

**DRAFT**

**HIGHLAND LAKES  
DREDGE AND FILL ORDINANCE**

**Effective Date: Jan. 1, 2022**

# HIGHLAND LAKES DREDGE AND FILL ORDINANCE

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## Section 1. TITLE AND SCOPE

This Ordinance shall be known and may be cited as the Highland Lakes Dredge and Fill Ordinance (“the Ordinance” or “HLDO”). This Ordinance shall apply to Dredge and Fill activities below and along the stated Regulated Pool Elevations of the Highland Lakes.

## Section 2. AUTHORITY

This Ordinance is promulgated under the authority of the LCRA Enabling Act, specifically Texas Special District Local Laws Code Chapter 8503; Texas Water Code Chapters 7, 26, and 51; Texas Parks and Wildlife Code Chapter 31; and other applicable law.

## Section 3. DEFINITIONS

**Affected Person:** Any Person who has a personal, justiciable interest and whose legal rights, duties or privileges may be adversely affected by impacts that are regulated under this Ordinance from any proposed Project for which a Permit is required under this Ordinance.

**Applicant:** A Person (or their duly authorized designee) who applies for a Permit under this Ordinance or submits written notification under Section 4.2 of this Ordinance.

**Authorization:** Any Dredge or Fill activity authorized by LCRA pursuant to this Ordinance that is not a Tier II or III Permit.

**Best Management Practices (BMPs):** Those practices, including but not limited to those described in LCRA’s Technical Manual, that effectively manage, control, prevent, or reduce the discharge of Pollutants into surface water in the state.

**Board:** The LCRA Board of Directors.

~~**Colorado River Watershed:** All area draining into the Colorado River in Texas.~~

**Commercial Dredge and Fill:** Dredge or Fill activity that:

- 1) has as its primary purpose the resale of ~~D~~redged ~~M~~material; or
- 2) involves any Dredging or Fill:
  - a) that will:
    - i) remove 500 or more cubic yards of dredge material, or
    - ii) occur over more than 3 surface acres, or
    - iii) occur along more than 1,500 feet of linear shoreline; and
  - b) will occur more than 30 calendar days per year or over the course of several years, regardless of the number of days of operation per year.

**Contaminated Dredge Material:** Dredge material which has been chemically, physically, or biologically altered by man-made or man-induced contaminants, which include, but are not limited to, solid waste, and hazardous waste as those terms are defined by 30 Tex. Admin. Code Chapter 335; pollutants as defined by Texas Water Code Chapter 26.001; and Hazardous Substances as defined by Tex. Health and Safety Code, section 361.003.

**Critical Infrastructure:** Includes all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation or as defined in Chapter 418, Government Code.

~~**Creek:** A well-defined channel that can convey running water.~~

**Disturb:** The modification of the land, shoreline, or lakebed by activities, such as clearing, grading and Dredging.

**Dredge or Dredging:** The removal of material from or the removal of structures such as piers, bulkheads, foundations or other similar manmade structures affixed to land located below the stated Regulated Pool Elevations of the Highland Lakes. Activities that may involve Dredging include, but are not limited to, constructing, or maintaining improvements including Shoreline Stabilization, boat ramps, boat slip or canal Excavation, or other similar construction along the shoreline or below the Regulated Pool Elevation of the Highland Lakes. The removal of flood debris or other trash that is not embedded in or otherwise affixed to land below the stated Regulated Pool Elevations of the Highland Lakes is excluded from this definition.

**Dredged Material:** Includes any material intentionally and incidentally ~~Disturbed removed~~ through Dredging, including that earthen material that is commonly found in submerged areas or along the shoreline, including dirt, soil, rock, clay, silt gravel, sand, rock, or other similar substance, as well as materials removed coincident with Dredging of such natural materials, such as trash, tree limbs, or other similar items.

~~**Required Environmental or Safety Plan:** Includes any required Turbidity Management and Monitoring Plan, Emergency Operations Plan, Sediment Screening Plan, Contaminant Response Plan, Spill Prevention Plan, Public Safety Plan, or any other plan required by the Standards in this Ordinance.~~

**Erosion:** The detachment and movement of soil, sediment or rock fragments by wind, water, ice or gravity.

**Excavation:** The removal of earthen material, rock, soil, or similar material to create a depression below the original topography.

**Fill:** Any material, structure, wall, rip-rap or revetment below the Regulated Pool Elevations of the lake, including any material deposited or placed on the lake bed or along the shoreline that extends above the Regulated Pool Elevation.

**Highland Lakes:** Includes Lake Buchanan, Inks Lake, Lake LBJ, Lake Marble Falls and Lake Travis on the Colorado River within the Lower Colorado River Authority District.

**Holiday:** New Year's Eve, New Year's Day, MLK Day, Presidents Day, Memorial Day, Juneteenth, the observance of Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Eve, Christmas Day, and the day after Christmas Day.

~~**Normal Business Hours:** Any weekday beginning 30 minutes after sunrise and ending 30 minutes before sunset but excluding any Holiday or any Friday or Monday preceding or following a Holiday that falls on a Saturday or Sunday.~~

**Landowner:** Any Person holding legal or equitable title to or having a fee simple ownership interest in land.

**LCRA:** Lower Colorado River Authority

**LCRA General Counsel:** The General Counsel of the LCRA or their designee.

**LCRA General Manager:** The General Manager of the LCRA or their designee.

**Normal Business Hours:** Any weekday beginning 30 minutes after sunrise and ending 30 minutes before sunset but excluding any Holiday or any Friday or Monday preceding or following a Holiday that falls on a Saturday or Sunday.

**Ordinance:** Dredge and Fill Ordinance.

**Permit:** An authorization issued by LCRA in accordance with the procedures prescribed in this Ordinance resulting from Dredge or Fill activities.

**Permit Amendment:** A revision to a Permit issued by LCRA after an application for such amendment has been received and reviewed, and the expansion, or modification plans have been found to be in compliance with this Ordinance.

**Permittee:** A Person authorized to undertake Dredge or Fill activities pursuant to a Permit granted according to the provisions of this Ordinance.

**Person:** Any individual, organization, trust, partnership, firm, association, public or private corporation, Political Subdivision, or any other legal entity.

**Political Subdivision:** A city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution and any other political subdivision of the state.

**Pollutant:** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into any water in the state.

**Project:** Dredge or Fill activities that are subject to the Ordinance.

**Project Limits:** The specific boundaries encompassing the area to be dredged or filled as described within a Permit application.

**Regulated Pool Elevation:** For each of the Highland Lakes, this term means:

Lakes Travis: 681 feet above mean sea level (feet msl)

Lake Marble Falls: 738 feet msl

Lake LBJ: 825 ~~feet~~feet msl

Inks Lake: 888 ~~feet~~feet msl

Lake Buchanan: 1,020 feet msl

**Required Environmental or Safety Plan:** Includes any required Turbidity Management and Monitoring Plan, Emergency Operations Plan, Sediment Screening Plan, Contaminant Response Plan, Spill Prevention Plan, Public Safety Plan, or any other plan required by the Standards in this Ordinance.

**Shoreline Stabilization:** The construction of structures such as revetment, rip-rap, retaining walls, or bulkheads as defined in the LCRA Technical Manual and any approved innovative practices constructed to stabilize the shoreline of a body of water.

**Single Project:** A Dredge or Fill activity occurring on one or more contiguous parcels of land owned or controlled by the same Landowner.

**Tier I Dredge and Fill Activity:** Except for Commercial Dredge and Fill Activity, a Single Project or combination of Single Projects that meet the conditions set forth in Section 4.2.

**Tier II Dredge and Fill Activity:** Dredge or Fill Activity that is not a Commercial Dredge and Fill Activity, and is either:

(1) any Single Project or combination of Single Projects that together will Dredge 500 or more cubic yards of material or ~~D~~isturb 500 or more linear feet of shoreline, or

(2) any Utility Dredge and Fill Activity that will Dredge 500 or more cubic yards of material or ~~D~~isturb 500 or more linear feet of shoreline, regardless of duration or surface area.

**Tier III Dredge and Fill Activity:** Any Commercial Dredge and Fill Activity.

**Utility:** A Person that owns or operates, for compensation, facilities or equipment for producing, generating, transmitting, selling or furnishing services including electricity, petroleum products, water, natural gas, sewer service, cable, broadband, or telephone services. A private water intake used for domestic or livestock purposes is not a Utility.

**Utility Dredge and Fill Activity:** A Dredge or Fill activity related to the construction and maintenance or repair of Critical Infrastructure or a Utility's facilities or equipment.

**Water Operations Committee:** The Water Operations Committee of the LCRA Board of Directors or any subsequent Board committee established and designated by the LCRA Board to consider appeals pursuant to this Ordinance.



## Section 4. PERMIT DETERMINATION

### 4.1 Exempt Activities

The following are exempt from the provisions of this Ordinance and are not required to file an application for or obtain a Permit pursuant to this Ordinance:

- (1) Dredge and Fill activities within a Political Subdivision that has adopted and maintains in effect LCRA's Ordinance and enters into an inter-local agreement with LCRA; or
- (2) Dredge and Fill activities within a Political Subdivision that has adopted an ordinance that LCRA determines is consistent and as protective as LCRA's Ordinance and the Political Subdivision enters into an inter-local agreement with LCRA.

### 4.2 Written Notification – Tier I Dredge and Fill Activities

A Person who wishes to conduct Dredge and Fill activities within the area subject to the jurisdiction of this Ordinance shall be allowed to conduct such activities **without obtaining a Permit** if:

- (i) The activity is a Single Project or combination of Single Projects authorized and implemented in accordance with LCRA's Army Corps of Engineers Lakewide Permit, or
- (ii) The activity is:
  - (1) A Single Project or combination of Single Projects that will Dredge less than 500 cubic yards of material or **D**isturb less than 500 linear feet of shoreline, and
  - (2) The Person conducting the activity provides written notification to LCRA on a form prescribed by LCRA prior to commencing the activity, including all information required by this Ordinance to demonstrate that the Dredge or Fill activity falls within the provisions of this subsection and complies with Dredge and Fill Standards found in Section 5.1. A single written notification encompassing a combination of eligible Single Projects may be submitted. Such notification must be signed by the Landowner(s) of all properties encompassed by the combination of Single Projects. Applicants are encouraged to use the checklist provided by LCRA in completing the required form that identifies all material required to demonstrate compliance with this Ordinance, or
  - (3) The activity is being conducted by a Utility to make an emergency repair of Utility infrastructure and the Utility provides written notice to LCRA within 24 hours of commencing the activity describing the nature of the Emergency and the scope and method of the repair. LCRA may require further information to determine compliance with the applicable Standards set forth in Sections 5.1 and 5.2 of this Ordinance. For purposes of this subsection, "Emergency" means any unplanned malfunction or failure of essential utility infrastructure

including, but not limited to, electrical power distribution, water and waste disposal, natural gas, broadband or communications.

The purpose of this Section is to authorize lower impact Dredge and Fill activities with little, if any, delay or paperwork. Upon review of written notification submitted under this section, LCRA may inform the Person(s) submitting the notification that a Permit is required or may issue conditional approval requiring specific measures to be implemented that LCRA determines are necessary to ensure the activity qualifies as a Tier I activity and will comply with the Standards set forth in Section 5.1.

#### **4.3 Permit Required –Tier II and Tier III Dredge and Fill Activities**

Any Person who wishes to conduct Tier II or Tier III Dredge and Fill Activities must obtain a Permit under this Ordinance.

### **Section 5. STANDARDS**

Dredge and Fill activities are subject to the Standards in this Ordinance as set forth below and, where applicable, the conditions imposed under an LCRA Lakewide Permit issued pursuant to the U.S. Army Corps of Engineers Programmatic General Permit. Additional guidance on how to achieve these Standards is provided in the LCRA Technical Manual.

#### **5.1 Standards for Tier I Dredge and Fill Activities**

A Person engaged in a Tier I Dredge and Fill Activity must comply with the Standards set forth below.

##### **(a) Property Ownership or Control**

The Person who will be performing the Dredge and Fill activities must demonstrate sufficient ownership or control of the land, including submerged land, within the Project Limits to allow the activities to occur in compliance with this Ordinance. For purposes of this Ordinance, “sufficient ownership or control” includes that all legal challenges to the control or ownership of that land have been finally resolved.

##### **(b) Water Quality Protection**

- (i) Dredge or Fill activities shall not result in an unauthorized discharge of Pollutants into waters in the state.
- (ii) Other than as necessary to ensure compliance with this Ordinance, Dredged Material must be removed from the lake and placed permanently above the Regulated Pool Elevation of the lake in a manner that will prevent material from re-entering the lake through runoff.

(iii) Dredge or Fill activities in submerged conditions must employ techniques to manage turbidity, such as coffer dams or turbidity curtains.

(iv) No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or authorized to be discharged must be free from ~~toxic amounts of~~ toxic pollutants in toxic amounts.

(v) Dredged ~~M~~material obtained from areas near marine service stations or boat refinishing or repair operations must be disposed of at disposal sites approved for this type of material in accordance with all applicable local, state, and federal laws and regulations.

**(c) Land Reclamation and Limits on New Structures**

(i) No reclamation of land including land lost to natural Erosion processes or flood events is allowed.

(ii) New structures may not exceed 1 cubic yard of fill per linear feet of shoreline, except as allowed under a separate authorization by the Army Corps of Engineers.

**(d) Navigability, Water Flow and Safety**

(i) Work must not interfere with others' reasonable access to or use of the lakes.

(ii) Shoreline Stabilization systems must not present a hazard to navigation. ~~Retaining walls must be designed and built to adequately control erosion and not present a hazard to navigation. To help ensure navigability, the fill for the retaining wall~~ Shoreline Stabilization systems must follow the existing shoreline, and be limited to the minimum required to stabilize the shoreline, and ~~The wall~~ must not exceed the length of the property owner's waterfront property line unless authorized.

(iii) Dredged areas must be maintained as not to allow water to become isolated from the remainder of the lake or otherwise impede the normal movement of water.

**(e) Shoreline Stabilization Protection and Slope Stability**

Shoreline Stabilization systems protection must be designed and constructed in accordance with best engineering practices to protect the structure from potential failure mechanisms, including Erosion, slump, sliding, structural failure, wave overtopping, and flanking Erosion ~~wave erosion, including wave run up and overtopping~~. No material shall be placed in a manner that will be eroded

by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas). Dredged or Filled areas must be gradually sloped downward from the shoreline to blend the newly Dredged or Filled area into the existing channel bottom contour, ~~and~~ Dredged or Filled areas must be smoothed-contoured and reinforced as necessary to prevent any irregular surfaces or cuts that might collapse or erode.

**(f) Invasive Species**

In addition to applicable regulations and requirements, including 31 TAC §57.113(g), prior to placing any barge equipment, vessels, or other equipment on the lake and upon removal from the lake, the Person conducting the Dredge or Fill Activity must drain all water from their barge equipment, vessels, and any on-board receptacles, including live wells, bilges, motors, and any other receptacles or water-intake systems coming in contact with public waters.

**(g) Other Requirements**

- (i) No Dredge or Fill activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent shorelinebank stabilization.
- (ii) When possible, Dredge or Fill activities should be performed in dry conditions during a scheduled lake lowering or other low water level conditions.
- (iii) All applicable permits and authorizations for the proposed operations must be applied for and obtained. This includes, but is not limited to, any applicable LCRA permits, including permits and authorizations required pursuant to the Highland Lakes Marina Ordinance, Highland Lakes Watershed Ordinance (HLWO) and On-Site Sewage Facilities program, real estate agreements, or water supply contracts, and any applicable Texas Commission on Environmental Quality (TCEQ), Army Corps of Engineers, and Texas Parks and Wildlife Department permits or authorizations. The Permits, authorizations, and contracts required pursuant to LCRA's programs and regulations shall be obtained in the order determined by LCRA.
- (iv) Dredge and Fill activities shall comply with all applicable local, state, and federal statutes and regulations, including any applicable local government orders and decisions from courts with applicable jurisdiction.

**5.2 Standards for Tier II Dredge and Fill Activities**

A Person engaged in a Tier II Dredge and Fill Activity must comply with the Standards set forth below.

**(a) Tier I Standards**

Demonstrate compliance with all Standards set forth in Section 5.1 of this Ordinance.

**(b) Turbidity Management and Monitoring**

Implement measures to reduce turbidity and conduct turbidity monitoring to demonstrate that operations will not cause ~~turbidity~~~~total suspended solids (TSS)~~ levels to exceed daily background levels by more than 20 Nephelometric Turbidity Units (NTUs) at any test location.

Develop and implement an LCRA-approved Turbidity Monitoring Plan that sets forth methods for establishing daily ~~turbidity~~~~TSS~~ background levels in the area to be dredged, methods for regular ~~turbidity~~~~TSS~~ measurements that demonstrate compliance with these ~~turbidity~~~~TSS~~ limits, methods for turbidity management, provides for the retention of all ~~turbidity~~~~TSS~~ data collected during operations for the duration of the Permit, the ~~submission~~ of the collected ~~turbidity~~ ~~TSS~~ data to LCRA, requires immediate notification to LCRA of any exceedance, and implementation of corrective measures or other adjustments to its dredging operations that will be implemented to reduce turbidity to no greater than 20 NTUs over background levels within the Project Limits and adjacent measurement locations, which could include temporary cessation of operations or other response as required by LCRA. Equipment used in turbidity monitoring must be maintained according to the manufacturer's specifications.

**(c) Emergency Operations Plan**

Develop and implement an LCRA-approved emergency operations plan and provide documentation demonstrating coordination and compliance with applicable public safety and emergency operations requirements of entities with applicable jurisdiction. The plan shall include details on how the Permittee will respond to emergency conditions, including, but not limited to, operational emergencies, a significant rise in lake level, how weather conditions and LCRA hydro/flood operations will be monitored, and how personnel and equipment will be removed from the lake.

**5.3 Standards for Tier III Commercial Dredge and Fill Activities**

A Person engaged in a Tier III Dredge and Fill Activity must comply with the Standards set forth below.

**(a) Tier I and Tier II Standards**

Demonstrate compliance with all Standards set forth in Sections 5.1 and 5.2 of this Ordinance.

**(b) Setback Requirements**

- (i) Tier III Commercial Dredge and Fill Activities shall not be located within: (a) 200 feet of Critical Infrastructure, including, but not limited to, dams, or (b) within 1,000 feet of all Utility infrastructure located under the Regulated Pool Elevation.
- (ii) The application shall include information identifying the locations of all Utility infrastructure, public water system intakes, and critical infrastructure within ~~an~~ extending 1,000 feet beyond the Project Limits and to demonstrate compliance with all required buffers, including required distances of operation from Utilities, public water system intakes, and critical infrastructure.
- (iii) Setback requirements may be satisfied by submittal of written releases obtained from owners of Critical Infrastructure or Utility infrastructure located under the Regulated Pool Elevation.

**(c) Public Safety Plan**

Develop and implement an LCRA-approved Public Safety Plan that will describe how the Dredge and Fill activity will achieve compliance with Section 5.1(d)(i) and otherwise ensure public safety, including plans for placement of buoys, signage, lighting, hours of operation, and other measures as determined on a case-by-base in consultation with LCRA.

**(d) Additional Turbidity Management**

Install and maintain silt curtains around active dredging operations unless other methods are otherwise shown to achieve the turbidity limits set forth in Section 5.2(b).

**(e) Removal of Native Materials**

Dredging may not remove native soils from below the original lakebed. Dredge and fill activities are required to comply with all applicable local, state, and federal statutes and regulations. This would include regulations and ordinances adopted by federal, state, and local governments pertaining to the identification and protection of areas with historical or cultural artifacts and any restrictions for removal of those artifacts. LCRA shall also honor any orders issued by a court of applicable jurisdiction.

**(f) Authorized Storage**

Dredging shall not result in increasing storage within the lake beyond the volume LCRA is authorized to store under its water rights.

**(g) Contaminant Release**

**(i) Sediment Screening Plan**

Develop and implement an LCRA-approved Sediment Screening Plan to demonstrate that the proposed Dredge and Fill activity will not release Pollutants found in the Dredge Material in concentrations that exceed the ~~Texas Commission on Environmental Quality's (TCEQ's)~~ Ecological Screening Benchmarks. The plan shall provide for screening of at least two sediment samples for each lake where proposed Dredging will occur plus one additional sample for every 25,000 cubic yards of Dredged Material proposed for removal from each lake, and shall screen sediments using EPA Methods E8081, 7471, and 6020.

**(ii) Contaminant Response Plan**

Develop and implement an LCRA-approved Contaminant Response Plan for responding to and reducing the risk associated with Contaminated Dredge Material encountered within the lake or sediment during Dredge operations that was not identified prior to commencing Dredging. The Contaminant Response Plan shall require: (1) immediate cessation of operations; (2) notification to LCRA and TCEQ as soon as possible but not more than 24 hours after encountering the Contaminated Dredge Material; (3) removal and disposal of the Contaminated Dredge Material in accordance with applicable TCEQ rules; and (4) if applicable, remediation of the area. Dredging may only resume upon receipt of written authorization from LCRA and TCEQ.

**(h) Spill Prevention Plan**

Develop and implement an LCRA-approved Spill Prevention Plan that includes steps to prevent spills, a spill response process that includes assessment of risk, confinement, stoppage of all activities that are the source of the spill, the evaluation of the spill and cleanup implementation. The Spill Prevention Plan shall require notification of a spill or leak to LCRA, TCEQ and any public water system within the Project Limits as soon as possible, but not more than 24 hours after the spill or leak occurs.

**(i) Discharges**

Tier III Commercial Dredge and Fill Activities shall comply with all applicable discharge restrictions in 30 Texas Administrative Code, Chapter 311, as amended.

**(j) Unforeseen or Cumulative Impacts**

On a case-by-case basis, LCRA staff may require demonstration that the proposed activity will not cause any other negative impacts, including cumulative impacts associated with other dredging operations in the vicinity of the Project, to the water quality beyond regulated standards, or threaten

public safety, including, but not limited to, navigation, water safety, water supply, or other condition of the Highland Lakes in a manner that is not specifically addressed by another standard set forth herein and which is within the LCRA's authority to regulate.

## **Section 6. APPLICATION PROCESSING**

### **6.1 Permit Process**

#### **(a) Pre-Application Planning Meeting**

A meeting attended by the Applicant and LCRA is required prior to applying for a permit for Dredge and Fill activities that require a Permit under Section 4.3.

#### **(b) Content and Preparation of Permit Applications**

(i) Permit applications shall be prepared in accordance with this Ordinance. Additional guidance in preparing the application may found in the current LCRA Technical Manual posted on [www.lcra.org](http://www.lcra.org).

(ii) Permit Applications must include:

(1) An application form prescribed by LCRA.

(2) Required fees.

(3) A description of the Project, including:

a. The purpose of the proposed Dredge and Fill activity.

b. The anticipated duration of the proposed Dredge and Fill activity.

c. A detailed map of the Project Limits that specifically identifies:

1. The boundaries of the Project Limits.

2. Each parcel of land within the Project Limits, including the identity of the landowner.

3. The location of any Utility infrastructure, public water system intakes, or other Critical Infrastructure located within the Project Limits or within 1,000 feet of the Project Limits.

4. The location of any proposed facilities that will be constructed (i.e., retaining walls, boat slips, etc.).

5. The specific areas that will be Dredged or Filled.



- d. An estimate of surface area within the Project Limits and the linear feet of shoreline included within the Project Limits.
  - e. A description of the type and quantity (in cubic yards) of Dredged Material or Fill to be removed from or added to the Project Limits.
  - f. The results of any sediment screening that has been performed consistent with Section 5.3(g)(i).
  - g. Specifications, drawings or detailed descriptions of the means and methods, including Best Management Practices, that will be used to conduct the proposed Dredge and Fill activity in compliance with the required Standards.
- (4) A list of all other required permits, authorizations or approvals required for the Project, including copies of any final permits, authorizations or approvals, and a summary of the status and anticipated date of any required permit, authorization, or approval that has not yet been secured.
- (5) A list identifying all Landowners located within the Project Limits or within ~~5001,000~~ feet of the Project Limits and any written waivers or agreements between the Applicant and such Landowners.
- (6) A list identifying all Utility infrastructure, public water system intakes, or other critical infrastructure located within the Project Limits or within 1,000 feet of the Project Limits and any written waivers or agreements between the Applicant and the owner(s) of such infrastructure or intakes.
- (7) Any Required Environmental or Safety Plan.
- (8) A cost estimate for installation and maintenance of turbidity controls, Shoreline Stabilization, and remediation or restoration required by the Ordinance.

**(c) Application Fees**

The application fees are described in the fee schedule approved by the LCRA Board. The LCRA Board may amend the fee schedule from time to time in accordance with Section 12.2 of this Ordinance. The fee schedule is ~~in the LCRA Technical Manual and~~ on [www.lcra.org](http://www.lcra.org).

**(d) Application Review**

- (i) Application Acceptance and Commencement of Administrative Review

A Permit application shall be considered filed on the date it is stamped received by LCRA staff at the LCRA General Office Complex on Lake Austin Boulevard in Austin, Texas, or if filed electronically, on the date LCRA acknowledges receipt of the application. LCRA staff shall not accept for filing any application that has not been signed and accompanied by the appropriate application fee or before a planning meeting has taken place, if required.

(ii) Administratively Incomplete Applications

Upon receipt of an application, LCRA shall conduct an administrative review of the application to determine if the required information has been submitted. An administrative review is not a technical or substantive review of the information submitted in an application. If the application is determined to be administratively incomplete, LCRA staff shall notify the Applicant in writing within 10 calendar days after the date the application is received. The Applicant shall submit additional information within 30 calendar days after the date of the letter notifying the Applicant of the deficiencies. If the Applicant does not submit the required additional information within 30 calendar days, the application may be returned to the Applicant and will be considered withdrawn. LCRA will refund the application fees in accordance with the [refund document posted on www.lcra.org fee schedule](#).

(iii) Technical Review

After LCRA determines an application administratively complete, LCRA shall begin a technical review of the Permit application for a period of time not to exceed 30 calendar days for a Tier II Permit and not to exceed 60 calendar days for a Tier III Permit. Unless subsequent technical review is needed pursuant to Section 6.1(d)(iv), application fees may be refunded in accordance with the [refund document posted on www.lcra.org fee schedule](#) if LCRA does not meet the above review times. If the Applicant unilaterally provides additional information, requests a variance, or revises the application within the technical review period, the technical review shall be extended for 30 calendar days.

(iv) Subsequent Technical Reviews

If more information is needed to complete the technical review or if LCRA determines the application does not meet the required standards, an Applicant shall have 30 calendar days to submit additional information or revise the application from the date of receipt of a written information request from LCRA. If the Applicant provides the additional information or revises the application within the 30-calendar day period, the technical review shall be extended for no more than 30 calendar days. In the absence of an approved written request for extension pursuant to Section 6.1(d)(v), if the Applicant does not provide the additional information within the 30-calendar day period, the application is considered withdrawn and LCRA may return the application and all or part of the fees to the Applicant. The Applicant must resubmit a new application with the appropriate fees.

(v) Extension of Time to Provide Requested Information or Abatement Due to Pending Permits

An Applicant may request an extension of time to provide the information requested by staff during the administrative or technical review. Requests for extensions shall be in writing and explain in detail the need for additional time. Such requests shall be approved in writing by LCRA, which approval shall not be unreasonably withheld. With the exception of requests for extensions due to delays resulting from permits and authorizations from other regulatory entities, in no event shall the cumulative amount of time granted to an Applicant exceed six months from the date the application for a Permit was filed. Technical review may be abated by staff or at an Applicant's request based on delays resulting from processing of the Applicant's other permits. Such abatement must be requested or re-evaluated every six months but shall not exceed a cumulative period of three years, unless supported by good cause. If an extension or abatement expires without action, the application is considered withdrawn and the Applicant must submit a new application with the appropriate fees. The LCRA General Manager will determine if good cause exists.

**(e) Notice of Receipt of Administratively Complete Application and Intent to Obtain Permit**

(i) Posted Notice

Except for applications to conduct Utility Dredge and Fill Activities, an Applicant shall post Notice of the Receipt of Administratively Complete Application and Intent to Obtain Permit in an LCRA-approved location and LCRA-prescribed format.

(ii) Website Notice

LCRA shall post the Notice of Receipt of Administratively Complete Application and Intent to Obtain Permit on its website, subject to copyright and trademark protections, and any other applicable exceptions in the Public Information Act.

(iii) Newspaper Notice of Tier III Receipt of Administratively Complete Application and Intent to Obtain Permit

(1) Applicants shall publish, at their expense, the Notice of the Receipt of Administratively Complete Application and Intent to Obtain Permit in a form prescribed by LCRA. Publication shall be in a newspaper of general circulation in each county or counties where the Dredge and Fill activity will occur.

(2) The Applicant shall provide LCRA with an affidavit of publication from the publisher within five business days of publication.

(iv) Mailed Notice

Notice of the Receipt of Administratively Complete Application and Intent to Obtain Permit, in a form prescribed by LCRA, shall be mailed as set forth below.

(1) Tier II Permit Applications

Except for applications to conduct Utility Dredge and Fill Activities, all Applicants for a Tier II Permit shall mail, by first class mail and at their expense, the Notice of Receipt of Administratively Complete Application and Intent to Obtain Permit to Persons who own property located within 500 feet of the Project Limits. The names and addresses of the property owners to receive notice shall be determined by the Applicant based upon records from the appropriate County Tax Appraisal District or other reliable documentation of ownership submitted as part of a complete application.

(2) Tier III Permit Applications

In addition to the mailed notice required by Section 6.1(e)(iv)(1), Applicants for a Tier III Commercial Dredge and Fill Permit also shall mail notice to officials, including: (1) each mayor and/or city manager, county judge, and county commissioner of the municipalities and county (or counties) where the proposed Dredge or Fill activity is located; and (2) TCEQ, Army Corps of Engineers, Texas Parks and Wildlife Department, and any other regulatory entity, as determined by LCRA.

**(f) Notice of Draft Permit**

(i) A Notice of a Draft Permit will not be issued until LCRA has completed the technical review. The technical review will not be completed until LCRA receives documentation demonstrating that the Applicant has all other necessary approvals, authorizations or permits for the Project from other applicable entities.

(ii) Website Notice

For Tier II and Tier III applications, LCRA shall post the staff's proposed Draft Permit associated with an application after it has completed its technical review and the deadline by which written comments must be postmarked.

(iii) Newspaper Notice of Tier III Draft Permit

(1) For Tier III applications, Applicants shall publish, at their expense, the Notice of Draft Permit in a form prescribed by LCRA. Publication shall be in a newspaper of general circulation in each county or counties where the Dredge and Fill activity will occur.

(2) LCRA shall prescribe the form and content of the notice.

(3) The notice shall provide the deadline by which written comments must be postmarked.

(4) The Applicant shall provide LCRA with an affidavit of publication from the publisher within five business days of publication.

(5) If action on the application is delayed by more than six months from the date of mailed and published notice pursuant to Section 6.1(d)(v) or the Applicant substantively amends the application, the Applicant shall re-publish notice in accordance with this Section.

(iv) Mailed Notice

For Tier III applications, Notice of Draft Permit shall be mailed in the same manner as required for mailed notice of the Notice of the Receipt of Administratively Complete Application and Intent to Obtain Permit pursuant to Section 6.1(e)(iv) and shall include the deadline by which written comments must be postmarked.

**(g) Comments**

Written comments concerning the application and the Tier II and Tier III draft permits may be made by any Person.

- (i) The Notice of Draft Permit shall state the date by which written comments must be submitted to LCRA. To be considered timely, comments must be submitted or postmarked by the date stated in the Notice of Draft Permit.
- (ii) Written comments must identify the specific standard(s) in this Ordinance that the proposed Dredge and Fill activity will or will not meet.

**(h) Public Meetings for Tier II and Tier III Permit Applications and Draft Permit**

- (i) LCRA may hold a formal public meeting to consider a Tier II or Tier III application and draft permit after expiration of the public comment period and upon the request of the Applicant or if LCRA determines that there is substantial public interest. For purposes of this subsection, “substantial public interest” is demonstrated if a request for a public meeting is filed by: a local governmental entity with jurisdiction where the proposed Dredge and Fill activity would occur; or a substantial percentage of property owners, or businesses with an affected interest. The request must be made in writing and received by LCRA within 10 calendar days after the close of the public comment period described in Section 6.1(g). The request must include:

- (1) The name, mailing address and phone number of the Person making the request;

(2) a brief description of the interest of the Person making the request, or of Persons represented by the Person making the request; and

(3) identification of the specific standard(s) that the Tier II or Tier III Dredge and Fill Activity will or will not meet.

(ii) If LCRA decides to hold a public meeting in accordance with Section 6.1(h)(i), all Persons who have submitted timely written comments or a written request for a public meeting shall be advised of the date, time and place of the public meeting and invited to attend. The public meeting shall occur within 60 calendar days, subject to meeting location availability.

(iii) If a public meeting is held, the comment period shall be extended until the public meeting is concluded.

**(i) Notice and Public Meetings for Multiple LCRA Permits**

If an Applicant requires other permits from LCRA for the Project that also provide for or require public notice, public comment or public meetings, LCRA may, at its discretion, modify the above notice and comment procedures to allow for a combined notice, comment, and public meeting process.

**(j) Financial Security for Tier II and Tier III Permits**

Approval of a Permit application is contingent upon the establishment of financial security acceptable to LCRA in an amount that provides for the installation and maintenance of turbidity control, Shoreline Stabilization and remediation, in accordance with the Permit and any other provision of this Ordinance. The amount shall not be less than 100% of the cost as estimated by the professional engineer who seals the application materials as approved by LCRA. The financial security shall be released after the completion of Permit requirements including final inspection and release by LCRA.

**(k) Insurance for Tier III Permits**

Approval of a Tier III Permit application is contingent upon:

(i) Obtaining comprehensive general or public liability insurance providing a minimum coverage of \$1,000,000 per person/per occurrence bodily injury and \$1,000,000 property damage or \$1,000,000 combined single limit.

(ii) Filing a certificate of insurance with LCRA as evidence of the required coverage before Dredging activities may commence and prior to the expiration of any certificate on file. This

certificate shall state that LCRA will be given a minimum of 60 calendar days advance notice of cancellation or material change in coverage.

- (iii) Any required insurance shall be purchased from an insurance company licensed in Texas or a surplus lines carrier on the list of eligible surplus lines carriers maintained by the Texas State Board of Insurance. The insurance company shall be rated at least A Class - VIII by the A.M. Best Company. Insurance companies not rated by the A. M. Best Company may be required to submit audited financial statements for LCRA's consideration and approval.
- (iv) LCRA shall be named as an additional insured in any insurance policy required by this Section.

### **(I) Permit Decision**

After the close of public comment, LCRA staff will consider all timely public comments and either issue a Permit after the Applicant has demonstrated compliance with the requirements of this Ordinance or deny a Permit application if the Applicant is unable to demonstrate compliance with the requirements of this Ordinance. A Permit will not be issued until LCRA receives documentation demonstrating that the Applicant has all other necessary approvals, authorizations or permits for the Project from other applicable entities.

### **6.2 Duration of Authorization or Permit**

- (1) Tier I Authorizations and Tier II Permits shall have a one-year term, except that Tier II Permits for Utility Dredge and Fill Activities shall be issued for a term of up to three years.
- (2) Tier III Permits may be issued for a term of up to three years.

### **6.3 Permit Renewal**

- (i) A Permittee with an effective Permit shall file an application for a Permit renewal at least 90 calendar days before the expiration of the effective Permit. Upon a timely receipt of an administratively complete application, the Permit shall continue in full force and effect during the LCRA staff review of the renewal application.
- (ii) If staff determines that the Permittee is in substantial compliance with the Permit and the Permittee does not seek any Major Amendments to its Permit, as described in Section 6.4(a)(ii):
  - (1) Tier II Permits may be renewed annually.

(2) Tier III Permits may be renewed for no more than two years (for a maximum term of five years) subject to demonstrating compliance with any applicable standards or permit terms and conditions in the Ordinance in effect at the time of renewal. A Permittee who wishes to continue operations within the same Project Limits beyond the renewal term must file a new application that is subject to public notice and comment.

(iii) Permits renewed under this section are not subject to the public notice and comment or appeal process set forth in this Ordinance.

## **6.4 Amendment**

### **(a) Major Amendments**

- (i) A Major Amendment requires a Permit Amendment and shall be filed consistent with the Permit application requirements of this Ordinance. The application for amendment shall clearly identify the items sought to be amended and the reasons therefore.
- (ii) For purposes of this section, a Major Amendment includes: a change in term, condition or provisions of a Permit, including any significant operational or siting modification to a Dredge or Fill activity authorized by LCRA or the BMPs approved and incorporated in the Permit or Authorization.

### **(b) Minor Amendments**

Permittees seeking minor amendments are not subject to the requirements for Permit Amendments in Section 6.4(a). For the purposes of this subsection, a minor amendment includes, but is not limited to, an amendment that:

- (i) would improve or maintain the protectiveness of the Permit conditions; or
- (ii) would not cause or relax a standard or criterion that may result in a potential deterioration of water quality, navigation, and public safety on the lakes.

### **(c) LCRA Staff-Initiated Amendments**

- (i) Staff may initiate an amendment to a Tier III Permit if staff determines such amendment is required to address a change in the laws under which LCRA has issued the Permit.
- (ii) Staff shall provide the Permittee with written notice of the determination stating the grounds for such amendment and provide a copy of a proposed draft amendment.



(iii) An amendment under this section shall become effective no earlier than the 15th calendar day after notice is provided under this section.

(iv) The Permittee may appeal an amendment made under this section pursuant to the appeal provision in Section 9.4 of this Ordinance.

**(d) Minor Field Adjustments**

No Permit Amendment is required for minor field adjustments of BMPs.

**6.5 Termination**

Unless operations are delayed due to other regulatory agencies, a Permit shall automatically terminate if the Permittee has not commenced Dredge or Fill activities within one year from the date of issuance of the Permit. Pursuant to Section 9.3, a Permit or Authorization may be terminated by revocation upon violation of a condition to the Permit. Upon termination of a Permit or Authorization, LCRA may call on the irrevocable letter of credit or other financial security to provide permanent stabilization within the Project Limits.

**Section 7. PERMITS**

**7.1 Standard Permit Terms and Conditions**

A Permit shall contain, at a minimum, provisions requiring the Permittee to agree to the standard terms and conditions as set forth below.

- (1) Comply with all applicable sections of this Ordinance and conditions of the Permit.
- (2) Notify LCRA in advance of commencing any Dredge or Fill activities authorized by a Permit.
- (3) Obtain a Permit Amendment from LCRA prior to seeking a change as described in Section 6.4 above, including the modification of the dredging operation method or the BMPs approved and incorporated in the Permit. However, no Permit Amendment is required for minor field adjustments of BMPs.
- (4) Install, inspect, maintain and repair all applicable BMPs identified in the approved Permit to ensure compliance with this Ordinance, including all applicable Standards and any other applicable regulations.
- (5) Allow LCRA to access any property, equipment, or other facilities owned or controlled by the Permittee within the Project Limits for the purpose of inspecting compliance with the Permit, or for performing any work necessary to bring the Project into compliance with the Permit.
- (6) Keep a copy of the Permit and all plans at a location designated by LCRA.

- (7) Promptly notify LCRA in writing of any change in the name, address or telephone number of the Permittee and any persons designated by the Permittee for ensuring compliance with Permit.
- (8) Shall not commence activities authorized under a Permit until all appeals, if any, filed pursuant to this Ordinance, are resolved.
- (9) Indemnify and hold LCRA harmless from any and all claims, demands, damages, actions, costs and charges to which LCRA may become subject and which LCRA may have to pay by reason of injury to any Person or property, or loss of life or property resulting from, or in any way connected with, the Permittee's acts or negligence under this Permit.
- (10) Acknowledge that the elevations of the Highland lakes and the flow in the Colorado River and its tributaries vary as a result of natural hydrologic events or LCRA's operations of its dams on the Colorado River. The Permittee further understands that these conditions can change dramatically and suddenly with little notice. LCRA reserves the right to operate its dams and associated appurtenances and to use LCRA property or property on which LCRA has flowage or inundation easements for any legal purpose that it sees fit in the operation and maintenance of its dams and reservoirs and makes no guarantee that the level of any lake operated and maintained by it will be retained at any specific lake level for any particular time. LCRA further reserves the right and privilege to inundate with water at any time and as many times as LCRA may see fit all or any areas and Permittee's facilities and equipment within the Project Limits that are subject to a flowage or inundation easement, without any liability on the part of LCRA to Permittee for making such use of said property, or any part thereof.
- (11) No work is authorized that is not directly addressed in the Permit application submitted to and approved by LCRA.
- (12) Nothing in this Permit is intended to amend or alter any legal rights or benefits previously granted to or vested in LCRA.
- (13) Perform all activities and comply with any other applicable LCRA, federal, state and local laws and regulations.
- (14) Maintain any required insurance and a letter of credit or other LCRA-approved financial assurances in the amount equal to the cost for installation of turbidity controls or any other BMPs after LCRA approves the cost estimate. Failure to maintain required financial security and insurance shall be cause for termination of a Permit.
- (15) For Tier III Permits, Permittee shall conduct activities authorized by the Permit only during Normal Business Hours.

## 7.2 Additional Permit Conditions

LCRA may include additional Permit terms and conditions as necessary to achieve compliance with the Ordinance, as set forth below.

- (1) Permittee shall meet with LCRA staff prior to commencing permitted or authorized activities for the purpose of reviewing permit conditions, verification of BMP installation, and coordination with other LCRA regulatory departments, prior to commencing any permitted or authorized activities. LCRA Staff must provide approval prior to commencing the permitted or authorized activities.
- (2) Permittee shall implement any Required Environmental or Safety Plan and provide such verbal and written notifications and retain all records required by such plan(s).
- (3) Unless otherwise specifically addressed by a Required Environmental or Safety Plan, Permittee shall promptly verbally notify LCRA of any spills or leaks, Contaminated Dredge Material, monitoring exceedances, assessments, evaluations, and any corrective actions taken to achieve and maintain compliance with the Standards or other conditions of the permit. Permittee shall provide a written follow-up notification within five calendar days.
- (4) As required by LCRA, Permittee shall maintain buoys and other markers that clearly delineates the area within the Project Limits where permitted or authorized activities are occurring.
- (5) Such other Permit conditions as LCRA determines may be required as necessary to achieve compliance with the Ordinance.

## Section 8. RIGHT OF ENTRY AND INSPECTION

### 8.1 Right of Entry

Any Person, or successors or assigns, who has filed a Permit application or Tier I notification, received a Permit or Authorization under this Ordinance, or is otherwise subject to the provisions of this Ordinance, shall allow LCRA entry within the Project Limits for the purposes of inspection and monitoring. LCRA employees and agents are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions related to water quality and administration of this Ordinance.

### 8.2 Inspection Fees

Inspection fees shall be as described in the fee schedule approved by the Board and posted on LCRA's website. The Board may amend the fee schedule from time to time in accordance with Section 12.2 of this Ordinance. LCRA may charge a reinspection fee, as authorized by the Board, when a project is out of compliance with any of the Standards of Section 5 to recover LCRA costs for returning to any location within the Project Limits to determine if compliance has been achieved.

## **Section 9. ENFORCEMENT**

### **9.1 Violations**

It is unlawful under this Ordinance for any Person:

- (1) to commence or undertake any activities regulated by this Ordinance, or to cause, suffer, or allow another to commence or undertake activities regulated by this Ordinance without first obtaining a valid Permit or Authorization pursuant to Section 4 from LCRA;
- (2) to conduct activities regulated by this Ordinance after a stop-work order has been issued in accordance with this Ordinance;
- (3) to fail to pay an inspection or reinspection fee as required by this Ordinance;
- (4) to fail to maintain any required BMPs in accordance with a Permit or Authorization issued pursuant to this Ordinance
- (5) to otherwise commence activities regulated by this Ordinance in a manner that violates any provision of this Ordinance; or
- (6) to fail to comply with any term or condition of an approved Permit or Authorization.

### **9.2 Notice of Violation/Stop-Work Order**

If, at any time, LCRA determines that activities regulated by this Ordinance have occurred or are occurring without full compliance with this Ordinance, LCRA may issue a notice of violation. The notice of violation will be in writing and, where a Permit or Authorization has been issued, shall be posted at the location within the Project Limits designated in the Permit or Authorization for posting such notices. The notice of violation will specify the deficiencies that cause the activities regulated by this Ordinance to be out of compliance. If the activity regulated by this Ordinance is occurring within an unpermitted location, or if no location is designated in the Permit or Authorization or maintained for the posting of notices, the notice shall be prominently posted in a visible location on equipment or facilities being used by the Person to conduct the activities regulated by this Ordinance. The notice of violation may include a stop-work order. The stop-work order will direct that no further activities regulated by this Ordinance shall take place until the Person or Permittee comes into full and complete compliance with this Ordinance. Immediately upon posting a stop-work order, a Person without a currently valid Permit shall cease all activities regulated by this Ordinance and take all corrective actions required by LCRA.

### **9.3 Permit Revocation**

Any Person that has been issued a notice of violation or stop-work order shall have 10 calendar days from the date that the notice of violation or stop-work order is posted to comply with the terms and conditions of the Permit or Authorization and this Ordinance. If the Permittee has appealed the notice of violation or stop-work order and the LCRA General Manager does not decide the appeal in the Permittee's favor, the Permittee shall have 10 calendar days from the date of the LCRA General

Manager's decision to comply with the terms and conditions of the Permit or Authorization. If a Permittee fails to comply within this period, LCRA may revoke the Permit or Authorization.

#### **9.4 Appeal by Permittee**

A Permittee may appeal the issuance of a notice of violation or stop-work order to the LCRA General Manager by submitting, in writing, a concise statement of any reason or reasons that the notice of violation or stop-work order should not have been issued. An appeal of the notice of violation or stop-work order must be received in the office of the LCRA General Manager within 10 calendar days from the date that the notice of violation or stop-work order is posted. The LCRA General Manager may decide the appeal based upon the reasons stated in the appeal or may request additional information from the staff or appellant.

#### **9.5 Penalty**

Any Person violating provisions of this Ordinance shall be subject to a civil penalty of not more than \$10,000 for each violation. Each calendar day a violation exists shall constitute a separate violation.

#### **9.6 Other Remedies and Injunction**

Compliance with the provisions of this Ordinance may also be enforced through any, and all, other remedies at law or in equity including enforcement by injunction.

### **Section 10. VARIANCES**

#### **10.1 Variance**

LCRA staff shall have the discretion to grant a variance to the provisions of this Ordinance on a case-by-case basis. A variance will not be granted if it significantly impacts water quality, public safety, or adjacent properties. The cost of compliance with this Ordinance shall not be justification for a variance.

#### **10.2 Requests for Variance**

A request for a variance shall be made prior to public notice commencing and shall be reviewed and processed in accordance with all of the procedures contained in this Ordinance, including those related to application processing, Permit issuance and appeals. Receipt of a variance request may result in an extension of the technical review period.

### **Section 11. APPEALS OF PERMIT DECISIONS**

#### **11.1 Requesting an Appeal**

An Applicant or an Affected Person may appeal a decision by LCRA staff regarding the granting, denial, or revocation of a Permit under this Ordinance in accordance with the requirements of Section 11.

## **11.2 Filing of Appeal**

An Applicant or Affected Person must file a request for appeal within 15 calendar days after the date of the action on the Permit. The request for appeal shall be filed with the LCRA General Counsel in accordance with the procedures outlined in Section 11. The request for an appeal must be in writing and contain a concise statement of the reasons for the appeal and cite the specific Standards that the Permit did or did not meet.

## **11.3 Notice of Appeal**

Notwithstanding Section 11.7, the LCRA General Counsel shall send written notice of receipt of any request(s) for appeal to the Board, LCRA staff, the Applicant and any Persons filing a request for appeal, within three business days after the expiration of the date for filing request for appeals. Such notice shall identify the parties, generally describe and summarize the issues raised by the appeal and advise the prohibition against ex parte contacts.

Once an appeal has been filed, the LCRA General Counsel shall not participate in any substantive discussions or correspondence regarding LCRA staff's legal position on the appeal. LCRA General Counsel shall advise the Board on matters related to the appeal. Until the appeal has been withdrawn or has resulted in a Board action as described in Section 11.10, LCRA General Counsel shall designate one or more attorneys in their office who shall represent LCRA staff regarding the appeal.

## **11.4 Form of Appeal**

A request for appeal must be in writing, timely filed, submitted as an original and two copies, and shall not exceed 20 pages in length, including exhibits or attachments. The request for appeal shall include the following information:

- (1) Name and address of the Person(s) filing the request for appeal;
- (2) Name of the Applicant, if different than Section 11.4(1);
- (3) A concise statement of how the Person filing the appeal is affected by the issuance, denial or revocation of the Permit, or by one or more of the terms or conditions of the Permit;
- (4) If appealing a recommendation for Permit approval, which specific Standards in Section 5 are not being met; and
- (5) Information required by Section 11.5.

## **11.5 Validity of Appeal.**

For an appeal to be valid, the request for appeal must meet all the following criteria:

- (1) Be filed in accordance with Section 11;
- (2) Demonstrate that the Applicant or Affected Person requesting the appeal provided written comments to staff in accordance with Section 6.1(g) or provided comments during a public

meeting held pursuant to Section 6.1(h). If the Applicant or Affected Person did not provide written comments in accordance with Section 6.1(g) or provided comments during a public meeting held pursuant to Section 6.1(h), the Applicant or Affected Person must provide a compelling reason why their request for appeal should be considered;

- (3) If appealing a recommendation for Permit approval, only raise matters or issues that were presented in writing pursuant to Section 6.1(g) or provided comments during a public meeting held pursuant to Section 6.1(h), or as part of the Permit application;
- (4) For appeals filed by Affected Persons, allege the failure of specific Standards in Section 5 or as further required by the Permit;
- (5) Provide credible evidence in support of the allegations raised by the request for appeal;
- (6) Demonstrate how such allegations, if taken as true, would change the terms and conditions of the Permit or would affect the issuance of the Permit; and
- (7) Demonstrate that such allegations are related to a matter that LCRA has jurisdiction to consider. For example, LCRA may not consider increase in vehicle traffic, noise, incompatibility of land uses, or questions of property rights, property ownership or easement rights.

## **11.6 Determination of Validity of Appeal**

### **(a) Commencement of Permit Activities and Construction**

Once an appeal has been filed, all activities regulated by this Ordinance must cease until the appeal is resolved.

### **(b) Staff Review**

- (i) Within 15 calendar days after the expiration of the date for filing requests for appeal, LCRA staff shall evaluate the request for appeal to determine if such request meets the requirements of Sections 11.1, 11.2 and 11.4.
- (ii) If the appeal does not meet the requirements of Sections 11.1, 11.2 and 11.4, staff shall return the request for appeal and the staff's Permit decision will become final.
- (iii) If the request for appeal meets the requirements of Sections 11.1, 11.2 and 11.4, staff shall forward the Permit and the application, together with such requests for appeal and the staff's statement as to the elements of such request for appeal, to the LCRA General Manager for consideration of the validity of the request for appeal.

**(c) General Manager Review**

The LCRA General Manager shall determine the validity or invalidity of the request for appeal within 15 calendar days from receipt of the information provided pursuant to Section 11.6(b)(iii).

**(d) General Manager's Decision Final**

The LCRA General Manager's determination of the validity or invalidity shall be final. Upon a determination that a request for appeal is invalid, the staff's Permit decision shall become final.

**(e) Effect of Pending Appeal on Permit Expiration**

The expiration date stated in the Permit issued after an appeal shall be based on the date the appeal is resolved.

**(f) Valid Appeal and Notification**

If the LCRA General Manager decides that the appeal is valid, the LCRA General Counsel shall immediately provide written notice of the LCRA General Manager's decision to staff and send such notice by first class mail to all Persons filing a request for appeal and the Applicant. Any notice regarding valid appeals shall include information regarding the mediation requirements in Section 11.7.

**11.7 Mediation Required Prior to Hearing of Valid Appeal**

- (i) Within 30 calendar days of the LCRA General Manager's decision that an appeal is valid, the Person(s) with a valid request for appeal ("Appellant(s)"), Applicant, and LCRA staff shall complete mediation of the disputed issues.
- (ii) Mediation shall be conducted by a mediator selected by agreement of the parties, or if the parties fail to agree, by a mediator selected by the LCRA General Counsel.
- (iii) Costs of mediation shall be shared equally among all the parties to the mediation, including LCRA.
- (iv) The mediator shall submit a written report, including a recommendation on the alignment of parties, informing the LCRA General Counsel of the result of the mediation within five calendar days after completing the mediation.
- (v) If the mediation does not result in the withdrawal of an appeal, further consideration of any unresolved appeal shall proceed under Sections 11.8 and 11.9. Any party that fails to participate in the required mediation or fails to pay its share of required costs of mediation is precluded from further participation as a party in any appeal of the staff's Permit decision.



## **11.8 Responses to Valid Appeals**

### **(a) Staff Response to Valid Appeal**

Staff shall prepare a written response to the appeal within 10 calendar days after the receipt of the mediator's report required under Section 11.7. Any response shall not exceed 20 pages in length, including exhibits and attachments, and shall be submitted to the LCRA General Counsel and mailed by certified mail, return-receipt requested, to the Applicant and all Appellants.

### **(b) Applicant Response to Valid Appeal**

The Applicant, if not the Appellant, may submit a written response to the appeal to the LCRA General Counsel within 10 calendar days after the receipt of the mediator's report required under Section 11.7. Any response shall not exceed 20 pages, including exhibits and attachments, and shall be mailed by certified mail, return-receipt requested, to all Appellants.

### **(c) Appellant Response to Valid Appeal**

The Appellant(s) may submit a written response to the appeal to the LCRA General Counsel, including any proposed alignment of the parties, within 20 calendar days after the receipt of the mediator's report required under Section 11.7. Any response to the Applicant and LCRA staff shall not exceed 20 pages including exhibits and attachments and shall be mailed by certified mail, return-receipt requested.

### **(d) Valid Appeal Forwarded to Water Operations Committee Chair**

Upon expiration of the deadline for the Applicant to submit a response pursuant to Section 11.8(b), the LCRA General Counsel shall forward to the Water Operations Committee chair a copy of the Permit, all valid appeals, the staff response and Applicant's response, if any.

## **11.9 Water Operations Committee Consideration of Valid Appeal**

### **(a) Forum**

Taking into consideration the complexity of the issues, the number of appellants, and the need to develop an adequate evidentiary record, the Water Operations Committee chair shall determine the most appropriate forum for consideration of an appeal.

The Water Operations Committee chair may:

- (i) consider all of the written information forwarded by the LCRA General Counsel and direct staff to issue the Permit;

- (ii) forward the appeal to the Water Operations Committee with a recommendation that the committee consider all the written information submitted and allow each party to the proceeding an allotment of time to present oral arguments; or
- (iii) forward the appeal to the Water Operations Committee with a recommendation that the committee consider the appeal using another method agreed to by all of the parties.

**(b) Scheduling of Hearing**

Upon the direction of the Water Operations Committee chair, as specified in Section 11.9(a)(i), a hearing before the Water Operations Committee may be held to consider a valid appeal. Such hearing should be scheduled no later than 45 calendar days after receipt of the required mediation report or the next meeting of the Water Operations Committee, whichever occurs later.

**(c) Written Information Provided**

No later than 15 calendar days prior to the date scheduled for the hearing, the LCRA General Counsel shall forward to the members of the Water Operations Committee the following materials:

- (i) All written information received from Appellants relative to a valid appeal and in accordance with this entire Section 11;
- (ii) The staff's response prepared in accordance with Section 11.8(a);
- (iii) The Applicant's response submitted pursuant to Section 11.8(b), if any; and
- (iv) The Appellants' response to the staff and Applicant's responses pursuant to Section 11.8(c).

**(d) Open Hearing**

The hearing shall be open to the public.

**(e) Participants**

Only the Applicant/Permittee, LCRA staff, the Appellant(s), or any of their designated representatives, shall be entitled to participate in the hearing.

**(f) Alignment of Parties**

Subject to the approval of the LCRA General Counsel, the parties shall establish their own alignments. In cases where parties fail to establish alignments, the LCRA General Counsel shall align parties (other than staff) according to their positions in support of, or opposed to, staff's Permit

decision. Except for an Applicant appealing a condition in a Permit, those Appellants opposed only to specific parts of the staff's Permit decision shall be aligned with those Appellants generally opposed to the staff's Permit decision. An Applicant appealing a condition in a Permit shall be separately aligned from other Appellants, if any, opposed to the staff's Permit decision. Each of the aligned parties shall designate a spokesperson to speak on their behalf. If any of the aligned parties cannot agree to a spokesperson, the LCRA General Counsel shall designate one.

**(g) Procedure**

The hearing process is as follows:

(i) Staff Summary

The Water Operations Committee shall convene in open session and shall receive a presentation by staff not to exceed 15 minutes which summarizes the position of each party to the appeal, including the staff's position. The staff summary shall be based upon all written information validly received from Appellants in accordance with Section 11, the application and the information contained in the Applicant's or Permittee's file.

(ii) Oral Argument

If oral arguments are requested by the Water Operations Committee chair pursuant to Section 11.9(a)(ii):

(1) The parties in opposition to the staff's Permit decision, as aligned by the LCRA General Counsel, will follow and will be collectively allowed a total of 20 minutes to make their argument(s).

(2) The parties in support of the staff's Permit decision, as aligned by LCRA General Counsel, will follow and will collectively have a total of 20 minutes to make their argument(s).

(3) Staff shall have 15 minutes to rebut the presentation of the parties aligned in opposition to the staff's Permit decision.

(4) Each group of aligned parties shall have five minutes to summarize their respective positions.

(iii) Presentation of Additional Evidence

If approved by the Water Operations Committee chair, any party may offer as part of their presentation additional evidence in the form of written information or documentation, if the

information has been provided to all other parties at least seven calendar days in advance of the hearing date.

(iv) Questions by the Committee

The Water Operations Committee may ask questions of any party or Person that has registered with the LCRA General Counsel and is a member or representative of a valid party to the appeal at any time during the proceeding.

**(h) Water Operations Committee Deliberation**

The Water Operations Committee shall deliberate in open session, taking into consideration the presentations of staff and the parties, if any, and all written materials submitted to the committee as a valid part of the appeal process. Notwithstanding the foregoing, the Water Operations Committee may confer with the LCRA General Counsel in Executive Session for the purpose of receiving legal advice concerning the appeal.

**(i) Water Operations Committee Recommendation**

The Water Operations Committee shall make a recommendation based on written information provided to the committee prior to the hearing, documents contained in the application file, and any other evidence or information submitted at the hearing, if recommended by the chair to be considered by the Water Operations Committee.

The Water Operations Committee may recommend:

- (1) Issuance of the Permit;
- (2) Denial of the Permit; or
- (3) Modification of the Permit.

**(j) Procedures May Be Altered as Justice Requires**

The Water Operations Committee may alter the procedures, including the hearing process, set forth in Section 11.9, if necessary, to develop an adequate record, to afford full opportunity for public participation or comment by the Applicant or staff, or if in the public interest.

**11.10 Board Consideration of Water Operations Committee Recommendation**

The Water Operations Committee's recommendation shall be forwarded to the full LCRA Board for consideration within 45 calendar days of the committee's recommendation. The Board shall consider the Water Operations Committee's recommendation and may, at its discretion, ask questions of the parties. Parties may not make additional arguments or comments to the Board without the permission of the Board. The Board may take the following action:

- (1) Affirm the Water Operations Committee's recommendation;

- (2) Reject the Water Operations Committee's recommendation; or
- (3) Modify the Water Operations Committee's decision.

### **11.11 Ex Parte Communications**

#### **(a) Prohibition**

Any communication by an Applicant/Permittee, party requesting an appeal or their representatives, or LCRA staff member with the Water Operations Committee or other member(s) of the LCRA Board on the merits of any pending appeal or decision affecting a Permit or Permit Amendment from the date of the Permit or Permit Amendment is issued by staff until the date the appeal is decided in accordance with Section 11, other than at a hearing or in a public meeting of the Committee or the Board, is strictly prohibited. Notwithstanding the foregoing, the LCRA General Counsel may consult with the Board or any of its members regarding the appeal.

#### **(b) Effect of Violation**

Any Person who violates this provision may be subject to sanctions, which may include:

- (1) Return of the application if the violation is from the Applicant or their representative;
- (2) Return of all or a portion of the application fee if the violation is from LCRA staff; or
- (3) Automatic rejection of the appeal if the violation is from a Person requesting an appeal or a Person otherwise opposed to the application.

## **Section 12. SAVINGS CLAUSE; AMENDMENT; EFFECTIVE DATE; REVIEW**

### **12.1 Savings Clause**

If any word, clause, sentence, process or provision of this Ordinance or the application thereof to any Person or circumstance shall be held to be invalid, the remainder of the Ordinance to that Person or circumstance and the application of such provision to other Persons or circumstances, shall not be affected thereby.

### **12.2 Amendment of the Ordinance, LCRA Technical Manual or Fee Schedule**

The Board may amend this Ordinance and/or the fee schedule from time to time after notice and reasonable opportunity for public review. The LCRA Technical Manual may be periodically amended by the LCRA General Manager.

### **12.3 Effective Date**

This Ordinance is effective as of Jan. 1, 2022.

**12.4 Review**

This Ordinance shall be reviewed for its effectiveness for protecting the quality of water in the Highland Lakes and its tributaries in accordance with Board policies in effect at the time.

DRAFT