



July 23, 2010

Dear Lessee:

It has come to our attention that there is a great deal of confusion regarding encroachments into the Federal Energy Regulatory Commission (FERC) area, especially for those lessees who plan a contemporaneous closing with Patterson PK Land Partnership.

This letter is being sent to you to help clarify issues related to removal of encroachments, what proof is required for encroachments, and when an escrow account is required. However, first we thought it would be helpful to provide some background information.

What is the FERC Project Area? This is the area regulated by FERC that is generally measured 25 feet landward from the 1,000 foot contour of Possum Kingdom Lake and also includes all land below the 1000 foot contour line. This area will not be sold to Patterson and will remain under BRA control.

Why are encroachments so important? The BRA license from FERC only allows certain items to be constructed within the FERC Project Area (Permitted Facilities). These items are:

1. Landscape Plantings
2. on-water facilities (docks, boat houses, etc.)
3. erosion control structures.

Other encroachments may at some time need to be removed if directed by FERC.

Why is May 15, 1980 such an important date? This is the date the BRA received an amendment to its FERC license that may have permitted certain structures within the FERC Project Area to remain in place.

If I am not purchasing my lot, do I need to submit evidence to BRA? Yes. Failure to submit evidence may result in your encroachments being treated as unapproved encroachments in BRA's application to FERC. It is likely that FERC will require all unapproved encroachments to be removed.

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Encroachment Removal - The best way to ensure that you will be able to close contemporaneously with Patterson PK is *to remove the encroachment from the property*. To do this:

1. You may remove the encroachment yourself or you may have someone else remove the encroachment.
2. Once the encroachment is removed, you must contact the Authority at pkencroachments@brazos.org with notice that removal is complete.
3. To avoid the necessity of an escrow account with Patterson PK, 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 with Patterson PK.

If you choose not to remove your encroachments, and have no proof that the encroachment was built prior to May 15, 1980, you will have to establish an escrow account with your title company at your closing with Patterson PK to cover the cost of removing the encroachment.

Encroachment Proof

Pre-May 15, 1980 Encroachments - If you believe you have a pre-May 15, 1980 encroachment:

1. You must provide the Authority with acceptable proof that identifies your encroachment was in place prior to May 15, 1980.
2. If the Authority approves this evidence, no escrow fund will be required for the applicable encroachment.
3. If the evidence is not clear, your encroachment will be placed on the pre-1980 list subject to review by an Authority inspector.
4. If the Authority determines your encroachment is not pre-1980, you will be moved to the appropriate category and an escrow account must be established with Patterson PK.
5. Tax records alone are not sufficient to establish an encroachment was built before 1980. Proof that an encroachment was in place prior to May 15, 1980 may consist of the following:
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 15 May, 1980.

Examples of Stand Alone Evidence are listed below:

- 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 15 May, 1980.

Examples of Corroborating Evidence are listed below in descending order of reliability:

- Original photos dated by 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
- 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 items are considered to be insufficient as proof:

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

Seller Approved Encroachments - to be included in this category:

1. you must have written proof in the form of a letter or permit stating that the Authority has approved the encroachment. Authority approval of a lease transfer is not considered approval of the encroachment.
2. Those lessees within this category must establish an escrow account with Patterson PK. For FERC purposes, the Authority will advocate for you to be allowed to maintain this encroachment. However, the ultimate decision on whether this encroachment must be removed remains with FERC.

If your encroachment does not fall into any of the previous categories (e.g. you are a residential encroachment or an unapproved encroachment), you must establish an escrow account with Patterson PK.

Permitted Facilities - If you believe an improvement which has been marked as an encroachment is actually a Permitted Facility, please fill out the Permitted Facilities Form, which can be obtained from Patterson PK and return this to the Authority. Please note, if the improvement has not previously been approved by the Authority, you must submit a post-construction permit to the Authority, otherwise the improvement will be considered an encroachment. The standard fee for a post-construction permit is \$50.

Escrows

An escrow will not be required if:

- Your encroachment is confirmed by BRA to be pre- May 15, 1980; or
- Your encroachment is confirmed by BRA to be a Permitted Facility; or
- Your encroachment is removed and an updated survey depicting removal received prior to individual closing.

An escrow will be required if:

- Your encroachment is not confirmed by BRA to be pre-May 15, 1980; or
- Your encroachment is Post-1980, approved or unapproved; or
- Your encroachment is determined eligible to be a Permitted Facility, but a postconstruction permit is not obtained; or
- Your encroachment is removed, but an updated survey is not received.

Deadlines

- August 2 Preliminary surveys are due to Link Field
- August 16 Encroachment forms with documentation due to the Authority

The Authority will strive to complete review of all forms and evidence for those planning a contemporaneous closing by September 15. If you have submitted your evidence and forms by August 16, 2010 and the Authority has not reviewed your forms by September 15, Patterson PK has agreed to extend the contemporaneous closing time frame and the additional five percent discount on the sale price (ie. 85 percent of 2008 assessed value) through December 15, 2010 in order to accommodate those lessees that timely submitted their information to the Authority.

If you have questions or are unclear on this process, please contact the Authority at pkencroachments@brazos.org or 254-761-3100 or Jarrod Cox at Patterson PK Land Partnership at 817-784-2065 or 800-800-9975.

Patterson PK Land Partnership

Brazos River Authority