



# EASEMENT ENCROACHMENT (NOT DEVELOPMENT REGULATION)

TEXAS ASSOCIATION OF WATERSHED SPONSORS (TAWS)  
SPONSOR LAND RIGHTS – ISSUES AND POSSIBLE SOLUTIONS

NOVEMBER 9, 2023

Alysha Girard, PE, CFM  
General Manager  
Upper Brushy Creek WCID

The image features a light gray background with a subtle gradient. In the corners, there are several realistic-looking water droplets of various sizes, some with highlights and shadows, giving them a three-dimensional appearance. The text is centered in the middle of the page.

**I AM NOT AN  
ATTORNEY**

# UPPER BRUSHY CREEK WCID

Upper Brushy Creek WCID is half of the original WCID that sponsored 46 federally built dams.

Upper Brushy Creek overlaps jurisdictions with 7 cities and 20+ MUDs to protect more than 400,000 residents that live within our southwest Williamson County watershed.

Our watershed is located within “flash flood alley” along the Balcones Fault and is one of the most rapidly developing regions in the nation; both of which make flood planning and mitigation challenging.





# WHAT CAN YOU DO TO PROTECT YOUR DAMS?

1. Know your Easements
2. Adopt an Easement Encroachment policy
3. Create desktop approximations of easements
4. Coordinate with “development” regulators
5. (Magic Answer)

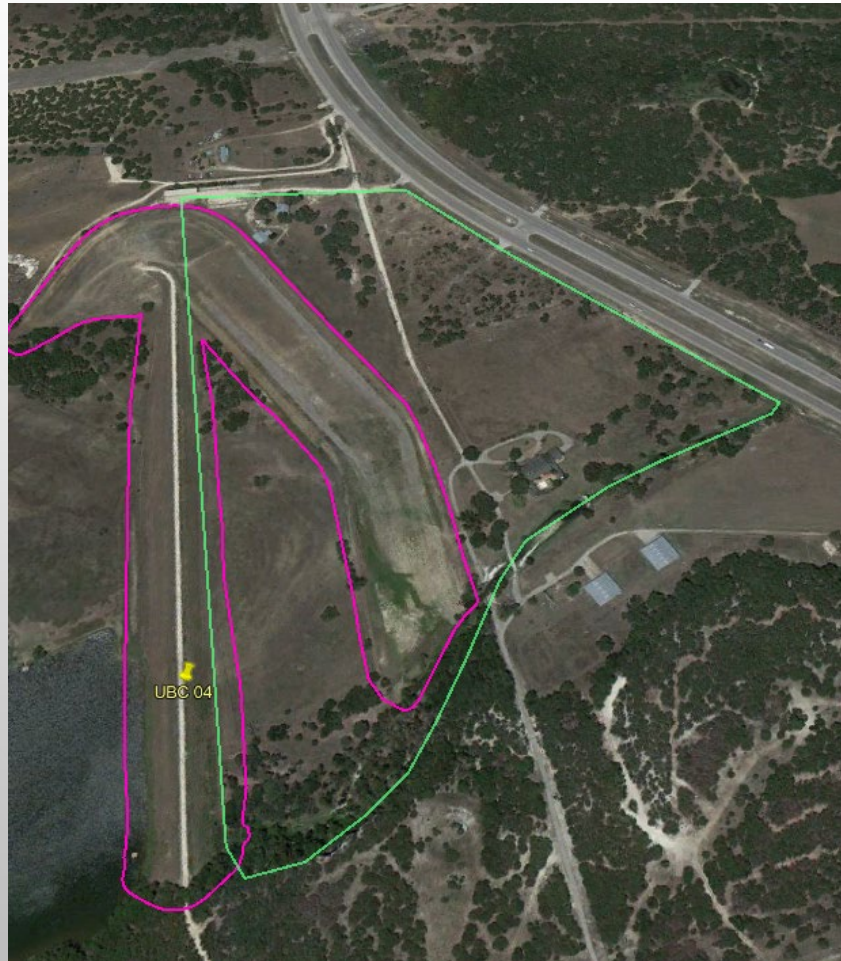
# MISSED OPPORTUNITIES - PLATTING



# MISSED OPPORTUNITIES - PLATTING



# MISSED OPPORTUNITY - ZONING



# WHAT CAN YOU CONTROL?

We cannot regulate  
“Development”

- Many dam sponsors do not have “development” regulatory authority.
- You may not have traditional zoning or platting authority.

We can regulate  
“Easement encroachments”

- ✓ We can regulate encroachments into our easements. This authority is independent from the State defined and rules associated with regulating “development”.



# DIFFERENCE BETWEEN TERMS

## “Development”

- There is volumes of law and case law regarding regulating development.
- The law can and typically does change with every legislative session.
- A developer’s attorney is an expert on land use and development law.

## “Easement Encroachments”

- ✓ Easement rights are essentially locked in.
- ✓ You can adopt a policy regarding encroachments for consistent permitting.
- ✓ The legislature is rarely doing things that affect your easement rights.
- ✓ Your attorney is generally an expert on your easements.

The image features a light gray background with a subtle gradient. In the corners, there are several realistic-looking water droplets of various sizes, some with highlights and shadows, giving them a three-dimensional appearance. The text is centered in the middle of the page.

**I AM NOT AN  
ATTORNEY**

# WE CAN REGULATE “EASEMENT ENCROACHMENTS”

- Easements give each easement holder specific rights
- Typical dam sponsor rights may include:
  - Right to build, operate, and maintain the dam
  - Right to fence the dam and exclude livestock
  - Right to access across multiple land tracts
  - Right to inundate land behind the dam



# WE CAN REGULATE “EASEMENT ENCROACHMENTS”

- Additional language typically in the easement...

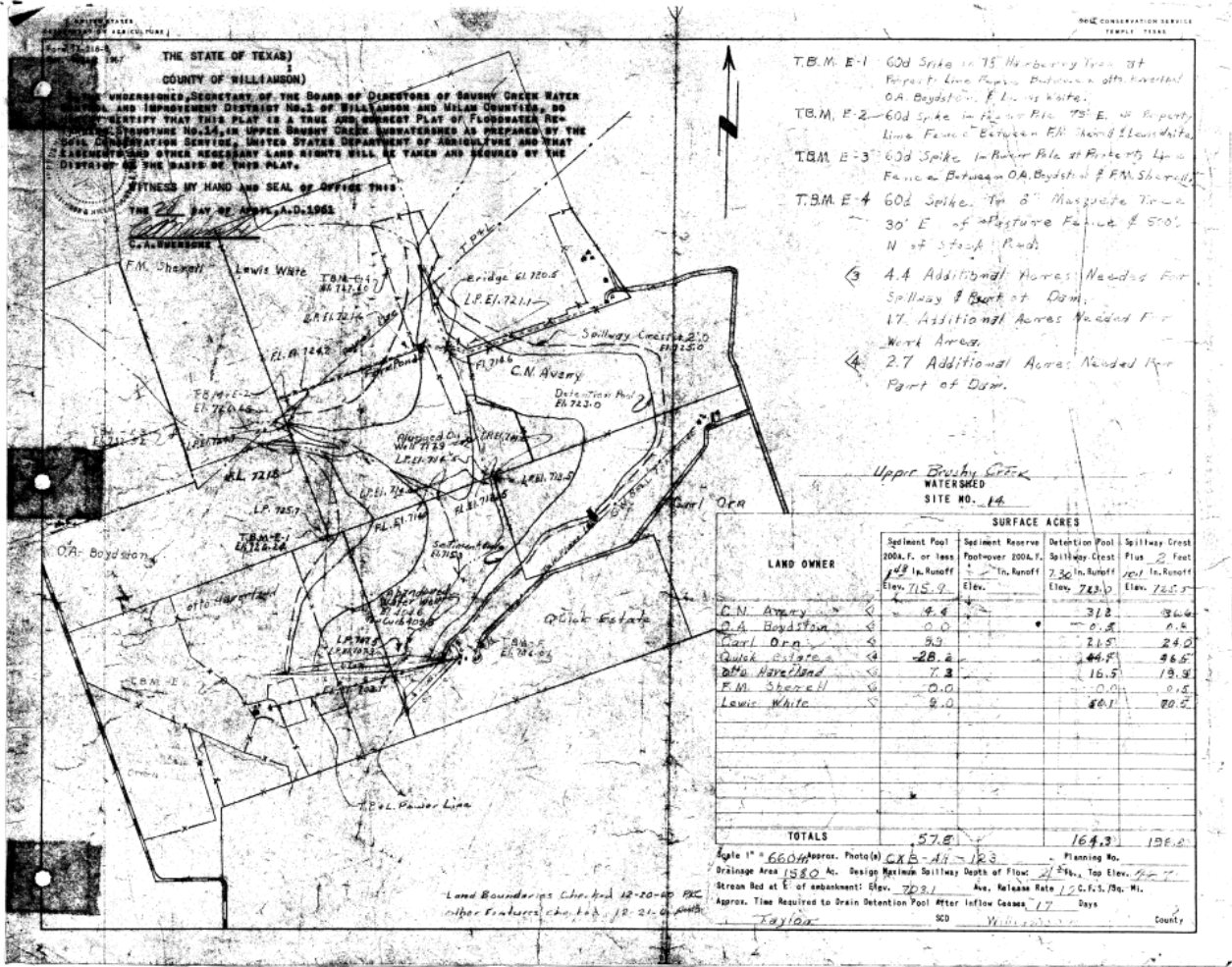
“Grantor (*landowner*) reserves the right to use said land or any part thereof at any time and for any purpose provided such use does **not** damage the structure or **interfere** with the full enjoyment by the Grantee (*dam sponsor*) of the easement”



# KNOW YOUR EASEMENTS

CABINET A SLIDE 322

No. 2982



- Not all easements are the same
  - Easement language can vary from dam to dam
  - Easement language can vary among the multiple owners on a single dam
- Work with your County clerk
  - Get the cleanest copies of the easements and the plat.
  - Check your “as built” for legible versions of the plat.

Filed For Record May 9, 1961, 8:00 A.M.  
 Recorded May 9, 1961, 8:10 A.M.  
 By Katharine Yearwood, Deputy,  
 DICK CERYENKA, County Clerk,  
 Williamson County, Texas.

# ADOPT AN EASEMENT ENCROACHMENT POLICY



## Board Adopted Easement Encroachment Policy

- Ensures Board and attorney review along with consistent use
- Defines the general requirements, fees, and refers to the manual
- Specific guidelines and rules for the three easement parts (access, inundation, and structure)

## Easement Encroachment Manual

- Explains history of District, its dams, and its authority
- Defines terms and explains with pictures
- References State Law TAC 299.16 (d)
- Outlines permit and easement modification procedures

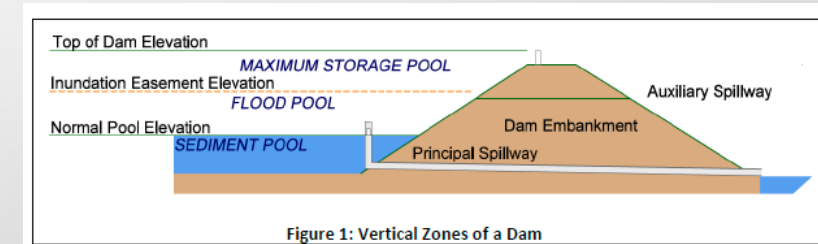


Figure 1: Vertical Zones of a Dam

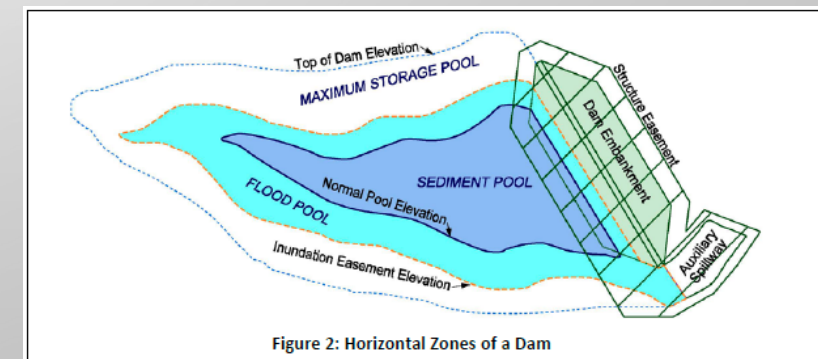


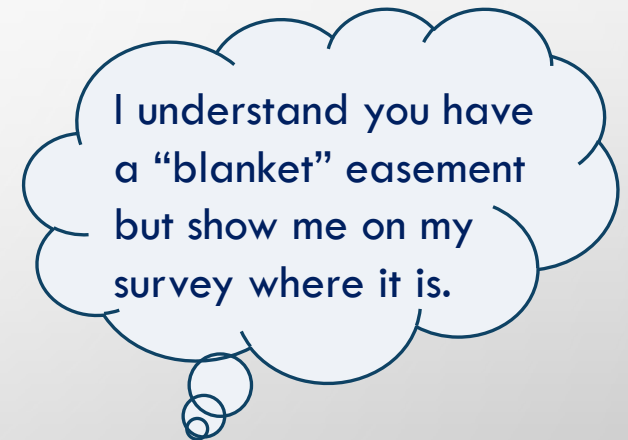
Figure 2: Horizontal Zones of a Dam

# EASEMENT APPROXIMATIONS

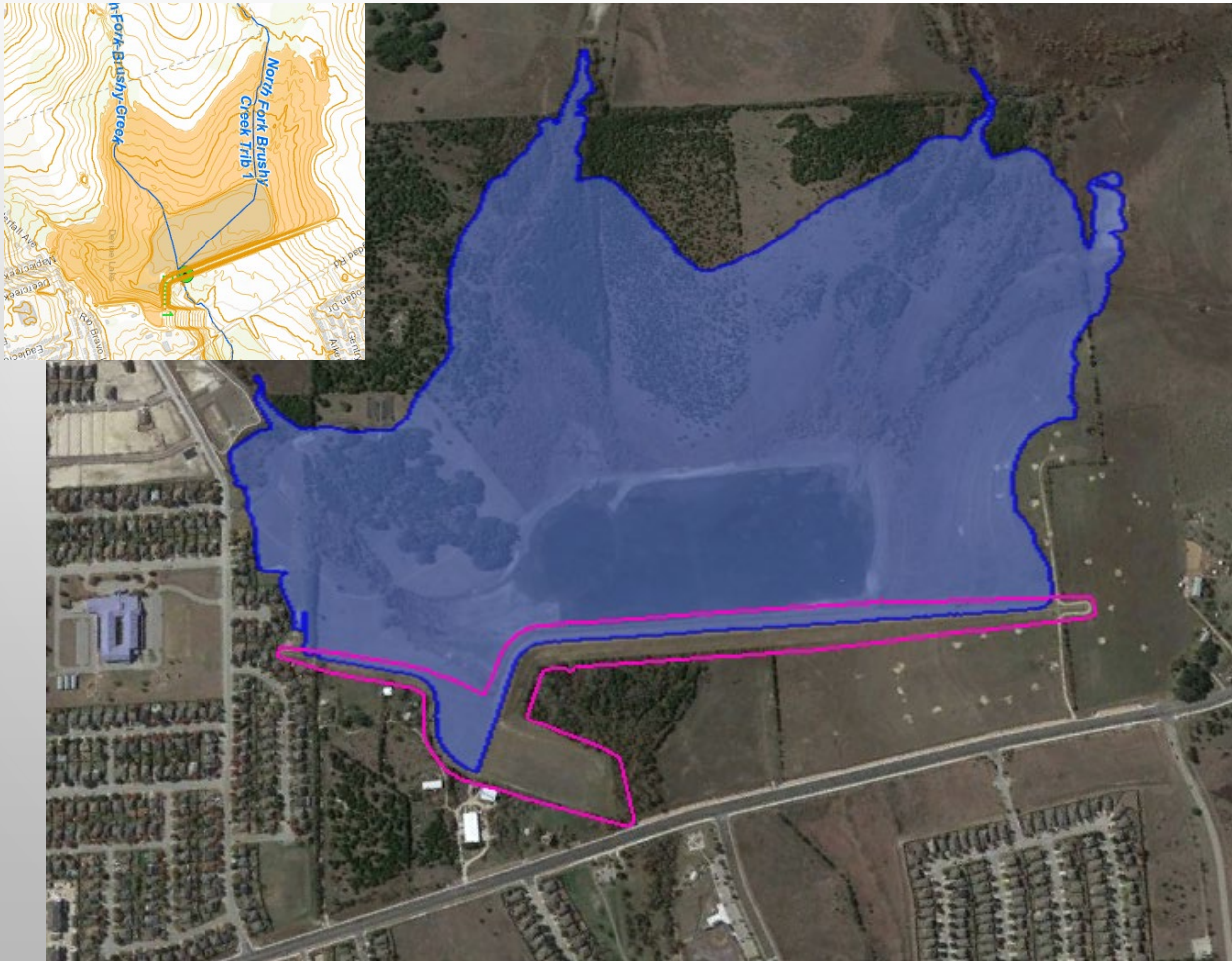
Readily accessible easement approximations make it easier for landowners, regulators, perspective buyers, and developers to better understand our easements.

Desktop approximations of easements can be made by using LiDAR contours and aerial images.

- A. Trace contour described in your inundation easement
- B. Define an outline of the actual structure as an offset from slopes



# EASEMENT APPROXIMATIONS



Using LiDAR contours, we created polygons that approximate both the inundation and structure areas of the easement.

The layers can be shared and used in Google Earth, ArcGIS, etc.



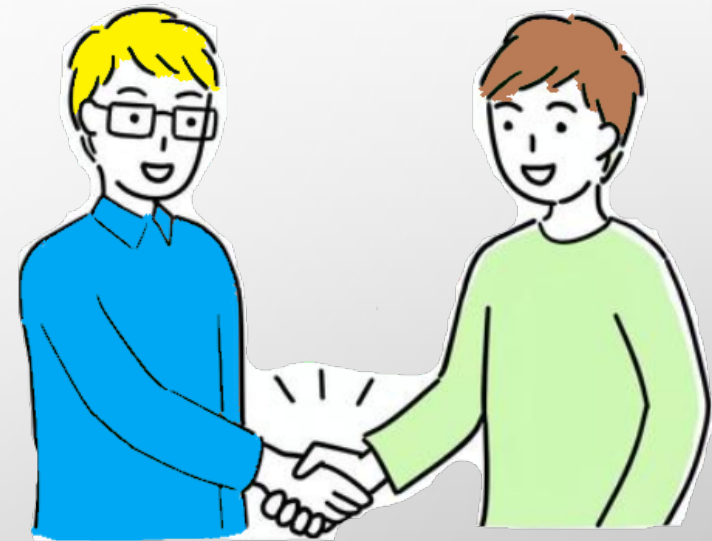
# MAKE FRIENDS WITH THE 'DEVELOPMENT' REGULATORS

Development regulation through cities and counties is expected.

It is likely that every city and county has more staff than your organization.

Most cities and counties are also concerned about flooding risk and dam safety.

However, most cities and counties know very little about our easements, our history, and even our dams.



# COORDINATE WITH THE 'DEVELOPMENT' REGULATORS

## Start with Introduction and Information Sharing

- Explain the history of the dams and your agency
- Explain about your easements and how the dams work
- Explain your regulatory and staffing limitations



*Cities can help catch and prevent easement conflicts.*

## Ask for help and cooperation with development

- Long range planning and zoning – land uses near dams should consider how the dams work including potential upstream and downstream flooding
- Subdivision platting – changes to subdivision should acknowledge existing easements and consider physical restrictions posed by dams and flows
- Utility planning – both wet and dry utilities should acknowledge easements and restrictions in certain area

Do not forget about your ally- the floodplain administrator

# WHAT CAN YOU DO TO PROTECT YOUR DAMS?

1. Know your Easements
2. Adopt an Easement Encroachment policy
3. Create desktop approximations of easements
4. Coordinate with “development” regulators
5. *Magic Answer* - **convert easements to fee title**

# CONVERT EASEMENTS TO FEE TITLE



Large scale developments are an opportunity to ask for the dam structure area to be donated.

Developers often understand the risks and minimal benefit to owning the dam footprint.


Work with cities to allow the developer to still get credit for open space with the donation

We have also paid to convert the structure area to fee title.

# QUESTIONS?

[www.UBCdams.org](http://www.UBCdams.org)

ALYSHA GIRARD, PE, CFM  
alysha.girard@UBCdams.org



Alysha Girard is the General Manager for Upper Brushy Creek WCID which owns and maintains 22 watershed dams with a focus to protect life and property from regional flooding impacts. During her tenure, the District has taken on the spectrum of dam projects including modernization, full rehabilitation, and decommissioning along with the design, permitting, funding, and construction of a new dam.

Alysha also currently serves as the Chair of the Lower Brazos Regional Flood Planning Group which is one of 15 watershed-based groups tasked by the Texas Water Development Board to create and update regional flood plans that make up the State flood plan.

Alysha has a Bachelor of Science degree from Texas A&M and an MBA with a Public Administration focus from St. Edwards University. She is a Registered Professional Engineer in the State of Texas and a Certified Flood Manager.

