

# **Sabine River Authority, State of Louisiana**

## **Policy for Administering the Shoreline Management Plan (SMP) – Encroachments**

**Adopted by SRA Board of Commissioners: \_\_\_\_\_**

### **Introduction**

The Federal Energy Regulatory Commission (FERC) issued a 50-year license for the Toledo Bend Project, P-2305 (Project) in August 2014. The Shoreline Management Plan (SMP) included as part of the license broadly outlines how the co-licensees of the Project, the Sabine River Authority, State of Louisiana (SRALA) and Sabine River Authority of Texas (together with SRALA, SRAs) will manage the Project shoreline. The SRALA Board of Commissioners previously adopted the FERC license and the SMP, which require SRALA to manage the shoreline in a manner that is consistent with license requirements and Project purposes and addresses the needs of the public.

The Project boundary incorporates approximately 550 miles of shoreline in the State of Louisiana. Although the Project boundary generally runs along the 175' mean sea level (msl) contour, it actually is established by a metes and bounds survey and in some areas the Project boundary encompasses lands above 175 feet msl. In addition, the varying topography along the shoreline makes it difficult to determine the exact location of the Project boundary. For these reasons, SRALA recognizes that adjacent landowners may be unaware of the Project boundary in some areas and inadvertently erected dwellings and other structures that encroach upon SRALA land within the Project boundary.

The SMP describes the SRAs' general treatment of existing encroachments (unpermitted or unauthorized uses or structures) within the Project boundary. The SMP also includes SRALA's "Private Use and Commercial Use Facility Policies and Guidelines," (Guidelines) which provide SRALA's specific procedures for addressing such encroachments. FERC approved the SMP but also required the SRAs to survey existing encroachments and produce a plan to assess and resolve the encroachments. The SRAs submitted an Existing Encroachment Identification Plan (EEIP) in response to this requirement and FERC approved the plan in July 2015.

The SMP is the document governing encroachments. This SRALA Encroachment Policy summarizes the SMP with respect to existing encroachments to help SRALA implement its shoreline management obligations under the FERC license, including the SMP and EEIP. This Encroachment Policy will direct SRALA staff on dealing equitably and consistently with encroachments for the term of the license. In the event that this Encroachment Policy conflicts with the SMP, the provisions of the SMP will control.

### **FERC License Requirements Governing Encroachments**

The SRAs have limited authority under the license to approve certain minor activities and uses of Project lands without the need for prior FERC approval. The SMP identifies the types of regulatory consultation and approvals needed for various types of shoreline development activities. Uses and occupancies that exceed the limits set forth in the SMP (such as conveyances of five acres of land or less that is at least 75 feet from Project waters at normal elevation), require prior notification to FERC. More significant uses of Project lands that exceed these criteria require FERC pre-approval through an application for non-Project use of Project lands. All uses of Project land, whether authorized directly by SRALA or approved by FERC, must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

Section 6.3.1 of the SMP provides an abbreviated process for addressing certain minor encroachments on a case-by-case basis, either by directing the owner to remove the encroachment and restore the site, or by authorizing certain encroachments through SRALA's permitting processes. To receive authorization for an existing encroachment in Louisiana, the SMP provides that it must meet two criteria:

1. The encroachment must have existed during the original term of the Project license (on or before September 30, 2013); and
2. The majority of the encroachment must be located above the 175-foot msl contour and at least 50 feet (measured horizontally) from the conservation pool level of 172 feet msl.

Encroachments that do not meet these criteria must be removed or authorized through the lengthier authorization processes outlined in the SMP requiring notice to or approval by FERC. This is described in section 6.3.2 of the SMP.

The EEIP requires the SRAs to conduct an annual encroachment audit on a minimum of 225 miles of Project shoreline, and assess any encroachments under the permitting and land use provisions of the SMP. Following each year's audit and assessment, the SRAs must file a report with FERC detailing the number and types of existing encroachments found, and describe how any encroachments identified during the previous year were resolved. These reporting obligations begin in 2017 and continue through 2021.

### **Implementation of FERC Requirements on Encroachments**

SRALA's Guidelines at section 1.2.10 set forth its policies and procedures for implementing the requirements of the FERC license and SMP with respect to encroachments. The relevant section of the Guidelines is attached as Appendix A, and summarized here:

**Lessee, Permittees, and Landowner Responsibility.** Lessees and permittees are responsible to ensure that their use and occupancy of SRALA lands do not encroach beyond the leased or permitted premises. Similarly, adjacent landowners are responsible to ensure that dwellings, buildings, and other structures and uses do not encroach on SRALA lands.

**General Policy Requiring Removal.** SRALA generally requires removal of all encroachments within the FERC Project boundary. The costs and expenses associated with removal and remediation of the encroachment are the sole responsibility of the owner. SRALA's policy is to cure any encroachments within the Project Boundary in a manner that balances the expense and challenge of removing encroachments against SRALA's FERC license obligations to ensure public access and protect the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project.

**Notification by SRALA.** In the event that SRALA discovers an encroachment within the Project boundary, whether through implementation of the EEIP or otherwise, SRALA will notify the owner in writing and direct the owner to remove the encroachment within a reasonable period not to exceed 90 days.

**Owner Request for Authorization of Encroachment and Improvement Survey.** If the owner of the encroachment believes removal is unnecessary or impractical, the owner may request authorization to register the encroachment from SRALA. The current standard form application with terms is attached as Appendix B. The request must include an improvement survey, depicting the location of: (1) the encroaching structure or use; (2) the FERC Project boundary and SRALA property line; and (3) the 172-foot-msl and 175-foot-msl contour lines. SRALA reserves the right to require additional information about the encroachment, including but not limited to the location of any sewer facilities.

**SRALA Authorization of Minor Encroachment and Issuance of Permit.** Upon receipt of a request for authorization and survey, SRALA will determine whether authorizing the encroachment would be consistent with license requirements, preserve public access and use of the Project, and meet the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. SRALA will permit the encroachment under the abbreviated procedures set forth in section 6.3.1 of the SMP and in accordance with SRALA's Guidelines and issue the appropriate use authorization if: (1) the encroachment existed on or before September 30, 2013; and (2) the majority of the encroachment is located above the 175-foot msl contour and at least 50 feet (measured horizontally) from the conservation pool level or 172 feet msl.

**FERC Notification or Approval.** Authorization of encroachments that are not within the scope of the criteria above (for example, for encroachments that did not exist on or before September 30, 2013, or for which the majority is not located above the 175-foot msl contour and is not at least 50 feet from the conversation pool level of 172 feet msl), do not qualify for the streamlined approval procedures set forth in section 6.3.1 of the SMP. Instead, they require FERC prior notification or approval. A chart depicting the process for obtaining authorization for certain encroachments that do not qualify for the process in section 6.3.1, including for conveyances of land five acres or less that is located at least 75 feet from the edge of the reservoir at normal conservation pool, is set forth in Figure 4-3 of the SMP and attached to this Encroachment Policy as Appendix C. A description of the approval process as set forth in the FERC Standard Land Use Article also is included in Appendix A to the SMP, and excerpted in this Encroachment Policy as Appendix D.

**Authorization Provisions.** Upon approval, SRALA will authorize the encroachment and grant appropriate rights for the encroachment. For minor encroachments falling within the scope of 6.3.1 of the SMP, that authorization typically will be an encroachment permit and: (1) require the owner to indemnify SRALA and hold it harmless; (2) require the owner to maintain appropriate insurance; (3) require the owner to agree SRALA has all rights to operate the Project for all Project purposes; and (4) include any other provisions deemed necessary or appropriate by SRALA. A complete list of current encroachment permit provisions is included in Appendix B.

**If a SRALA encroachment permit will not meet the requirements of a lending institution, then a right-of-way or easement running concurrent with the term of the loan may be requested. This would include the same SRALA requirements of the encroachment permit and the additional requirements of those encroachments outside the scope of the abbreviated process of section 6.3.1 of the SMP that require prior FERC notification or approval. As reflected in Appendices C and D, these procedures are more time consuming and costly, and may entail consultation with interested federal and state resource agencies, and review and/or approval of an application by FERC.**

It is the policy of SRALA to not convey fee title, only to convey use through right-of-way or easement for the term of the loan, and then the encroachment can be permitted for the remaining life of the structure.

**Denial of Encroachment Authorization.** In the event SRALA or FERC denies a request to authorize an encroachment, SRALA will notify the owner of the encroachment in writing and direct the owner to remove the encroachment within a reasonable period, not to exceed 90 days.

**Appendix A**  
**Sabine River Authority, State of Louisiana**  
**Excerpt of Private Use and Commercial Use Facility Policies and Guidelines**

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**Section 1.0 Shoreline Management Policies for Toledo Bend Project Shoreline Lands**  
**Section 1.2 Land Management Policies**

*1.2.9 Encroachments, Generally*

Lessees and permittees are responsible to ensure that their use and occupancy of SRA-LA lands do not encroach beyond the leased or permitted premises. In addition, adjoining landowners are responsible to ensure that dwellings, buildings, and other structures and uses do not encroach on SRA-LA lands. Any encroachment issues must be resolved prior to SRA-LA issuing any permit for a proposed structure or activity. SRA-LA reserves the right to require, at the sole expense of the lessee, permittee, or land owner, removal of any and all encroachments. Costs and expenses associated with remediation of an encroachment are the responsibility of the permittee, lessee, or land owner of the encroaching structure or activity.

*1.2.10 Encroachments within FERC Project Boundary*

Leaseback agreements and permits issued by SRA-LA do not authorize the lessee or permittee to construct any dwelling or other habitable structure within the FERC Project Boundary for the Toledo Bend Project. In addition, any structure or groundbreaking activity, except as provided in Section 1.2.2 of these Policies and Guidelines, must be approved and permitted by SRA-LA. For these reasons, it is the policy of SRA-LA to cure any encroachments within the Project Boundary in a manner that balances the expense and challenge of removing encroachments against SRA-LA's FERC license obligations to ensure public access and protect the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project. The following procedures apply to the resolution of encroachments on SRA-LA's lands within the Project Boundary.

*1.2.10.1 Removal of Encroachment*

As a general rule, SRA-LA requires removal of all encroachments on its lands within the FERC Project Boundary for Toledo Bend Project. Upon discovery of an encroachment, SRA-LA will notify the owner of the encroachment, in writing, directing the owner to remove the encroachment within a reasonable period, not to exceed 90 days. If the owner of the encroachment believes additional time for removal is warranted, it may seek an extension of time to remove the encroachment, which SRA-LA may grant at its sole discretion, upon a showing of good cause.

*1.2.10.2 Authorization of Limited Encroachments*

If the owner of an encroachment believes that removal of the encroachment is unreasonable or impractical, it may seek authorization and accompanying appropriate interests from SRA-LA for the encroachment, as follows:

- (a) **Improvement Survey Required.** The owner of the encroachment must prepare an improvement survey and submit it to SRA-LA with its request for authorization and accompanying interests from SRA-LA. At a minimum, the improvement survey must depict the location of:
  - (1) the encroaching structure or use,
  - (2) the FERC Project Boundary for Toledo Bend Project and SRA-LA property line, and
  - (3) the 172-foot-msl and 175-foot-msl contour lines.
- (b) **Unilateral Authorization by SRA-LA.** Upon receipt of a request to authorize an encroachment with accompanying improvement survey, the SRA-LA will determine whether authorizing the encroachment would:
  - (1) be consistent with FERC license requirements;
  - (2) preserve public access and use at the Toledo Bend Project; and

(3) meet the electric generating, water supply, recreational, historical, and environmental values at the Toledo Bend Project.

If the requested encroachment approval meets each of these criteria, SRALA will approve limited encroachments, without prior resource agency consultation or FERC review and/or approval, so long as:

- (1) The encroachment existed during the original term of the Toledo Bend Project license, i.e., on or before September 30, 2013; and
- (2) The majority of the encroachment is located above the 175-foot msl contour and at least 50 feet (measured horizontally) from the Toledo Bend conservation pool level of 172 feet msl.

(c) Authorization Following Consultation and/or FERC Approval. All encroachments not within the scope of Section 1.2.10.2(b) must be approved in accordance with Section 4.0 of the SMP and SRA-LA's accompanying Policies and Guidelines.

(d) Authorization and Rights. Upon approval, SRA-LA will authorize the encroachment and grant appropriate rights for the encroaching structure. Any instrument of conveyance will:

- (1) require the owner to indemnify SRA-LA and hold it harmless;
- (2) require the owner to maintain appropriate insurance for the structure and personal property therein;
- (3) retain sufficient flowage rights to SRA-LA, as well as rights to operate the Toledo Bend Project for all Project purposes; and
- (4) include any other provisions deemed necessary or appropriate by SRA-LA.

(e) Denial of Encroachment Authorization. In the event SRA-LA or FERC denies a request to authorize an encroachment, SRA-LA will notify the owner of the encroachment, in writing, directing the owner to remove the encroachment within a reasonable period, not to exceed 90 days. If the owner of the encroachment believes additional time for removal is warranted, it may seek an extension of time to remove the encroachment, which SRALA may grant at its sole discretion, upon a showing of good cause.

#### *1.2.11 Boundary Line Disputes Among Lessees and Permittees*

Disputes regarding a common boundary line between leaseback and permitted parcels that cannot be agreed to by all concerned parties will be resolved by the SRA-LA, at its sole discretion. Costs and expenses associated with the resolution of boundary line disputes, including but not limited to surveys, are the sole responsibility of the disputing parties, and not SRA-LA.

#### *1.2.12 Habitation*

Except as provided in Section 1.2.10 of these Policies and Guidelines, leased and permitted lands owned by SRA-LA and within the FERC Project Boundary may not be used for permanent habitation by any person(s).

**Appendix B**  
**Sabine River Authority, State of Louisiana**  
**Application to Register Existing Encroachment Upon Lands Owned by SRA**

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**Sabine River Authority, State of Louisiana**  
**SHORELINE DEPARTMENT**  
**15091 TEXAS HWY.**  
**MANY, LA 71449**  
**318-256-4112**

**APPLICATION TO REGISTER EXISTING ENCROACHMENT**  
**UPON LANDS OWNED BY SRA**

Attach Toledo Bend Reservoir vicinity Map with location of Encroachment designated.

Attach a stamped improvement survey that includes:

1. The Toledo Bend Project taking line and SRA property line
2. The 175 ft. contour line
3. The 172 ft. contour line
4. Square footage of encroachment

Attach Photos of Encroachment

List any Permit Numbers issued to tract: \_\_\_\_\_

**FULL AND COMPLETE NAME OF APPLICANT(S):**

(For title purposes, the Permit will only be issued to the individuals named on the tract's deed of conveyance)

**MAILING ADDRESS:** \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

PHONE: home \_\_\_\_\_ work \_\_\_\_\_ cell \_\_\_\_\_

Email \_\_\_\_\_

Legal Description of Applicant's land adjacent to encroachment on SRA property:

\_\_\_\_\_ Section \_\_\_\_\_, Township \_\_\_\_\_ N, Range \_\_\_\_\_ W in \_\_\_\_\_

Parish OR Subdivision \_\_\_\_\_ Lot \_\_\_\_\_

Block \_\_\_\_\_ in \_\_\_\_\_, Louisiana

**PHYSICAL OR LAKE ADDRESS:** \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**I hereby make application for a permit to register an Existing Encroachment as follows:**

1. Nature of Existing Encroachment: \_\_\_\_\_

2. Encroachment constructed of: \_\_\_\_\_

3. Square footage of encroachment: \_\_\_\_\_

4. Permit for \_\_\_\_\_ years (length of mortgage or estimated life of structure) as long as all rules and regulations of Encroachment Policy are complied with or the facility has been removed.

5. Date encroachment was built (must be prior to **Sept. 30, 2013**): \_\_\_\_\_

6. \_\_\_\_\_ **New PERMIT** or \_\_\_\_\_ **Transfer** of PERMIT from \_\_\_\_\_

(If requesting to transfer PERMIT, include copy of existing PERMIT as recorded in the Clerk of Court records and all the requirements of the Encroachment Policy have been met.)

\$ \_\_\_\_\_ **APPLICATION FEE SUBMITTED:** \_\_\_\_\_

\$ \_\_\_\_\_ Annual Encroachment Fee (July 1- June 30)

Applicant verifies that he/she has read the above and foregoing provisions, together with the Rules and Regulations and Instructions mentioned herein, and fully understands them, is aware of their contents and agrees to be bound by said terms and conditions.

\_\_\_\_\_  
Signature of Applicant Date

**TERMS AND CONDITIONS**

In consideration of the Sabine River Authority (SRA) granting a PERMIT for an Existing Encroachment to the Applicant, Applicant hereby consents and agrees to the following:

1. Applicant agrees to abide by the provisions of the Shoreline Management Plan (SMP) and any additional rules and policies as adopted by the SRA Board of Commissioners, which are incorporated and made a part of this agreement.
2. Applicant acknowledges that a PERMIT for an Existing Encroachment may be revoked at any time by SRA.
3. If SRA does, in fact, cancel said PERMIT of Applicant, Applicant shall be wholly responsible for all costs, including, but not limited to, costs of removal and reclamation, any court costs and attorney fees incurred by the SRA for removal of said structure from SRA’s property.
4. Applicant agrees to maintain the existing encroachment in a safe and orderly condition and not to enlarge the encroachment.
5. Applicant, his agent, heirs, representatives or assigns, agree that actions taken on said existing encroachment on SRA property shall be at his own risk, and SRA is hereby released from any and all claims for injuries or damages incurred while on SRA’s premises. Issuance of a PERMIT is a revocable privilege and does not convey any right of ownership or control of the permitted lands. Applicant, his heirs, representatives or assigns agree that they will indemnify and save harmless SRA against any and all claims for damages to property, or injuries received by anyone, as a direct or indirect result from the Applicant’s encroachment upon SRA’s property, arising either from alleged or in fact negligence of Applicant, his agents, representatives, servants or guests; and Applicant further agrees to defend any and all suits filed or prosecuted against SRA, and to pay any and all judgments, together with court costs, attorney fees and all other expenses of defending such suits.
6. Applicant grants permission to SRA, through its authorized employees, to physically inspect Applicant’s encroachment when necessary and reasonable and to enter upon Applicant’s property for the purpose of gaining access to the existing encroachment.
7. Applicant agrees to cancellation of the current leaseback agreement, if applicable, and to execute an agreement to run concurrent with the PERMIT terms.
8. Applicant agrees to provide liability insurance with SRA named as an additional insured in the amount of \_\_\_\_\_ and to maintain insurance for the term of the PERMIT. Failure to maintain and provide SRA with current proof of insurance is grounds for revocation of PERMIT.
9. Applicant agrees to file in the Parish Clerk of Court’s records a copy of this permit, a copy of the improvement survey, a copy of the new leaseback agreement and provide a certified copy of filing to SRA.
10. Applicant agrees to promptly pay the annual fee imposed by SRA for the existing encroachment. The application fee, proof of insurance, and first year’s annual fee shall be submitted prior to the issuance of said PERMIT. ANNUAL FEE: \_\_\_\_\_

Applicant verifies that he/she has read the above and foregoing provisions, together with the Rules and Regulations and Instructions mentioned herein, and fully understands them, is aware of their contents and agrees to be bound by said terms and conditions.

\_\_\_\_\_  
Signature of Applicant \_\_\_\_\_ Date

The completed Application for PERMIT to Register Existing Encroachment, the application fee, and all other requested documentation should be forwarded to the address at the top of this Application.

**Applicant's Checklist:**

1. Property Appraisal containing:
  - a. Valuation of the property upon which the existing encroachment is located;
  - b. legal description of property upon which existing encroachment is located;
2. Property Deed evidencing applicant's ownership of property adjacent to the existing encroachment.
3. Improvement Survey evidencing encroachment and containing the following items:
  - a. the Toledo Bend Project taking line and SRA property line
  - b. the 175' contour
  - c. the 172' contour
  - d. the square footage of the encroachment (this includes all structures and cement/asphalt areas);
  - e. Photographs of encroachment
4. Completed application with fee of \$100.00. Fee must be submitted with Application.
5. Copy of existing PERMIT (only if Applicant is requesting a transfer).
6. Copy of the leaseback agreement for the subject area, if applicable. This documentation can be found in your deed or it may be in an additional document.

**Instructions for PERMIT to Register Existing Encroachment**

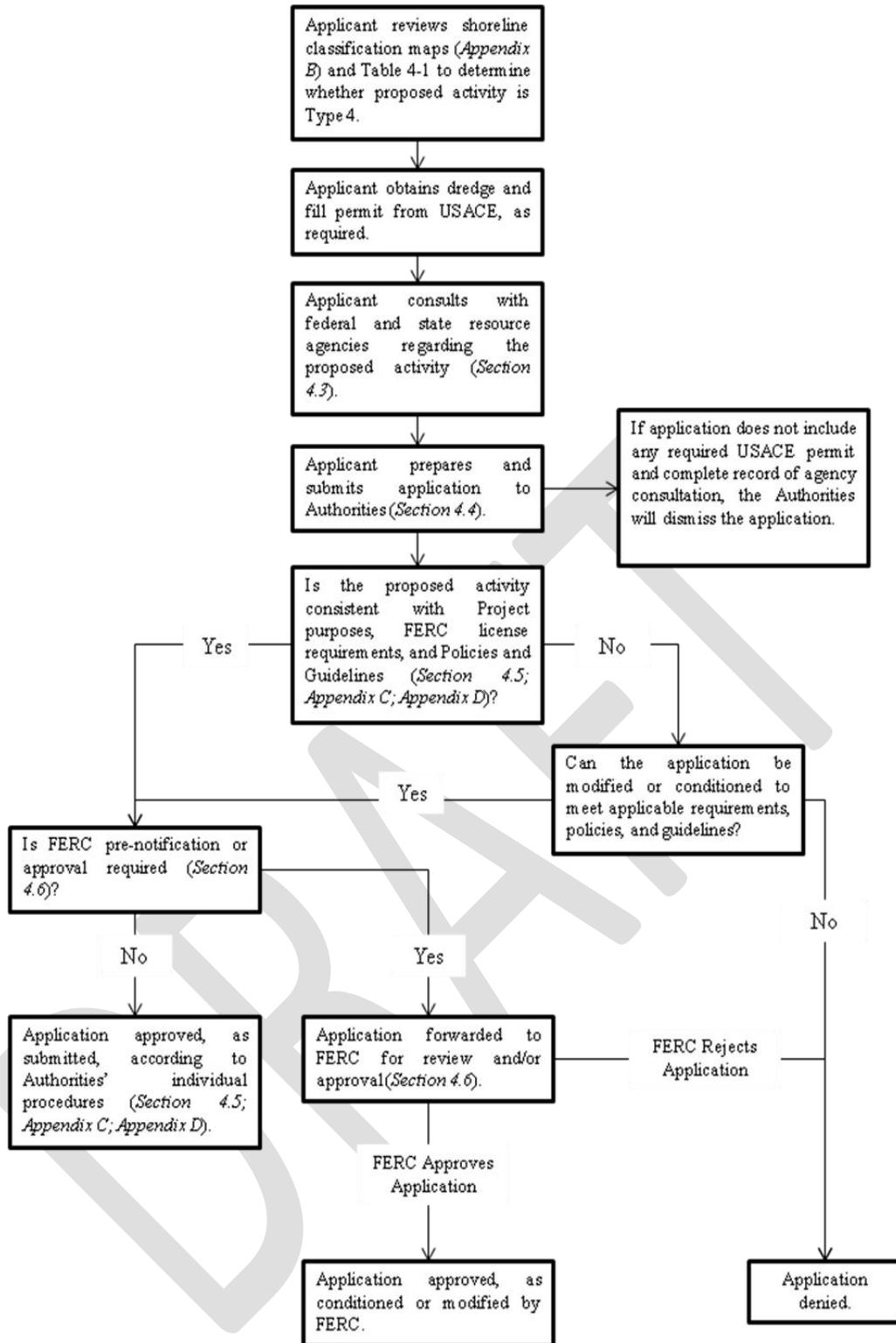
A PERMIT to register existing encroachment must be obtained for encroachments with documented proof it was built prior to **Sept. 30, 2013**, upon property owned by SRA. The applicant should fully review the rules prior to submitting their application. These rules are contained in the Shoreline Management Plan and any additional rules and policies as adopted by the SRA Board of Commissioners. The SMP is posted on the SRA website at [www.srala-toledo.com](http://www.srala-toledo.com).

1. Encroachments are unpermitted habitable buildings, either permanent or temporary structures or sewer facilities located on or attached to SRA lands.
2. To be eligible for a PERMIT, the encroachment must have been **in existence prior to Sept. 30, 2013**. Further, a PERMIT will only be issued to improvements related to residential property.
3. Applicant must be the adjacent landowner to SRA's property where the existing encroachment is located.
4. The amount of SRA land upon which the encroachment is located will determine the yearly fee for the encroachment. The square footage of the encroachment as determined by the survey times \_\_\_\_\_ per year. (Square foot or portion thereof \_\_\_\_X \_\_\_\_ = \_\_\_\_)
5. A PERMIT to register existing encroachment must be approved by the SRA Board of Directors.
6. A PERMIT to register existing encroachment shall not exceed 30 years, may be assigned upon approval by the SRA Board of Directors, and will transfer to the heirs, legatees and devisees upon the death of the holder.
7. The PERMIT does not give the holder a right to increase the existing encroachment, however, the holder must maintain the existing encroachment in a safe manner.
8. Violation of the terms and conditions of the PERMIT or the failure to pay any amounts due SRA shall subject the PERMIT holder to cancellation of the PERMIT and other legal or administrative action or both.
9. Upon approval by the SRA Board of Directors, Applicant will be required to submit the first year's annual fee prior to issuance of the PERMIT.
10. Transfers of a PERMIT will follow the same procedure for a new PERMIT, however, Applicant should contact SRA prior to obtaining a new appraisal or new survey. SRA may waive said requirements in its discretion related to the transfer of a PERMIT.
11. Applicant is responsible for obtaining any necessary approvals required by other local, state or federal agencies, including but not limited to the U.S. Army Corps of Engineers, U. S. Fish & Wildlife Service for Endangered Species Act, and the Louisiana State Historic Preservation Officer for National Historic Preservation Act compliance. Applicant is also advised to contact the local floodplain administrator.
12. Any additional cost to SRA associated with this PERMIT will be passed on to Applicant. Submit application fee and proof of liability insurance with PERMIT application.
13. Questions should be addressed to SRA's Shoreline department at the address above or by phone.

**Appendix C**  
**Figure 4-3 of the Shoreline Management Plan**  
**Permit Application Process for Type 4 Activities**

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**FIGURE 4-3  
PERMIT APPLICATION PROCESS FOR TYPE 4 ACTIVITIES**



**Appendix D**  
**Sabine River Authority, State of Louisiana**  
**Excerpt of Appendix A of the Shoreline Management Plan,**  
**FERC Standard Land Use Article**

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(d) The licensees may convey fee title to, easements or rights of way across, or leases of project lands for:

....

(7) other uses, if:

- (i) the amount of land conveyed for a particular use is five acres or less;
- (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and
- (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the licensees must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensees to file an application for prior approval, the licensees may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

(1) Before conveying the interest, the licensees shall consult with Federal and State fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensees shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved report on recreational resources of an Exhibit E; or, if the project does not have an approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land:

- (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use;
- (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and
- (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensees to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.