

BRADFORD RECLAMATION DISTRICT NO. 2059

LEVEE ENCROACHMENT
REGULATIONS

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BRADFORD RECLAMATION DISTRICT NO. 2059

LEVEE ENCROACHMENT REGULATIONS

Regulations controlling Alterations to and Encroachments upon, Through or Over the District's Levee System.

Adopted by the Board of Trustees of the Bradford Reclamation District No. 2059, as follows:

Section I. Purpose. The purpose of these Regulations is to protect the integrity of the levees of Bradford Reclamation District No. 2059 from the adverse effects caused by improper alterations to or encroachments upon District levees and to assure adequate access for relocation, reconstruction, and routine and emergency inspection, maintenance and repair.

Section II. Definitions. As used in these Regulations, the following words and phrases shall, unless otherwise provided, have the following definitions:

- a. "District": Bradford Reclamation District No. 2059.
- b. "Applicant", "Permittee" and "Landowner": Any person who is the owner of record of any parcel or tract of land within the District.
- c. "Levee", "District Levee", and "District Facility": Any embankment or structure designed or used to protect lands from flooding which was constructed by the District or its predecessors or which is maintained, operated or controlled by the District or which is subject to the maintenance, operation, or control of the District.
 1. "Levee Section": The physical levee structure from the landward toe to the waterward toe.
 2. "Levee toe": The point of intersection of the levee slope with natural ground.
- d. "District Area of Jurisdiction": The District Levee and the area on the landside and waterside of the District Levee that is required to satisfy the stability, safety and integrity of the District Levee and the levee operating, maintenance, relocation and reconstruction requirements of the District (to-wit: a minimum of 110 feet on either side of the center line of the District levee).
- e. "District Engineer": The professional engineer appointed by the District to advise the District on issues involving the District's flood control works.

f. "Person": Any person, persons, company, partnership, corporation, governmental body or any agent thereof.

g. "Camp": To establish or pitch or attempt to establish or pitch a camp, tent, or temporary shelter or to reside temporarily or otherwise in any camp, tent or temporary shelter.

h. "Boat": Any vessel for transport by water regardless of size, use, construction or method of propulsion.

i. "Livestock": Horses, cattle, sheep, goats, pigs, or other useful animal or animals, excepting household pets, of a type kept or raised on a farm or ranch.

j. "Owner": The legal owner, equitable owner, or any person harboring or having custody and control of livestock or an otherwise permitted item of personal property.

k. "Obstructive vegetation": Any tree, shrub, bamboo, briars, vines, or other vegetation which is or could be a hindrance to access or to visual inspection including low grass and lawns.

l. "Adjacent": The area adjoining the District levee within the District Area of Jurisdiction as defined in Section II, c above.

m. "Flood Control Works": The levee, rock revetment or other works to provide flood protection and wave wash protection.

n. "Dwelling": An improvement of real property used, intended to be used, or suitable to be used for residential purposes, including, but not limited to, living, sleeping, cooking, or eating.

o. "Non-Project Levee": The levees which were constructed for the purpose of controlling floods and have not been authorized by the Federal Government or the State Legislature to be part of the Sacramento River or San Joaquin River Flood Control System Projects.

p. "Encroachments, Improvements and Developments": These terms are considered to be interchangeable. "Encroachment" means any obstruction or physical intrusion by construction of works or devices, planting or removal of vegetation, or by whatever means for any purpose into any of the following:

- (1) any flood control project works;
- (2) the waterway area of the project;
- (3) the area covered by an adopted plan of flood control; or

(4) any area outside the above limits, if the encroachment could affect any of the above.

See Section IV for additional definitions.

Section III. Responsibilities.

a. Maintenance of levees, flood control works, district drainage ditches, drainage pumps, and levee roads shall be the responsibility of the District.

b. All maintenance costs shall be borne by the landowners, by way of assessments.

Section IV. Encroachments. No person shall, and it shall be unlawful for any person to, encroach upon, over or on any levee or flood control work (including the rock riprap or other wave wash protection thereon) of the District or upon lands owned or maintained by the District or within the District Area of Jurisdiction, except when expressly permitted to do so by a proper and revocable written permit, easement or agreement executed between said person and the District and upon payment to the District of all required fees, expenses, rental, or other compensation therefor. For purposes of this Section, encroachment shall be deemed to restrict persons from doing any of the following within the District Area of Jurisdiction without an appropriate permit:

- 1) Excavate, grade, level, fill, widen, raise, cut, disturb, rip or dig upon the District's Flood Control Works; or
- 2) Place, erect, construct, or maintain any pipeline, septic tanks and/or drain fields, underground storage tanks, fence, parking lot or area, pole, pole line, utility lines, cable, gate, barrier, barricade, conduit, rail, dock, ramp, wharf, landing, mooring, building, structure, obstructive vegetation, or works of any kind upon or over the District's Flood Control Works; or
- 3) Leave, place, store or maintain any lumber, pipe, or any other object or item upon the District's Flood Control Works; or
- 4) Park or place any vehicle, mobile home, motor home, premanufactured home, equipment or other item on the District's Flood Control Works so as to obstruct traffic [i.e., there must always be at least sixteen (16') feet of clearance on the levee crown] or to interfere with the District's maintenance and operation of the District's Flood Control Works [any vehicle left standing in one place for 48 hours or more may be deemed to be abandoned and may be removed at the owner's expense]; or

- 5) . Camp on the District's Flood Control Works; or
- 6) Launch any boat from the District's Flood Control Works.

The above list is demonstrative of the types of encroachments subject to this section and is not to be deemed an exclusive list.

Section V. Non-Conforming Encroachments. Any encroachment (as set forth in Section IV above) upon or over the levees or flood control works of or within the District which encroachments exist at the time of adoption of these Regulations are hereby declared non-conforming with these Regulations. No such non-conforming encroachments may be expanded or modified by any person except when expressly permitted to do so by a proper and revocable written permit executed between said person and the District and upon payment to the District of all required fees, expenses, rental or other compensation thereof. If a non-conforming encroachment is damaged or destroyed in whole or in major part, by or from any cause (including fire, flood or wind) and the damage sustained requires repair work costing more than the fair market value of the encroachment prior to the damage, then such non-conforming encroachment shall not be repaired or reconstructed back into a non-conforming condition. These Regulations are not intended to and shall not render legal or proper any encroachment heretofore occurring which was not in accordance with law, including these Regulations of this District.

Section VI. a. Levee Excavation. When the District has issued a permit which allows any excavation within the District Area of Jurisdiction, the District nevertheless reserves the right to require all excavation activity to cease, and such excavation to be immediately refilled, when, in the opinion of the District, anticipated high water conditions within the area of excavation pose a threat to the levee stability or integrity. Whenever a landowner is allowed to conduct any excavation activities within the District's Area of Jurisdiction, there must be a District representative present during the excavation and backfill activities, at the landowner's expense.

b. Impervious Material. "Impervious material" means soil which has twenty (20) percent or more of its particles passing the No. 200 sieve, a plasticity index of eight (8) or more, and a liquid limit of less than fifty percent (50%).

Section VII. Encroachment Permit. All encroachments, improvements, developments or use, existing or proposed, whether on or adjacent to the levees, within the District Area of Jurisdiction, are subject to written permit of the District.

Inquiries about proposed encroachments or encroachment permits should be directed to the District office in Stockton.

Encroachment permits issued by the District will use as a guide the "Standards for Encroachments" as approved by the State Reclamation Board, as set forth in California Code of Regulations, Title 23, Waters, in conjunction with the Regulations of the District.

Approval and issuance of an encroachment permit shall be by the Board of Trustees or Committee of the Board (duly designated by the Board of Trustees of the District) pursuant to these Regulations. Such approval and issuance shall be contingent upon:

- 1) the application for a permit and the permit being signed and executed by the landowner of the parcel where the encroachment is planned,
- 2) the Applicant paying all application and permit fees and agreeing to pay out-of-pocket District expenses incurred by the District,
- 3) the Applicant agreeing to assume all liability resulting from the Applicant's encroachment,
- 4) the Applicant agreeing to hold the District harmless from additional costs occasioned by such encroachment and necessitated by any future work by the District in the District Area of Jurisdiction, and
- 5) the Applicant complying with any other condition which the Board or Committee of the Board in its discretion may from time to time deem appropriate.

The Board or Committee of the Board may in its discretion refuse to issue any or all permits and may from time to time modify its adopted Regulations for encroachments or guidelines for encroachments (including pipes and conduits) which shall be conditions to the issuance of any permit.

The Board or Committee of the Board may from time to time in its discretion adopt a standard application form or forms for use in administration of the permit procedure provided herein.

A permit, when issued, may be subsequently modified by action of the Board or Committee of the Board.

In addition to an encroachment permit issued by the District, the Applicant must also obtain approval from other permitting agencies as required by law (such as, Reclamation Board, Corps of Engineers, State Department of Fish and Game, State Department of Water Resources, Contra Costa County, etc.).

The encroachment permit issued by the District should be obtained prior to obtaining other agency permits. The receipt of

a District permit does not excuse the applicant from having to receive any and all other necessary permits which may be required by other governmental agencies prior to constructing the improvements.

The Encroachment Permit must be accepted by the Landowner, which acceptance must be received by the District before the Landowner commences construction of the encroachment.

Section VIII. Application for Encroachment Permit. Requests for "Application for Encroachment Permit" forms or inquiries about completing the forms should be directed to the District office.

Completed applications for an encroachment permit should be submitted to the District office.

Applications for approval of plans for encroachments must be submitted on the Application For Encroachment Permit form provided by the District and must be accompanied by drawings and supporting data that provide sufficient detail to permit a good and proper review of the proposed work. Generally, the following information must be shown on or accompany the application:

1. Name, address, telephone number, and signature of the Applicant, or the owner's designated agent (a copy of such designation shall be attached to the Application).
2. A detailed description of the proposed encroachment, including the intended purpose of the project.
3. A preliminary work plan for the construction of the encroachment, including but not limited to (a) the date upon which the Applicant proposes to commence construction, (b) the time periods for the various segments or components of the project, and (c) the total length of time required to complete construction.
4. A location description including the District Tract Number and County Assessor's Parcel Number or some other means of identifying the exact location.
5. A location map showing the exact position of the proposed encroachment related to existing identifiable landmarks. These include, but are not limited to the following:
 - (a) Name of the waterway that the project is on or adjacent to.
 - (b) Distance to or from roads, bridges, or other identifying landmarks.
 - (c) North arrow.

6. A plan view drawn to scale and which shows the:
 - (a) Location of proposed encroachment with respect to existing facilities and adjacent property lines.
 - (b) Location of cross sections or elevation views that are being submitted with the application.
 - (c) Direction of flow of stream.
 - (d) North arrow.
7. Elevation and/or cross section views (drawn to an appropriate scale) which provide the following:
 - (a) Location of proposed encroachment with respect to levees, water surface, stream bank and berms measured both horizontally and vertically.
 - (b) Elevations of project features and adjacent levee crown, and design flood plane referenced to commonly accepted local datum, such as USGS.
8. Material specifications, installation and/or construction details, and proposed construction schedule.
9. A copy with the results of any special study required by the District Engineer or by any other permitting authority, if such are required to determine the impact of the proposed project on the particular portion of the levee, stream or river system.
10. Names and addresses of owners of adjacent land parcels sharing a length or point of common boundary with the land upon which the proposed project is to be built.
11. A list of items which Applicant is submitting with the application.
12. Engineering design calculations for features requiring structural, safety, stability or other engineering analysis.
13. Drawings, specifications and calculations required to support engineered facilities must be prepared, signed and sealed by a California registered professional engineer.
14. Flood evacuation plan for the development project in conformance with County Ordinances.

Section IX. Permit Fees And Reimbursable Costs. As a part of the application process, the Applicant shall pay to the District the following:

- A. Application Fee: The Applicant shall pay to the District with its Application an application fee in the following amount:

<u>Estimated Value of Encroachment</u>	<u>Application Fee</u>
Under \$1,000	\$ 200.00
\$1,000 to \$10,000	\$ 500.00
\$10,000 to \$100,000	\$1,000.00
Over \$100,000	To Be Negotiated

- B. Reimbursable Costs: In addition to the fees required by this Section IX, the Applicant shall be responsible for reimbursing the District for the District's out-of-pocket expenses in connection with District's engineering and/or legal services, including but not limited to review and approval of the application, the issuance of the permit, review of the construction of the encroachment for conformity to the terms of the Permit, and any proceedings necessary to enforce the Applicant's obligations under the Application and/or Permit. The District reserves the right to request a deposit to be submitted with the Application. Failure to pay the estimate with the Application or failure to pay any balance due the District shall be grounds for denial of the Application or cancellation of the Permit. Any reimbursement costs not paid by the Applicant shall become a lien against the title to the property, the same as the District assessment, and may be enforced the same as the District assessment.

- C. Permit Fee: Upon approval of the Application and prior to the issuance of a Permit, the Applicant shall pay to the District a Permit Fee in the following amount:

<u>Estimated Value of Encroachment</u>	<u>Permit Fee</u>
Under \$1,000	\$ 200.00
\$1,000 to \$10,000	\$ 500.00
\$10,000 to \$100,000	\$1,000.00
Over \$100,000	To Be Negotiated

Section X. Special Requirements. The Board of Trustees of the District will adopt levee standards, including geometry, dimensions and freeboard, that will provide acceptable levels of

stability and safety. Special conditions may be added by the Board.

The height of any fill or embankment added to the existing ground levels shall be limited to elevations and construction standards (type of material, compaction, time length of loading and consolidation and staging of construction) designated by District.

For fills and embankments District designated tests to confirm stability, density and safety may be required to be conducted periodically by the Applicant.

Section XI. District's Right of Entry. The District, by any authorized agent or employee, shall have the right to enter upon any property within the District Area of Jurisdiction at all reasonable times and places to determine and enforce compliance with these Regulations.

Section XII. Liability Insurance. Prior to the issuance of the Encroachment Permit, the Applicant shall provide the District with a standard commercial general liability policy providing bodily injury and property damage insurance during the period of construction with coverage limits of not less than \$300,000.00 per each occurrence and in the aggregate, insuring against any and all liability resulting from and as a result of the Applicant's construction of the encroachment. If the District concludes that the proposed project poses substantial risk to the District and the District Flood Control Works, the District reserves the right to require insurance in a greater amount than herein set forth. Such insurance shall name the District as an additional insured. The Applicant shall provide the District with a certificate of insurance, showing the District has an additional insured, which shall provide that the insurance may not be canceled or the coverage reduced without providing the District a minimum of thirty (30) days prior written notice of such cancellation or reduction of coverage.

Section XIII. Time of the Essence. The Applicant is advised that time is of the essence in connection with the construction of any encroachment authorized under the Encroachment Permit. The District at all times reserves the right to amend and change the time under which the Applicant shall be permitted to construct or to complete construction of said encroachment.

Failure on the part of the Applicant to commence construction or to complete construction within the established time may be deemed to be a violation of the Encroachment Permit, and the District may avail itself of the rights set forth in Section XIV and XV of these Levee Encroachment Regulations.

Section XIV. Cease and Desist Order. The District may at any time there is an encroachment in the District Area of Jurisdiction

in violation of these regulations, whether or not an encroachment permit has been issued by the District, issue a written order signed by the President of the Board, or his official designee, to cease and desist such encroachment or issue an order to remove or alter such encroachment.

Section XV. Violation of Regulations. Any person who shall violate any of the provisions of these Regulations shall in addition to suffering from any remedy imposed by law be liable for all costs, expenses, and damages to the District caused by such violations.

In addition to all of the other remedies provided herein, the Board, with regard to any violation of these regulations after issuing a cease and desist order or order for removal or alteration and after issuing 72 hours prior written notice of the same by mail or by publication (in accordance with Government Code Section 6061) to the person or persons involved, may perform at the cost and expense of the person or persons in violation any corrective work deemed appropriate or necessary by the Board to protect the integrity of the District levee.

Section XVI. Removal of Encroachments During Emergency Condition. The District reserves the right to take such action as it deems necessary, in the event of an emergency, to protect the District's levees, reclamation works, and the lands within the District's levees, including but not limited to the removal of the encroachment described in the Permit, and the removal from the levee of any equipment or materials located within the District Area of Jurisdiction, and owned by the permittee and/or landowner, their employees, agents or guests. If reasonably possible, District shall give twenty-four (24) hour advance notice to the permittee and/or landowner to enable them to take such action as may be necessary to move/remove the encroachment, equipment or other items on the District's Flood Control Works, and/or to correct the situation. If District is unable to give such notice, it shall give advance notice at the earliest time reasonably possible.

An emergency means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services. If made in good faith, the decision of the District as to when an emergency situation exists shall be final and District shall have no liability or responsibility to the permittee and/or landowner, their employees, agents or guests in the exercise of the power herein reserved.

The permittee and/or landowner shall reimburse the District for its out-of-pocket expenses in connection with the moving and/or removal of the encroachments and/or equipment in accordance with

this Section in order to permit the District to address the emergency situation.

Section XVII. Interpretation, Constitutionality, Severability.

A. In interpreting and applying the provisions of these Regulations, the requirements contained herein are declared to be minimum requirements for the purposes set forth.

B. The provisions of these Regulations, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatement and continuations and not as new enactments.

C. If any section, subsection, sentence, clause or phrase of these Regulations is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Regulations. The Board hereby declares that it would have passed these Regulations and every section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

D. These Regulations shall upon effect supersede and replace the provisions of the other Regulations and laws of the District in conflict herewith.