

ROUGH RIVER LAKE FLOWAGE EASEMENT ENCROACHMENT RESOLUTION

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US Army Corps
of Engineers®



WHY ARE WE HERE?

- Summarize the Flowage Easement Encroachment Resolution Plan.
- Identify the impacts to landowners.
- Outline resolution options.
- Identify what must be provided to resolve the encroachment on Flowage Easement.
- Discuss impacts of WRDA 2018 (section 3021).
- Discuss the ASA(CW) Guidance Memo.



WHEN WAS FLOWAGE EASEMENT PURCHASED?



In the mid to late 1950's the U.S. Army Corps of Engineers (Corps) acquired 319.8 miles of flowage easement in Breckinridge, Grayson and Hardin Counties.



WHY AND HOW WAS FLOWAGE EASEMENT PURCHASED?



- Provide for additional storage during high water events.
- Authorized to acquire easement up to approximately 534 ft. contour.
- Flowage easement was purchased and described using tangent lines.



WHAT ARE THE FLOWAGE EASEMENT RESTRICTIONS?



Grants the United States the right to:

- Occasionally overflow, flood, and submerge the land.
- Provide that no structure for human habitation shall be constructed on the lands.
- No structure of other types except farm fences shall be constructed or maintained on the lands without the government's approval.



WHY ARE HOMES ON FLOWAGE EASEMENT?



- Prior to the record 2011 flood event, the upper guideline for acquired flowage easement was believed to be at or near the 534 ft. contour, as authorized.
- As a result of using the tangent lines for legal descriptions, many areas of flowage easement were acquired above the 534 ft. contour and below the 534 ft. contour.
- The flowage easement boundary is not marked/monumented.
- Only method for identification of the flowage easement on the ground is with a survey of the deeded flowage easement.
- Deeds are subject to existing easements, however, easement descriptions do not appear on most private property deeds.
- Most financial institutions' title searches only go back 30 years.



SURVEYS



- In 2012, a landowner produced a subdivision development survey that identified the flowage easement line in their area as being near the 520 ft. contour. This prompted the Corps to conduct a survey to verify.
- From 2013 thru 2018 the Corps conducted surveys of the deeded flowage easement boundary.



RESULTS OF SURVEYS

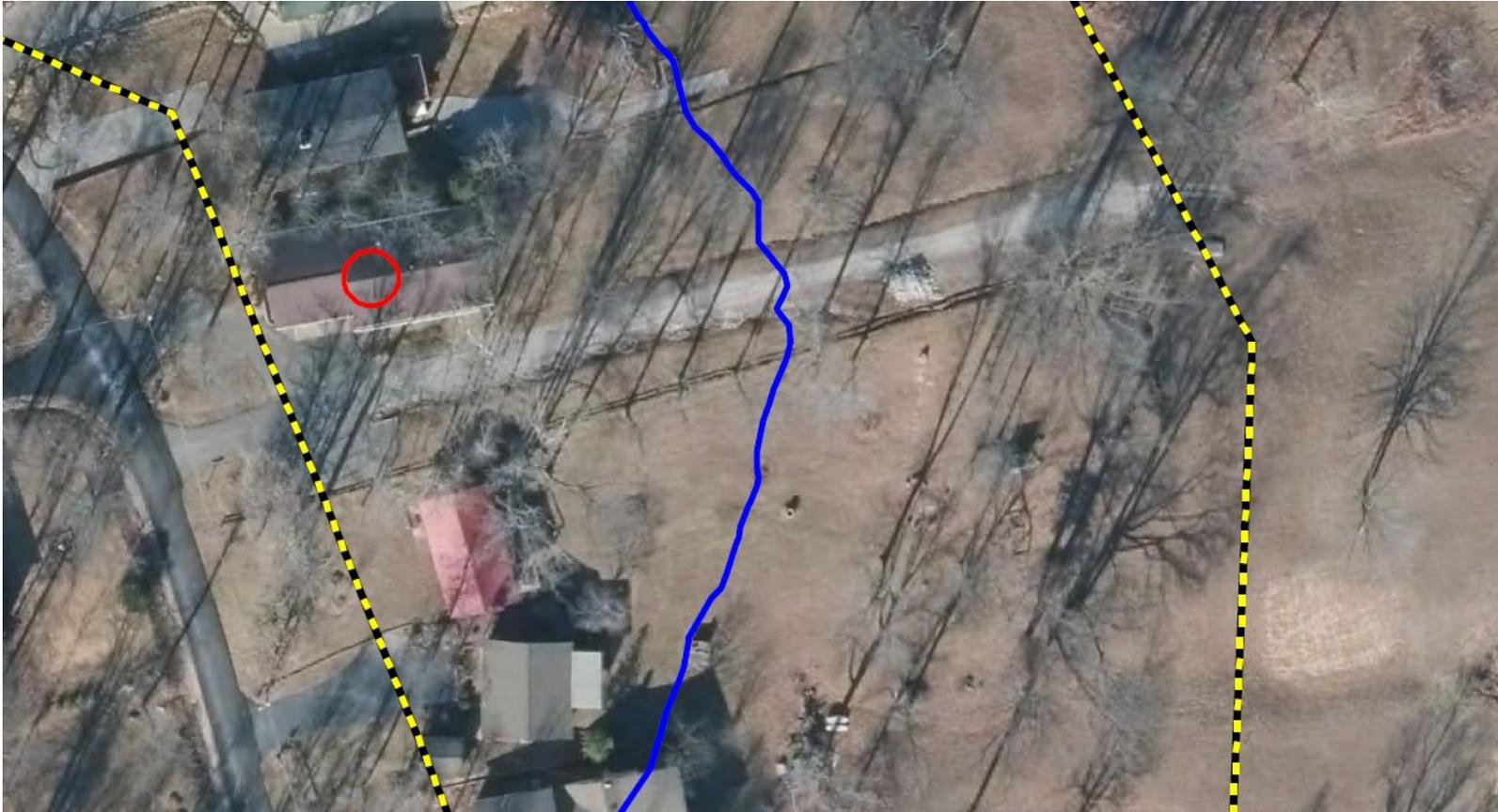


- As a result of the surveys, habitable structures have been identified as encroaching on flowage easement.

- Encroachments have been categorized into 4 Scenarios.
 - Scenario A
 - Scenario B
 - Scenario C
 - Scenario D (will not be addressing at this meeting)

- Landowners who do not have an encroachment but have flowage easement on their property have also been notified.

Scenario A



- Flowage easement is above elevation 534 ft.
- Structure is above 534 ft. contour.

Legend

 Deeded Flowage Easement Line

 534 Contour Elevation

SCENARIO DEFINITIONS



Scenario B

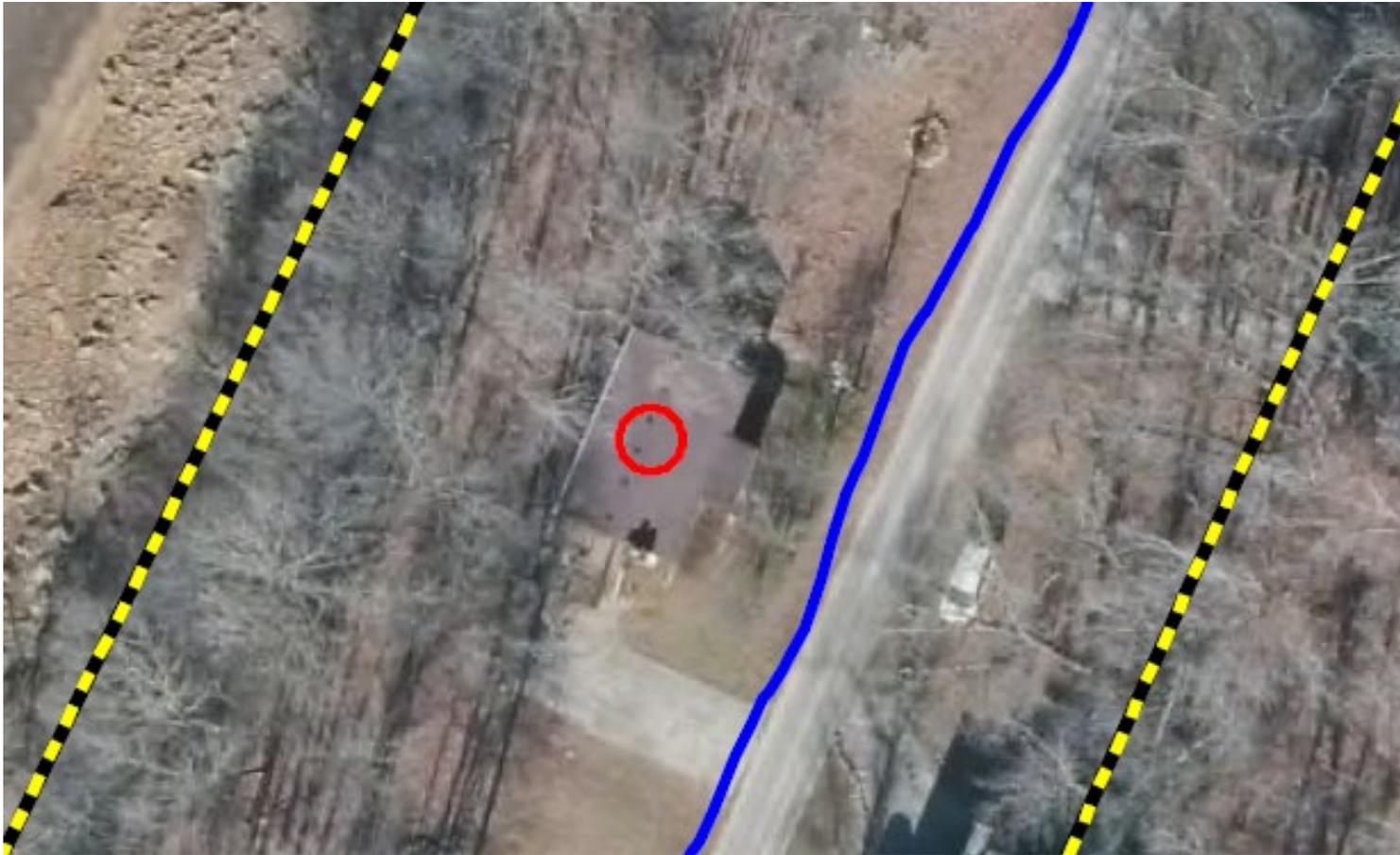


- Flowage easement is above elevation 534 ft.
- A portion of the structure is below 534 ft. contour.

Legend

-  Deeded Flowage Easement Line
-  534 Contour Elevation

Scenario C



- Entire structure(s) is/are on flowage easement.
- Entire structure(s) is/are below 534 ft. contour.

Legend

 Deeded Flowage Easement Line

 534 Contour Elevation



WRDA 2018 (SECTION 3021)



- Water Resources Development Act of 2018(WRDA 2018)
- Signed into law as the America's Water Infrastructure Act by President Trump on October 23, 2018.
- Prohibits the U.S. Army Corps of Engineers from collecting administrative fees for the processing of landowners flowage easement encroachment resolutions.
- Allowed for the return of any administrative fees already paid by landowners.



20 JUNE 2019 ASA(CW) GUIDANCE MEMO



- Assistant Secretary of the Army for Civil Works – ASA(CW)
- Additional Guidance for Rough River Lake Easement Encroachment Resolution memo was signed by the ASA(CW) on 20 June 2019.
- Directed that no flowage easement rights shall be extinguished by the U.S. Army Corps of Engineers (Corps).
- Directed that the 3 January 2017 Rough River Lake Encroachment Resolution Plan be followed with two exceptions:
 - The Corps shall not charge or collect any administrative fees from property owners and shall refund any administrative fees paid by property owners for encroachment resolution; and
 - For scenario A properties, the Corps shall only process a release of the human habitation restriction above the 534 ft. contour.



WHAT DOES A LANDOWNER NEED TO DO TO RESOLVE THE ENCROACHMENT?



Scenario A landowners must provide:

- Copy of a stamped survey plat prepared by licensed surveyor that identifies the property boundaries to include Northing and Easting coordinates. (Subdivision plat DOES NOT meet this requirement.)
- Verify location and elevation of septic tank and KY Division of Health verification of functioning system.
- Copy of recorded property deed.
- Copy of the Title Search (if one was done).
- Signed Right-of-Entry for Survey & Exploration.
- Submit all documents along with a letter requesting the release of the human habitation restriction above 534 ft. contour to the Rough River Lake Project Manager.



WHAT DOES A LANDOWNER NEED TO DO TO RESOLVE THE ENCROACHMENT?



Scenarios B and C landowners must prove:

- There is no risk to human health and safety.
- You have adequate notification of rising waters.
- You have a dry way out.



WHAT DOES A LANDOWNER NEED TO DO TO RESOLVE THE ENCROACHMENT?



Scenarios B and C landowners must provide:

- Copy of a stamped survey plat prepared by licensed surveyor that identifies the following:
 - The property boundaries to include Northing and Easting coordinates of the property corners, foundation of the habitable structure(s), and septic tank(s).
 - Location of 534 ft. contour across the property.
 - Location of the foundation (current footprint) of the habitable structure(s) and septic tank(s).
 - Elevation of the main living floor of the habitable structure(s).



WHAT DOES A LANDOWNER NEED TO DO TO RESOLVE THE ENCROACHMENT?



Scenarios B and C landowners must provide (Cont.):

- Copy of recorded property deed.
- Copy of the Title Search (if one was done).
- Photos of habitable structure (all four sides).
- Signed Right-of-Entry for Survey & Exploration.
- Submit all documents along with a letter requesting the release of the human habitation restriction on the foot print of the structure to the Rough River Lake Project Manager.



WHAT HAPPENS ONCE YOU SUBMIT YOUR PACKAGE?



Rough River Lake Project Manager will:

- Review your package to ensure all necessary documents have been received.
- Conduct a site visit of your property to ensure it matches what was submitted.
- Identify any risk to human health or safety.
- Prepare supporting documentation for submission to the Green River Operations Manager for review and forwarding to the Louisville District Chief of Operations.



WHAT HAPPENS ONCE YOU SUBMIT YOUR PACKAGE?



Louisville District Chief of Operations will:

- Review request and recommendation.
- Forward signed recommendation to the Louisville District Real Estate Division.



WHAT HAPPENS ONCE YOU SUBMIT YOUR PACKAGE?



Louisville District Real Estate (RE) Division will:

- RE will review entire package.
- RE will obtain any missing info from the landowner to include any missing survey data.
- A legal description will be prepared and an environmental completed.
- Louisville District Office of Counsel will prepare a deed and obtain landowner signature (s).
- RE will forward a partially signed deed thru the USACE Lake and Rivers Division to USACE Head Quarters (HQ) for execution of the deed.
- Upon return of the executed deed RE will record the deed at the respective County Clerk's office.
- RE will return a copy of the recorded deed to the landowner.



QUESTIONS?

Flowage Easement Encroachment Resolution Plan, this presentation, and landowner checklist will be available at www.lrl.usace.army.mil.