

Part 504 – Project Installation

Subpart A – General Provisions

504.3 Real Property Rights

C. Requirements

- (1) Dams
 - (i) NRCS shall provide the real property rights work map to the SLO prior to landrights acquisition as per NWPM, Part 503, Subpart A, Section 504.3(B)(3). The real property rights work map shall show the areas where landrights are required and shall show areas where water may reach an elevation equal to or greater than the elevations occurring without the dam in place.
 - (ii) For areas upstream of the dam, the STC shall inform the SLO that water may reach an elevation equal to or greater than the top of the dam. The SLO should be encouraged to acquire landrights upstream of the dam for the entire area below the elevation of the maximum water surface during passage of the probable maximum flood (PMF) event. As a minimum, landrights must be acquired to an elevation no lower than the maximum water surface elevation during passage of the 100-year, 24-hour storm through the dam or the minimum elevation determined to be appropriate and approved in the watershed plan, whichever is higher.
 - (iii) For areas downstream of the dam, landrights should be acquired for the entire area where water elevations are higher for the dam in-place condition than for elevations occurring without the dam in place. See NWPM, Part 504, Subpart A, Section 504.3 C(3)(i).
 - (iv) For low and significant hazard class dams, the STC must consider existing and future downstream development, including controls for future development. To account for an unanticipated change in future development, the STC shall verify that the SLO has completed one of the following prior to the construction of significant or low hazard potential dams:
 - For new or rehabilitated dams, certification that adequate controls on future development within the breach inundation area (as defined in NEM, Part 520, Subpart C 520.28) are in force. The controls must limit improvements within the breach inundation area such that the hazard potential class does not increase during the evaluated project life.
 - For new dams only, acquire adequate landrights to modify the footprint of the dam and auxiliary spillway to allow rehabilitation to a high hazard potential dam if needed at a future date.
 - (v) The landrights must include a prohibition on future construction of inhabitable dwellings below the elevation of the acquired landrights. The potential risks and liability the SLO and landowners may be assuming for selecting landrights elevations lower than elevation of the PMF must be discussed with the SLO, disclosed to the public, and documented for future reference. Documentation must be in either the real property rights work map for that dam (NWPM Part 504, Subpart A, Section 504.3 B(3), the workplan or supplement, or an exchange of correspondence.
 - (vi) On privately owned land, real property rights must be acquired by one of the following items of instruments.
 - Fee simple title or term easements for at least the length of the period of analysis are required for the dam, spillways, ingress and egress routes, and pool areas.
 - Flowage easements in lieu of fee simple title may be obtained for the flood pool (temporary water storage), areas of spillway discharge, and areas needed only for construction or disposal of spoil.

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- Temporary easements may be obtained in lieu of permanent rights-of-way where needed to install measures to mitigate unavoidable adverse landscape resource effects.
- (vii) On publicly owned lands, the SLO must acquire special use or occupancy permits from the appropriate land-managing agency during detailed planning and before implementation of structural works of improvement are undertaken. The SLO must apply for permits with sufficient lead time to ensure an orderly installation of the project.
- (viii) Prior to obligating funds for high hazard class dams, the STC must verify in the project administrative record that the SLO has prepared a current emergency action plan consistent with NEM, Part 520, Subpart C, Section 520.27 and NOMM, Part 500, Subpart F.
- (2) Channels
- (i) The STC must ensure that all of the following are included in the minimum area of real property rights to be acquired for the channel work:
- Areas within the channel's designed top width and berm width necessary on each channel bank to ensure stability of the channel, channel banks, and side slopes.
 - Areas needed for installation, inspection, design, operation and maintenance, ingress and egress, and disposal and diversion of water.
 - Areas needed for environmental protection features.
 - Other areas adversely affected by changed stream flow characteristics or induced flooding during the passage of all floods up to the 100-year, 24-hour storm.
- (ii) Fee simple title or term easements for the period of analysis must be acquired for the channel itself, appurtenances, any needed diversions, and areas needed for ingress, egress, and travel ways to allow for operation and maintenance of the works of improvement. In addition, fee title or easements are required for any additional areas, including downstream areas that may be subjected to adverse effects by changed stream flow characteristics, such as extended flooding of low-water crossings and more than negligible flood damage to property.
- (3) Induced Flooding. — In cases where the installation could result in induced flooding, the following criteria must be met with respect to various types of works of improvement.
- (i) Induced flooding is any flooding that results due to the presence of a project measure greater than the flooding that would have occurred without the project measure. Except as stated otherwise, the STC must ensure that the real property rights work map includes all areas of induced flooding resulting from the project measure during the passage of the 100-year, 24-hour storm.
- (ii) Flooding of Roads and Railroads
- The maximum water surface elevation during passage of the 100-year-24-hour event, or higher if required by the road authority, through a dam may not be higher than upstream highways and public roads. An exception may be made when it is possible for the highway or public road to be closed when necessary for a brief period and an alternate all-weather route can be used with minimum inconvenience. A written right or permission to flood the highway or public road must be obtained from the State, county, or agency having jurisdiction over the highway or public road. The written right or permission may be an easement, court order, or, if those may not legally be given, a permit. The written right or permission must be accompanied by a citation of the applicable State statute or a written opinion of the State attorney general stating that the State, county, or agency granting the permission has legal authority to allow the road to be closed due to flooding.
 - Occupied dwellings affected by the temporary closing of the flooded road must be accessible by an all-weather road that will not flood more frequently than it did under preconstruction conditions. If a road providing the only access to a dwelling is at a lower elevation than that of the water surface during

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passage of the 100-year 24-hour event, a historical record of preconstruction temporary flooding must be developed and documented in the administrative record.

- Public roads on or upstream of dams may be located at the same elevation as the maximum water surface during passage of the 100-year 24-hour event, or higher if required by the road authority, or below this water surface elevation (such as in the case of a road located in or across the auxiliary spillways of dams) under exceptional cases, if any of the following conditions apply:
 - Because of the nature of the terrain adjacent to the dam area (such as in mountainous areas), the road must be located so that one or more points of the road crown is at or above the water surface during passage of the 100-year 24-hour event.
 - Natural flooding of one or more points along the road above or below the project area would make the road impassable before any flooding caused by the structure would take effect, and State law permits flooding of roads under those conditions.
 - Flow through the auxiliary spillway is at a lesser frequency than that at which the road flooded before construction of the structure.
- Railroads that are to remain in use may not be flooded.

(ii) Flooding of Buildings

The STC may not allow dwellings, including basements, or any other buildings that contain valuable property or that may be used as permanent or seasonal living quarters, to remain in the area upstream of a dam and below the maximum water surface elevation in the reservoir during passage of the 100-year, 24-hour storm and the area downstream from the dam within the flowage area of the auxiliary spillway, unless they are floodproofed or otherwise protected from damage. Before financial assistance is made available to the SLO, the dwelling or building must be demolished, relocated, raised, floodproofed, or protected by a floodwall. This must be completed so that drainage is adequate, and ponding of water is not unreasonable.

- If requested by the SLO and approved by the STC, other buildings, such as barns and garages, will be allowed to remain in the flowage easement area. Approval for flooding buildings of this type will not be granted if the building is used for the storage of feed, regulated chemicals, perishables, supplies, equipment, or other items that would be substantially damaged by flooding or that could interfere with the designed function of the dam's principal or auxiliary spillway(s). This prohibition against allowing other buildings also applies to any building used for other purposes if flooding would cause an interruption or delay of operations carried on in the building or if a death or damage to the building's contents could occur.

(iii) Flooding of Water Sources

Flooding of water sources, such as springs, wells, or stream diversions, or the interruption of delivery, conveyance, and disposal systems is prohibited until the SLO has complied with State laws, ordinances, and regulations relating to water sources.

(iv) Flooding of Utilities

Public or private utilities may not be flooded unless the utility company or owner has determined that the function of the facility will not be adversely affected and a subordination agreement has been obtained.

(v) Flooding of Burial and Historical Sites

- Burial sites, such as cemeteries, indigenous historic and prehistoric burials, and private family plots, may not be flooded unless disinterment and reburial

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has been accomplished in accordance with applicable State laws (PL 89-665) and pertinent tribal representatives are formally consulted, if applicable.

- Historical sites or monuments may not be flooded until compliance with procedures for such property has been completed as required under the NHPA. The STC must assist the SLO in obtaining permission to survey for or recover archeological or historical resources in accordance with Title 420-GM, Part 401. The STC must ensure that appropriate Government-to-government (Tribal government) consultation is conducted per EO 13085.

- (4) Permit or Term Easements for Project Installation
Permit or term easements are to be acquired for areas in addition to those covered in Title NWPM Part 505.4 C (1), (2), and (3) as needed for surveys and investigations, for one-time operations such as spoil spreading, and as needed for construction performance. These areas include those for construction ingress and egress, equipment staging, and parking lots.
- (5) Public Recreation and Public Fish and Wildlife Habitat Improvements and Developments
 - (i) Fee simple title is required for all privately-owned land acquired for public recreation and public fish and wildlife habitat purposes when Watershed Program cost-sharing assistance is provided. Fee simple title is preferred for all non-Federal public land needed. However, if it is not feasible to obtain this title, the granting of a perpetual easement generally will suffice. An acceptable permit from the agency administering the land will be sufficient for real property rights required on Federal land.
 - (ii) At least one access road must be provided to all principal recreation areas. Rights-of-way required for public utilities, such as power lines and pipelines needed to service recreation or fish and wildlife developments, must be acquired by at least a perpetual easement.
 - (iii) Construction of private facilities on land acquired with Federal cost-share funds is prohibited. The exception to this is for facilities constructed or operated by private concessionaires on a controlled permit basis to serve the planned use of the improvement or development, approved by the SLO and NRCS.
- (6) Wetland or Floodplain Acquisition
 - (i) Wetland and floodplain conservation easements, including land acquired or improved for flood damage reduction using Watershed Program cost sharing will be acquired by the SLO. Real property acquired in fee title or as perpetual easements with deed restrictions must be compatible with the purposes for which the land was acquired. These easements must be used to retain excessive floodwaters, improve water quality and quantity, and provide habitat for fish and wildlife.
 - (ii) Real property acquired by the SLO in fee title will be addressed in the operation and maintenance agreement and must not be sold or otherwise disposed of except as provided for in the watershed agreement (see NWPM, Part 506, Subpart C, Section 506.30).
 - (iii) Wetland and floodplain acquisition will be used to retain excessive floodwaters, improve water quality and quantity, and provide habitat for fish and wildlife. When acquired for flood damage reduction, use must be compatible with flood mitigation. Land uses must be limited to purposes that provide public benefit such as recreation, fish and wildlife habitat, water quality improvement and other purposes that are compatible with the remaining flood hazard.