

Office Memorandum  
No. 1130-2-31

24 September 1990

Project Operations  
RESOLUTION OF TIMBER CUTTING ENCROACHMENTS

1. Purpose. This memorandum establishes a formal procedure for correcting and resolving timber cutting and clearing encroachments that damage vegetation which has landscaping value.

2. Applicability. This memorandum applies to all public lands owned in fee by the Little Rock District in the states of Arkansas and Missouri.

3. Authorities. The Little Rock District draws its authority from the following legislation:

a. Arkansas:

(1) Statute 5-38-203. The purposeful destruction or damage to the property of others is a violation of Section 5-38-203 of the Annotated Codes of Arkansas. If the amount of the actual damage is \$500 or more, this is a Class C Felony that is punishable by a fine not to exceed \$10,000 and/or 3 to 10 years imprisonment. Otherwise, it is a Class A Misdemeanor.

(2) Statute 5-38-204. Recklessly damaging the property of others may be a Class D Felony, a Class A misdemeanor or a Class B misdemeanor depending upon the amount of actual damage. A Class D Felony has been committed when the actual damage is \$2500 or more. A Class D Felony is punishable by a fine not to exceed \$10,000 and/or imprisonment not to exceed 6 years. Class A misdemeanors occur when actual damages are \$1000 or over, but less than \$2500 and are punishable by a fine not to exceed \$1000 and/or imprisonment not to exceed 1 year. Class B misdemeanors occur when damage is less than \$1000, and are punishable by a fine not to exceed \$500 and/or imprisonment not to exceed 90 days.

(3) Statute 5-72-102. The removal of trees growing below the normal high watermark of a navigable river or stream designated by legislated act is a violation of Section 5-72-102 and is punishable by a fine of not less than \$10 nor more than \$1000.

24 Sep 90

b. Missouri:

(1) Statute 569.100. The knowingly destruction or damage to the property of others in excess of \$750 in value is a violation of Section 569.100 of the Annotated Codes of Missouri. This is a Class D Felony that is punishable by a fine of \$5000 and/or 5 years imprisonment.

(2) Statute 569.120. Knowingly damaging property in an amount less than \$750 is a class B misdemeanor Statute 569.120) that is punishable by a fine of up to \$500 and/or a imprisonment not to exceed 6 months.

c. Federal: 36 CFR 327.14 prohibits the destruction, injury, defacement, removal, or any alteration of public property on lands administered by the Corps of Engineers.

4. References:

a. Arkansas Statute 5-38-203

b. Arkansas Statute 5-38-204

c. Arkansas Statute 5-72-102

d. Missouri Statute 569.100

e. Missouri Statute 569.120

f. Guide For Establishing Values of Trees And Other Plants published by The Council of Tree and Landscape Appraisers (or equivalent).

5. Procedure.

a. Determination. The Resident Engineer or Resident Manager will apply two standard tests in determining whether the damaged or removed vegetation should be valued as landscape or as cordwood-sawtimber. These tests should be applied when making the decision that the appearance of the project landscape is adversely affected by a timber cutting or clearing encroachment.

(1) Reasonable Person Test - Would a reasonable person think that this was just a minor clearing of some spare timber or would they think that the clearing changed the landscaping in the area causing a long term change in value to the surrounding property?

(2) Balancing Test

(a) Is the affected area in a scenic area?

(b) Is the affected area readily visible?

(c) Did the encroachment have a noticeable effect on the appearance of the Government property? (i.e. can houses now be seen where before they were shielded by the trees)

(d) Has the affected area been planted, thinned, or otherwise maintained by the Corps?

(e) Is the affected area used for recreation or other high value uses?

b. Appraisal. The Appraisal Branch of the Real Estate Division has professional appraisers available to assist the field office employees in making these damage valuations. Once the person responsible for cutting the timber or clearing the land is ascertained, the services of a professional landscape appraiser (i.e. certified by The Council of Tree and Landscape Appraisers) may be obtained to further determine the landscape value of the vegetation that was cut or cleared. The services of a professional landscape appraiser can usually be obtained through landscape architects or landscape contractors.

c. Filing Process.

(1) Prosecution in the Federal courts must be based on violation of Federal law. As to tree cutting or destruction of other vegetation, efforts to resolve these instances through restitution should be initially made. If the matter cannot be resolved, a citation under 36 CFR 327.14 may be issued. The person responsible for the investigation will notify the appropriate representative in the U.S. Attorney's Office of the encroachment.

(2) If the U.S. Attorney's Office does not specifically want to prosecute the case, the results of the investigation and the supporting documentation will be submitted to the appropriate county or state prosecuting attorney and request that she/he file a Complaint for a Felony Information citing a violation of one of the above state statutes. Referral to local authorities is based on concurrent jurisdiction of a state and the Federal Government. Copies of all information will be maintained at the project office.

SWL0M 1130-2-31

24 Sep 90

d. Resolution. An acceptable offer of settlement of the case before it goes to court will consist of restitution to the Government for damages to the vegetation or vegetative restoration satisfactory to the Resident Engineer/Manager. Restitution will also be made for any and all fees paid to the landscape appraiser, and the salary and equipment expenses of the Government concerning the encroachment. If the defendant desires to contest the charge in court, the landscape appraiser will be used as an expert witness for the Government.

6. Civil Complaint. The valuation of removed or damaged vegetation as landscaping may also be used for cases filed in the Federal District Court for compensation of civil damages.

FOR THE DISTRICT ENGINEER:

  
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