

TUMALO IRRIGATION DISTRICT

O. EASEMENT ENCROACHMENT POLICY

The Tumalo Irrigation District (“TID” or the “District”) Board of Directors (“Board”) has the authority to establish, and change from time to time, equitable bylaws, rules and regulations for the administration of the District and for the distribution and use of water among the landowners. ORS 545.221(1)(c). TID may also perform all acts necessary to fully carry out the purposes of the Irrigation District Law. ORS 545.221(1)(d). Pursuant to this authority, the purpose of this Easement Encroachment Policy and Fee Schedule is to clearly establish policies, rules, and regulations governing encroachments upon easements held by TID.

A. DEFINITIONS

1. Easement:

An easement establishes the right to use the land of another (i.e. the right of TID to maintain and operate an irrigation system on land not owned by TID). Easements originate from a variety of sources including, without limitation, by a recorded instrument, on a plat, or pursuant to the Carey Act of 1894 (a "Carey Act Easement").¹ The owner of the property burdened by the easement cannot unreasonably interfere with the rights of the District in its easements. The District must have unobstructed access to its easements for the inspection, operation, management, repair and improvement of the District’s water delivery system and otherwise fulfill its statutory obligations under ORS Chapter 545

2. Encroachment:

An encroachment is any temporary or permanent occupation of a TID easement by someone other than TID. Encroachments increase the amount of time it takes District employees to inspect, operate, manage, repair and improve the District’s water delivery system (e.g., an unauthorized locked gate on a ditch access road can result in a District employee having to backtrack and circle around from the other direction) and ultimately the costs operate the water delivery system. Encroachments also increase potential liability to the District as they increase likelihood of damage to the water delivery system and require District employees to work around the obstruction.

3. Classes of Encroachments:

Class I: A Class I Encroachment shall include moderate obstructions including, without limitation, fences, fenceposts and other semi-permanent structures; locked, unauthorized or inadequate gates; debris or other objects that restrict or inhibit District vehicles and employees from accessing the water delivery system or enjoying any other right associated with a TID easement.

Class II: A Class II Encroachment shall include severe obstructions, including but not limited to houses, shops, barns, or any permanent/immoveable structure or improvement within any portion of the easement.

¹ A Carry Act Easement includes the width of the canal/ditch plus 50’ on either side “from the marginal limits thereof”.

B. POLICY

Because encroachments negatively impact TID's operations, they are not preferred. However, TID understands that, due to the changing times and the ever-evolving nature of our water delivery system, there may be situations in which it is appropriate to permit an encroachment upon TID easements. These situations should be limited to instances in which TID's ability to serve its patrons is not jeopardized and the impacts of the encroachment are appropriately mitigated.

C. DISTRICT RIGHTS

1. **Easement/Right-of-Way:** To the greatest extent provided by law, the District claims an easement, and all rights associated with such easements, on and around all District waterways including, without limitation, pipelines. Identification of waterways, including piped sections of the water delivery system, shall be as represented by the map at the District's office.
2. **Access to Land:** District employees shall have free access to any land irrigated from the delivery system for the purposes of examining the waterways, measurement and flow of water therein, and water use upon the irrigated land.
3. **Maintenance:** The District may remove any vegetation within its easements without consultation with landowners. Nonetheless, TID shall strive to consult with the burdened property owner prior to removing any vegetation outside of the interior slopes of waterways.

D. APPLICATION

Any party seeking the right to encroach on a TID easement shall submit an application on the form prescribed by TID, including any submittals required by the application form, and remit the administrative base charge. TID may reject any incomplete or improperly completed application.

E. APPROVAL OF ENCROACHMENT

The Board shall have sole discretion as to whether or not to grant an authorization to encroach on a TID easement. Notwithstanding the foregoing, no encroachment will be allowed closer than 15 feet from the disturbed edge on either side of the water delivery system (i.e. the top of the bank on a ditch or canal).

If granted, the authorization to encroach will be memorialized in a written instrument and recorded in the Deschutes County Official Records. All fees and other charges must be paid in full prior to TID's execution of the instrument. Construction plans for any improvements associated with the encroachment must be approved by TID prior to TID's execution of the instrument. TID may retain engineers and other consultants to evaluate the proposed improvements and the applicant will be responsible for reimbursing TID for such expenses.

F. ENCROACHMENT CHARGES AND OTHER FEES:

1. To compensate for the interference with TID's easement rights and to reimburse TID for the costs of preparing an easement, TID shall impose appropriate charges in

granting any encroachment authorization including, without limitation, administrative base charges and charged based on the class of encroachment.

2. An administrative base charge shall be collected upon application for authorization to encroach on a TID easement. The administrative base fee shall be non-refundable even if the authorization to encroach is not granted.
3. The Board shall establish fees based on the class of encroachment.
4. The Board may establish such other fees and charges as are appropriate from time to time to achieve the objective of Section F(1) above.
5. The amount of the charges shall be set forth in the District's fee schedule and adopted by the Board annually.
6. TID may also require reimbursement of engineering or other consultant fees incurred by TID in reviewing the application and advising the Board on impacts to the water delivery system and the appropriateness of the requested encroachment.
7. The applicant shall be responsible for the recording fees and any attorney or other advisor fees incurred by the applicant in completing the application and developing the written instrument to memorialize authorization of the encroachment.