ensure that the SLO(s) of each project, individually or collectively, are willing and able to provide for the functions listed below:

- (1) Power of Eminent Domain and Real Property Rights
- (2) Permits and Licenses
- (3) Authority to Levy Taxes
- (4) Land Treatment above Reservoirs
- (5) Public Participation
- (6) Financial
- (7) Watershed Management
- (8) Public Recreation and Fish and Wildlife
- (9) M&I Water Supply
- (10) Operation and Maintenance
- (11) Storm and Sanitary Sewers



Natural
Resources
Conservation
Service

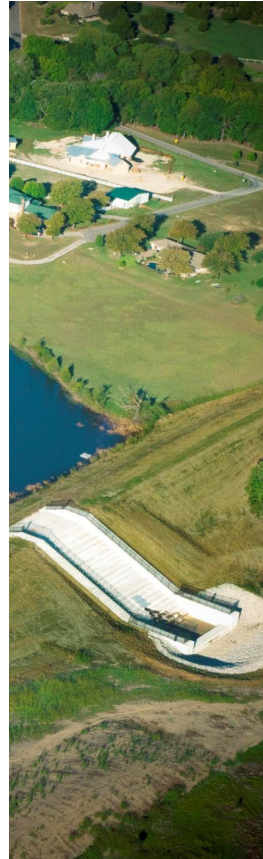
nrcs.usda.gov/

Sponsor Eligibility and Responsibilities

Definition and Responsibilities

Real property acquisition includes obtaining needed land, water, mineral, and other subsurface rights, and required federal, state, and local permits or clearances for installation of works of improvement. Acquisition of rights may be obtained with the use of fee simple title, easements and rights of way, or by permits and clearances as required by applicable state regulations

Pub. L. No. 83-566 does not provide authority for land acquisition by the Federal Government. The SLO must acquire all rights needed for investigations, surveys, installation, operation, maintenance, and inspection of works of improvement to be installed with federal financial assistance on non-federal lands (Pub. L. No. 83-566 § 4 (2)).



Natural
Resources
Conservation
Service

nrcs.usda.gov/

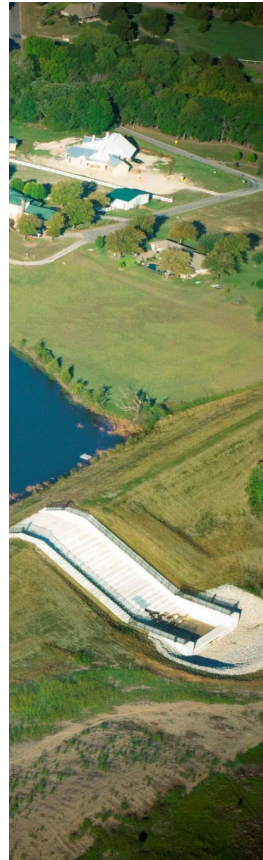


Sponsor Eligibility and Responsibilities

Who owns the dams?

In contrast to other federal water resource projects (USACE, Bureau of Reclamation), NRCS Watershed projects are “Federally assisted” not federally owned.

The sponsors own the dams.



Natural
Resources
Conservation
Service

nrcs.usda.gov/



Requirements

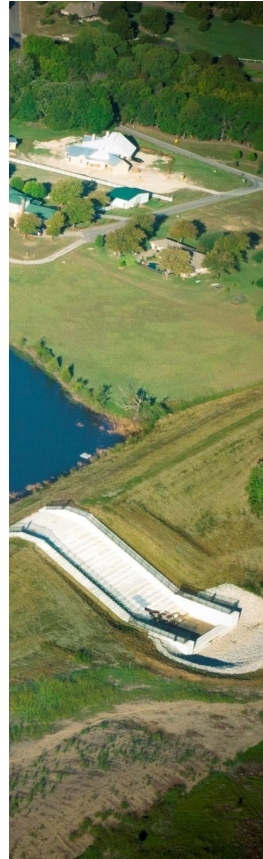


Real Property Rights

Acquisition of real property is a major step in project implementation. It is one of the most important responsibilities of the SLO and requires firm scheduling, attention to details and follow-up.

Requirements Dams.—The watershed plan, plan modification, and watershed agreement or project agreement should also prohibit the future construction of inhabitable dwellings below the secured land rights at the elevation upstream from the dam.

On privately owned land, real property rights must be acquired for the structure, spillways, the reservoir area (including permanent and temporary water storage areas), areas for spillway discharge, mitigation areas and areas for other activities including construction, operation and maintenance, spoil disposal, borrow, and diversion of water.



Natural
Resources
Conservation
Service

nrcs.usda.gov/



Requirements



Minimum Land Rights

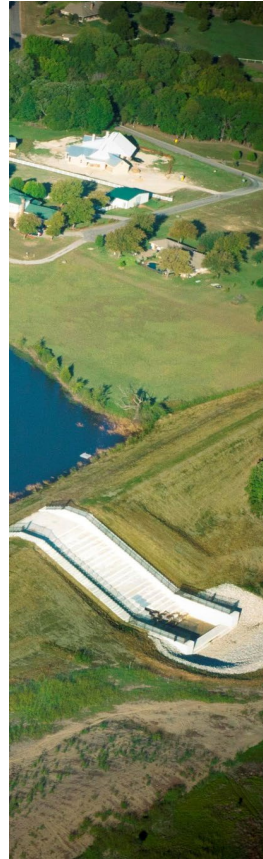
(NWPM) – 4th Ed., Apr 2014

Authorized prior to December 2009: the minimum land rights elevation may not be lower than the higher elevation of either the auxiliary spillway crest or the maximum elevation of the water surface during passage of the 100-year, 24-hour storm through the dam.

Authorized after to December 2009: the minimum land rights area upstream from the dam is all areas below the elevation of the top of the dam.

For rehabilitation, the minimum land rights area upstream from the dam must be for all areas below the elevation of the top of the dam, unless the plan allows a lower elevation (not lower than the elevation of the 100-year, 24-hour storm or auxiliary spillway elevation, whichever is higher).

If not: , the rationale for the selected elevation of required land rights must be discussed in the plan and a provision must be included in the watershed agreement that describes the potential risk and liability the sponsors and landowners may be assuming by not securing land rights to the top of dam elevation..



Natural
Resources
Conservation
Service



Requirements



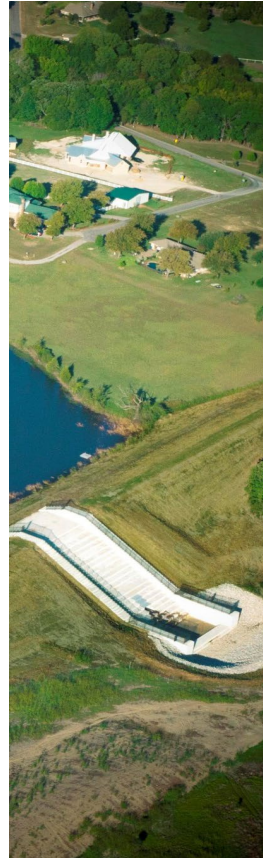
Minimum Land Rights

(NWPM) – 5th Ed., Aug 2023

For new construction. At a minimum, the SLO shall acquire all real property rights upstream to the top of dam.

For rehabilitation, the SLO will be encouraged to acquire all real property rights upstream to the elevation of the top of the dam.

If not: SLO will acknowledge the risk of flooding upstream areas and accept that liability in writing as a part of the watershed agreement. As a minimum, landrights must be acquired to an elevation no lower than the maximum water surface elevation during passage of the 100-year, 24-hour storm through the dam.



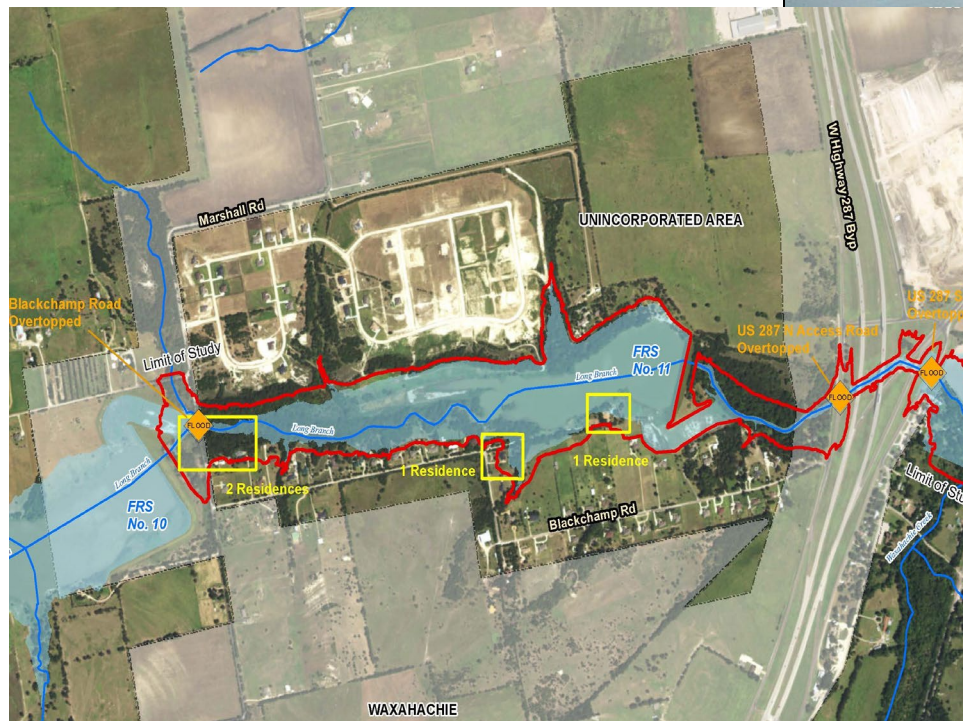
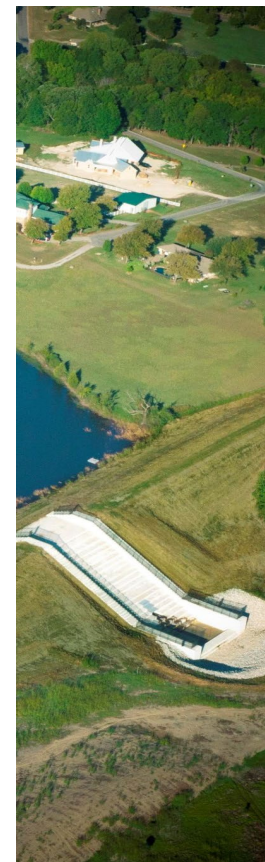
Natural
Resources
Conservation
Service



Sponsor Issues



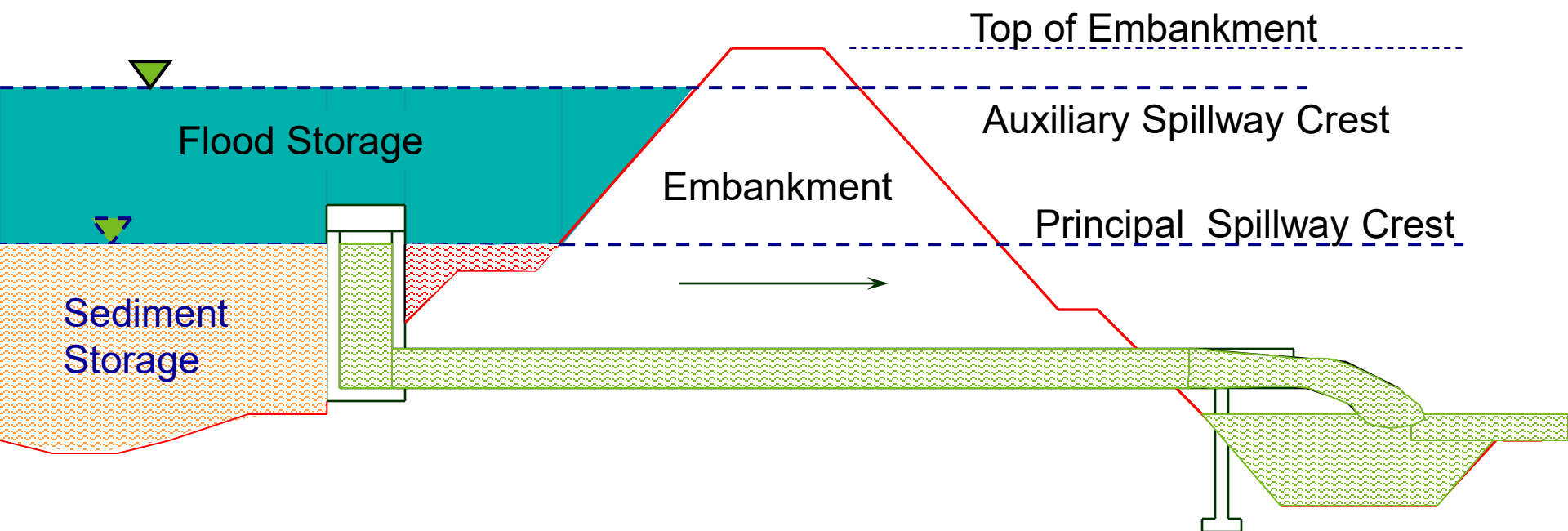
Encroachment in Pool Area



Natural Resources Conservation Service

nrcs.usda.gov/

Typical Section of Floodwater Retarding Structure Storage in Pool



Natural
Resources
Conservation
Service



Requirements



Minimum Land Rights

(NWPM) – 5th Ed., Aug 2023

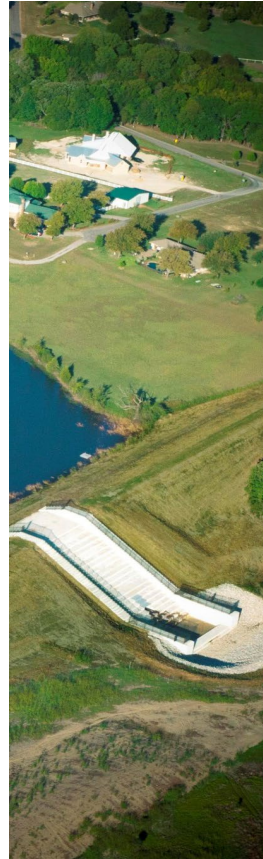
For new construction in areas downstream of the dam, real property rights for induced flooding should be acquired for the entire area where water elevations for any flood event are higher for the dam in-place condition than for elevations occurring without the dam in place.. See 390 NWPM § 504.4.

For low and significant potential hazard class dams, must account for an unanticipated change in future development, the STC must ensure that the SLO has consulted with the responsible authority of the need for adequate controls on future development within the breach inundation area. The SLO will complete one of the following prior to construction of significant or low hazard potential dams:

(a) For new dams or existing dams to be rehabilitated, certification that adequate controls on future development within the breach inundation area are in force.; such that the hazard potential class does not increase during the evaluated life of the project;

(b) For new dams only, the SLO must acquire adequate real property rights to modify the footprint of the dam and auxiliary spillway to facilitate rehabilitation to a high hazard potential dam if needed at a future date.

(c) The real property rights must include a prohibition on future construction of habitable dwellings within the area of the acquired real property rights. The SLO and landowners must acknowledge the potential risks and liabilities for not controlling area determined by a breach inundation study. These risks and liabilities must be discussed with the SLO, disclosed to the public, and documented for future reference. Documentation of the potential risks and liabilities must be in the Watershed Agreement and in either the real property rights work map for that dam (390 NWPM § 504.3(B)(3)), the workplan or supplement, or an exchange of correspondence.



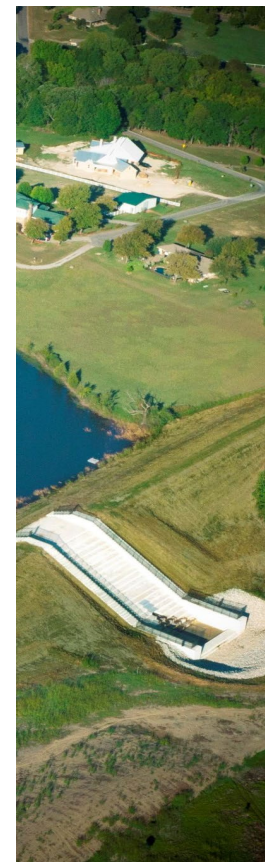
Natural
Resources
Conservation
Service



Sponsor Issues



**Encroachment –
Hazard Class Change**



Natural
Resources
Conservation
Service

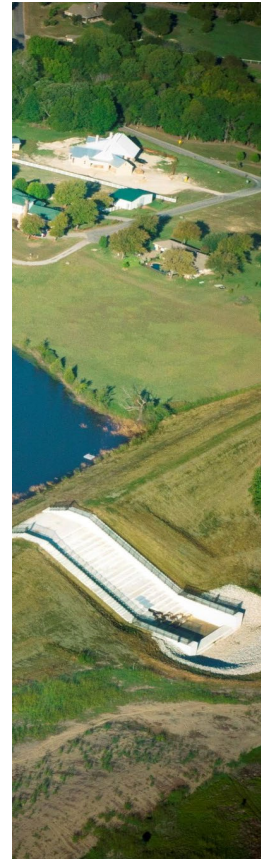
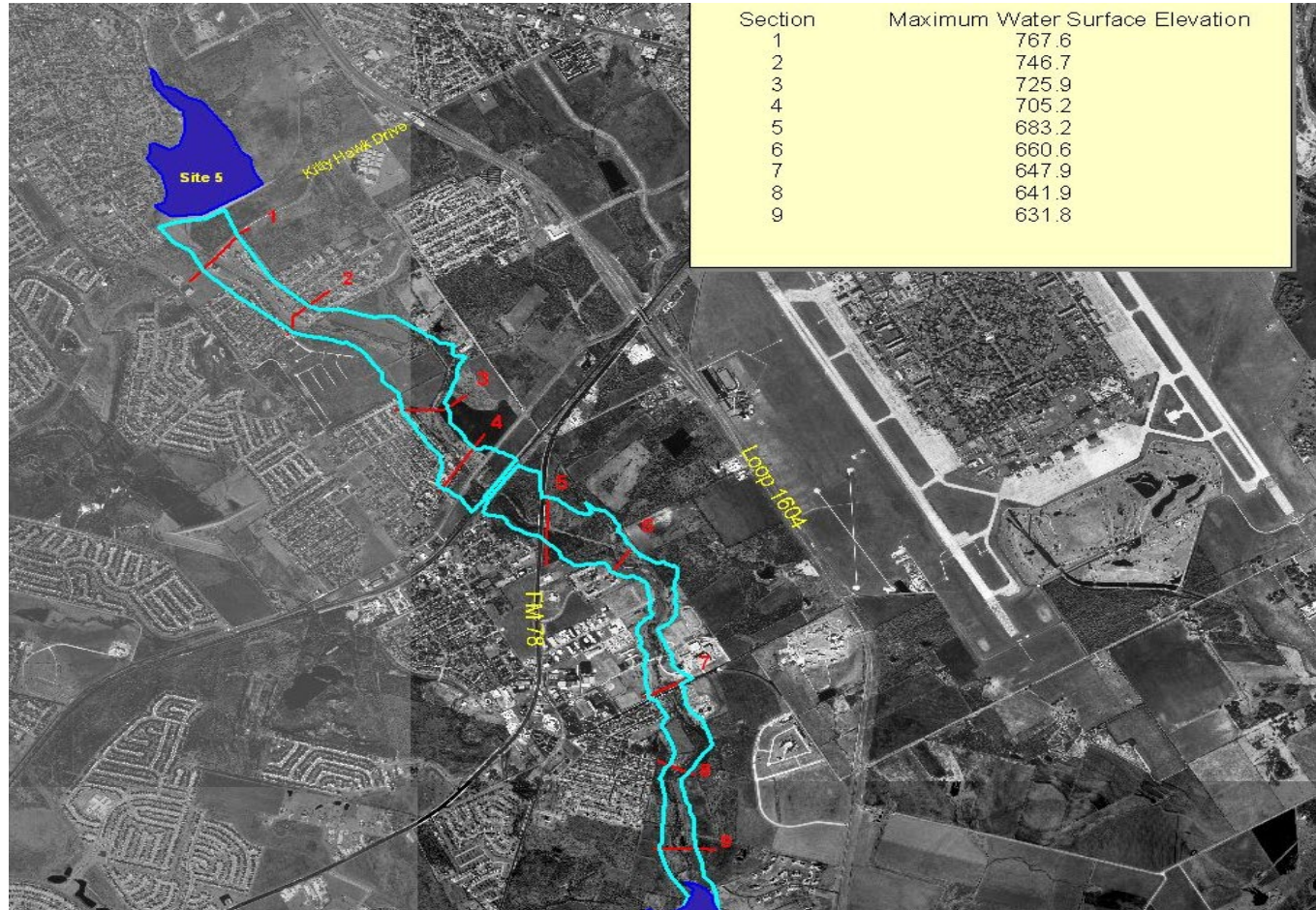
nrcs.usda.gov/



Sponsor Issues



Breach Flood Breach Floodplain Mapping – Emergency Action Plans (EAP)



Natural
Resources
Conservation
Service

nrcs.usda.gov/



Requirements



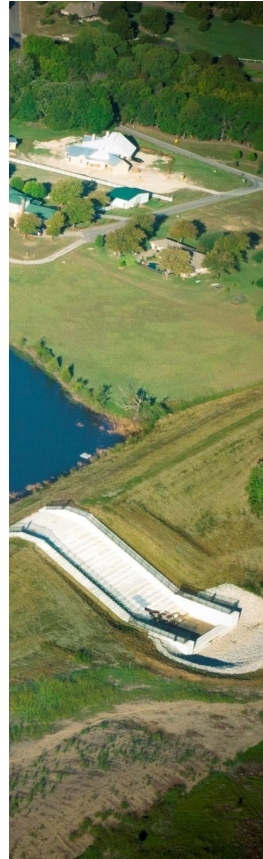
Minimum Land Rights

(NWPM) – 4th Ed., Apr 2014

For rehabilitation, the land rights must include a prohibition on future construction of inhabitable dwellings upstream from the dam below the elevation of the top of the dam. *All land rights must be identified by metes and bounds surveys conducted by a professional land surveyor.*

(NWPM) – 5th Ed., Aug 2023

No requirement for survey



Natural
Resources
Conservation
Service



Requirements

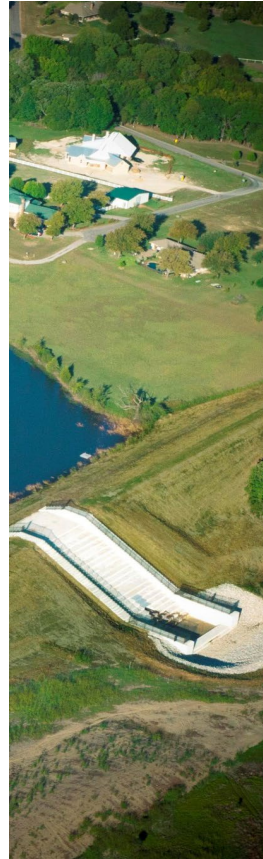


Minimum Land Rights

(NWPM) – 5th Ed., Aug 2023

On privately owned land, real property rights must be acquired by one of the following:

- Fee simple title;
- Term easements for at least the length of the period of analysis are required for the dam, spillways, ingress and egress routes, and pool areas;
- Flowage easements in lieu of fee simple title may be obtained for the upstream flood pool (temporary water storage), downstream areas of induced flooding due to spillway discharge, and areas needed only for construction or disposal of spoil;
- Temporary easements may be obtained in lieu of permanent rights-of-way where needed to install measures to mitigate unavoidable adverse landscape resource effects



Natural
Resources
Conservation
Service



Requirements

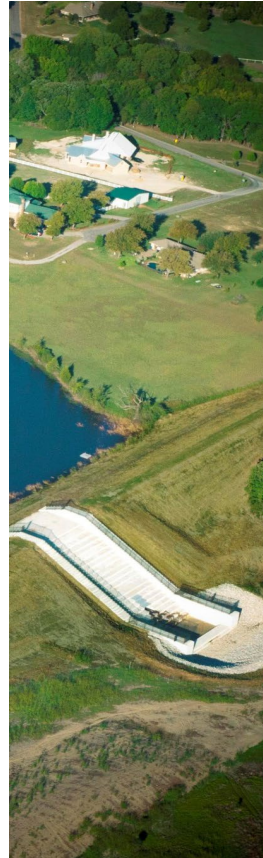


Minimum Land Rights

Water and other resource rights are the responsibility of the SLO. The SLO must obtain the water and other resource rights necessary before the cooperative agreement is signed. To fulfill their obligations, the SLO must present satisfactory evidence that water and other resource rights are held or can be obtained by landowners or their organizations or associations for the quantity, seasonal use, and storage of water, if required, to supply contemplated need.

This assurance applies if real property interests were acquired for the installation of project measures.

The NRCS-ADS-78 must be supported by an attorney's opinion.



Natural
Resources
Conservation
Service



Proactive Response to Minimize Future Liability for Sponsors of Small Watershed Dams



How to Minimize your Risks

- Know Your Dams
- Who Should Know
- Inform and Educate
- Be Proactive
- Take Action
- Zoning
- ✓ Easements / Hazard Class / Breach
- ✓ Landowners / Planning, Zoning & Taxing / Lenders / Surveyors / Developers
- ✓ News Articles / Outreach to Local Officials
- ✓ Seller Disclosure – Realtors
- ✓ Development Control of Downstream Breach
- ✓ Who – How (Methods)



Questions



Natural
Resources
Conservation
Service

nrcs.usda.gov/





In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

Natural
Resources
Conservation
Service

nrcs.usda.gov/

