

Steps You Need to Take to Cure FERC Encroachments So You Can Close Contemporaneously with Patterson PK Land Partnership

1. Review your FERC encroachment letter from the BRA and determine what type of FERC encroachment(s) you have. There are 5 types of FERC encroachments that you could possibly have:
 - **Residential Encroachment** – A “Residential Encroachment” is any enclosed, habitable, residential structures which have not been approved by BRA in writing and for which no evidence exists that such structure was in existence prior to May 15th, 1980. If you have a Residential Encroachment go to number 2. If you think that the encroachment was there prior to May 15, 1980 skip to number 3.
 - **Pre-1980 Encroachment** – A “Pre-1980 Encroachment” is any FERC encroachment that existed, in their current size and location prior to May 15, 1980. If you believe you have an encroachment that existed before May 15, 1980 go to number 3.
 - **Seller Approved Encroachment** – A “Seller-Approved Encroachment” is any encroachment that had the approval of the BRA. If you have a Seller-Approved Encroachment go to number 4.
 - **Permitted Facility Encroachment** – “Permitted Facility Encroachments” are permitted on-water facilities; such as docks, water withdrawal facilities, landscape plantings or retaining walls utilized for bank stabilization or erosion control. Please note that pump houses are considered other encroachments and not a component of a water withdrawal facility. Also, please note that obtaining a construction permit from the BRA does not make an encroachment a Permitted Facility Encroachment. Please see number 5 if you have a Permitted Facility Encroachment.
 - **All other FERC encroachments** – “All other FERC encroachments” are all other FERC encroachments that do not fit into the categories above. If you have a FERC encroachment that does not fit into one of the definitions above go to number 6.

2. If you have an encroachment that was created after May 1980 you have two options.
 - Option 1:** The first option is to remove the encroachment that is within the FERC. If you choose to remove the encroachment you can either remove it yourself or you may hire someone else to remove the encroachment. Once the encroachment is removed you must contact your survey company and request an updated survey indicating the encroachment is removed. This updated survey will allow you to forgo an escrow account. The updated survey must be submitted to Link Field prior to your individual closing.

 - Option 2:** If you don't want to tear down the encroachment that is within the FERC then you need to escrow 150% of the tear down cost for the encroachment that is

within the FERC. Skip to number 7 on how to set up an escrow account for removal of FERC encroachments.

3. If you believe you have a FERC encroachment that existed in its current location and size on May 15, 1980 you may:

a. Provide the BRA with acceptable proof that establishes that your encroachment was in place prior to May 15th, 1980. Evidence that can be considered indicating that an encroachment was in place prior to May 15th, 1980 is:

Stand Alone Evidence – Stand Alone Evidence is evidence which, taken on its own merit and confirmed by an on-site inspection, sustains the claim that an encroachment was present in the same area footprint as was present on May 15th, 1980. Stand Alone Evidence is as follows:

- Sealed pre-1980 improvement survey (non-sealed survey if survey was accomplished by BRA surveyor)
- Accurate drawing (including structure dimensions and location), contained on pre-1980 On-Site Sewage Facility documentation.
- Original written and signed BRA construction approval which contains specific dimensions of the structure footprint and structure location on the lot.
- Accurate drawing (including structure dimensions and location), contained on pre-1980 dock/residential water permits/applications signed and approved by BRA personnel.

Corroborating Evidence – Corroborating Evidence is evidence which, taken into account with other evidence would lead the inspector to the conclusion and subsequent recommendation that the encroachment was present in the same area footprint as was present on May 15th, 1980. Examples of Corroborating Evidence are listed below in descending order of reliability:

- Original photos dated by a photo processor
- Dated Construction documents
- Dated concrete impressions
- Original undated photos
- Dock/water permits that don't meet Stand Alone criteria
- Mobile home year dated title/registration
- Affidavits by disinterested 3rd parties, a neighbor would qualify. The Affidavit form can be found on our site under useful forms.
- Tax records showing the size of the structure, year built, etc.
- Shoreline/vegetation comparison
- Other evidence as provided by the lessee

Insufficient Proof – The following are considered to be insufficient as proof:

- Tax documents alone or tax documents noting only the date built
- Affidavits signed by only the lessee

○ Send Proof to: Natalie Kinnaird
Brazos River Authority
PO Box 7555
Waco, TX 76714
pkencroachments@brazos.org

b. If the Authority approves this evidence, no escrow fund will be required for the applicable encroachment.

c. If the evidence is not clear, your encroachment will be placed on the pre-1980 list subject to review by a BRA Authority inspector.

d. If the BRA determines your encroachment is not pre-1980, you will be moved to the appropriate encroachment category and an escrow account must be established with Patterson PK if you want to keep the encroachment. Please refer to number 7 on how to set up an escrow account for the encroachment.

4. If you have Seller-Approved Encroachment(s):

a. You must have written proof in the form of a letter or permit stating that the BRA has approved the encroachment(s). BRA approval of a lease transfer is not considered approval of the encroachment.

b. Those lessees within this category must establish an escrow account with Patterson PK. To learn how to set up an escrow account with Patterson PK see paragraph 7.

c. For FERC purposes, the BRA Authority will advocate for you to be allowed to maintain this encroachment.

5. Permitted Facility Encroachment – If you believe an improvement which has been marked as an encroachment that is actually a BRA Permitted Facility, please fill out the Permitted Facilities form found in our website under Useful Forms and send to:

Natalie Kinnaird
Brazos River Authority
PO Box 7555
Waco, TX 76714
pkencroachments@brazos.org

Please note, if the improvement has not previously been approved by the BRA, you must submit a post-construction permit to the BRA, otherwise the improvement will be considered an encroachment. The standard fee for a post-construction permit is \$50.

6. If you have another FERC encroachment it is considered unapproved and you have two options.

Option 1: The first option is to remove the encroachment that is within the FERC Buffer . If you choose to remove the encroachment you can either remove it yourself or you may hire someone else to remove the encroachment. Once the encroachment is removed, you must contact your survey company and request an updated survey indicating the encroachment is removed. This updated survey will allow you to forgo an escrow account. The updated survey must be submitted to Link Field prior to your individual closing.

Option 2: If you don't want to tear down your encroachment that is within the FERC Buffer then you will need to escrow 150% of the tear down cost for the encroachment that is within the FERC. Refer to number 7 on how to set up an escrow account for removal of FERC encroachments.

7. How to set up the escrow account for removal of FERC encroachment(s) that are not approved.

- a. Pick a company to do the FERC removal. The following is a list of contractors from our website. You may use anyone of them or anyone else you choose. The choice is yours.

Bob Koncak Construction Attn: Bob Koncak 940.779.3113 work 940.328.5406
cell 1221 McGinnis Point Road Graford, TX 76449

Gary Grossman Architect and Construction, Inc. 817.473.9168
work 817.228.3114 cell 600 Strada Circle Mansfield, Texas 76063

Steven J Moore Construction 940.549.4134 work 940.550.4415 cell Graham,
Texas Prefer West Side

One Man Crew Attn: Les Williams 817.304.2331 work rblkay2@yahoo.com

Regie Judd Construction 940.521.2064 cell 13931 FM 1287 Graham, Texas
76450

Greco Services 940.549.2415 cell P.O. Box 899 Graham, Texas
76450 pam@twstexas.com

RMI Construction 940.383.3939 RMI Office 940.779.3800 PK Docks

Office Russell.madden@verizon.net

ADC, Inc. dba. Anderson Fine Homes and Mark G Anderson Homes Mark
Anderson 806.789.6275 manderson@adc-group.com

Custom Stone Work 300 N Hwy 2353 Graford, Tx 76449 940.779.3700
office 940.779.2474 fax Your local masonry company at PK for over 25 years!

- b. Get a written bid from the company.
- c. Attach the bid to the FERC Encroachment Removal Escrow Agreement form found in our website under Useful Forms and make 4 copies.
- d. Sign all 4 as originals.
- e. Send all 4 signed originals to PPKLP.
- f. PPKLP will review and if acceptable sign all 4 originals and forward to BRA for their review, approval and signature.
- g. When PPKLP receives the 4 signed originals from BRA, PPKLP will return all 4 to you.
- h. You must take all 4 to the title company with your check for 150% of the FERC curative contract.
- i. Your title company must sign all 4 and keep one fully executed original for their file.
- j. You keep 1 fully executed original and send 2 fully executed originals back to PPKLP.
- k. PPKLP will send 1 of the 2 fully executed originals to BRA and keep one for our records.