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DEPARTMENT OF THE ARMY
Little Rock District Corps of Engineers
P.O. Box 867
Little Rock, Arkansas 72203-0867

SWLR 1130-2-47

Regulation
No. 1130-2-47

22 November 2000

Project Operations
TIMBER AND PERSONAL PROPERTY TRESPASS ADMINISTRATION AND
RESOLUTION

1. Purpose. This memorandum establishes procedures for correcting and resolving timber and personal property trespass violations.
2. Applicability. This memorandum applies to all public lands owned in fee by the Little Rock District.
3. References.
 - a. 36 CFR 327, Rules and Regulations Governing Public Use Of Corps Of Engineers Water Resources Development Projects.
 - b. ER 405-1-12, Real Property Management, Chapter 8, Change 30, 30 September 1994.
 - c. SWLR 405-1-14, Encroachment Administration for Civil Works, 30 January 1998.
 - d. SWLOM 1130-2-31, Resolution of Timber Cutting Encroachments, 24 September 1990.
 - e. SWLOM 1130-2-33, Shoreline Management at Civil Works Projects, 15 September 1992.
 - f. Guide for Plant Appraisal, 9th Ed. Published by the International Society of Arboriculture (or equivalent).
4. Procedure.
 - a. Investigation.

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(1) Detection. Upon discovery of a trespass, immediate steps should be taken to prevent further damage. If a permanent structure is involved, refer to SWLR 405-1-14. Unauthorized grazing activities are addressed in CFR Title 36 and ER 405-1-12.

(2) Documentation. Comprehensive documentation of the trespass should begin immediately. The following items should be include as a minimum:

(a) The date of the trespass discovery.

(b) Adjacent property owner information, including the date of purchase.

(c) Narrative description of the nature and extent of the trespass to include the number, species, and diameter of stumps and/or limbs affected.

(d) Detailed drawings of the damaged area with the location of the nearest boundary monuments and the distance (length and width in feet).

(e) Photographs with date, time, location, direction photo is depicting, and if present, the location of the boundary lines. (Digital photos may not be acceptable in court).

(f) Aerial photos of affected area if available (before and/or after).

(g) Real Estate grants of interest or Shoreline Use Permits if issued, including the conditions of the permit/real estate instrument.

(h) Estimate the relative age of the trespass (stump sprouts, evidence of recent cutting, decayed stumps, vegetative regeneration, etc.).

(i) All general correspondence.

(j) All memorandum for record/conversation(s).

(k) Are rare or endangered species present and have they been damaged or destroyed?

(3) Course of Action. Operations Manager's will make the determination on how to pursue the case. Courses of action that may be considered include citation, timber value appraisal, and landscape value appraisal. In all instances, the interests of the public and government should be of prime consideration.

(a) Citation. Citations should be issued as directed by the Operations Manager. While each tree cut can constitute a separate citation, this should be rarely used, if ever. One citation can be issued for multiple cuttings, but will not exceed the dollar amount as set in the forfeiture schedule for one violation. Citations may also be issued for mandatory appearance.

(b) Timber Value. Timber value appraisals should be accomplished when the Operations Manager determines the violation was to obtain material to sell or utilize for personal use. A forester or qualified timber appraiser should accomplish timber value appraisals in a manner commensurate with common timber value practices. The cost of the appraisal(s), curative costs, and expenses incurred by the Government during investigation and resolution will be included in the appraisal amount. In accordance with state statutes, timber values may be doubled or tripled for collections and settlement.

(c) Landscape value. Landscape value appraisals should be accomplished when the cutting directly benefits the landowner. Violations of this type include, but are not limited to, clearing for access, landscaping purposes or view. One of two appraisal methods may be used depending on the extent of damage. The first method, appraisal of a sample plot, will be accomplished if total disruption has occurred and no stumps are present. Utilize adjacent undisturbed vegetation with site characteristics commensurate to the disturbed site for the appraisal. If stumps are present, a landscape appraiser will assess damages using the Trunk Formula Method. The appraiser will act as an expert witness should the need arise. Limbing and lower tree damages will be included in this appraisal and considered as part of the restitution.

b. Resolution. One or a combination of the following methods may accomplish resolution of a trespass violation.

c. Restitution. Operations Manager's will collect restitution payment based on the appraised amount. To ensure accuracy, consistency, and an equitable and reasonable solution, a landscape appraiser or timber appraiser, if assessing timber value, should accomplish the appraisal(s). At least one written appraisal will be accomplished in all cases. The appraisal costs, curative costs, and other expenses incurred by the Government during investigation and resolution may be included in the total restitution amount.

(1) The violator will be notified in writing of the restitution amount. If the violator does not agree with the appraised amount, another appraisal by a professional certified landscape appraiser or timber value appraiser can be accomplished at their cost using the same methods described herein. The violator's appraisal must be accomplished within 30 days of receipt of the written notice of restitution amount. The lesser of the appraised amounts may be used as a restitution base.

(2) A negotiated settlement may be accepted, but may not be less than 50% of the appraised value. However, the violator must be agreeable to the total appraised amount with the remaining balance held in abeyance pending the completion of any restoration agreements with no further violations. Should a violation occur, the violator would be responsible for payment of 100% of the appraised amount. A restitution agreement will include language to this affect.

d. Restoration. Restoration may be considered as a means for resolution. Operations Manager's will determine the terms of the restoration area agreement. Terms will consider the extent of the damage, site conditions, and presence of rare or endangered species. Restoration area agreements should be no less than 5 years. An example of a restoration area agreement is shown in Appendix A.

(1) Tree plantings or other acceptable means of re-vegetation should be considered if site conditions are suitable. If the violator is to restore the area, the agreement will include terms to ensure plant survivability for a period no less than five years. The agreement may be recorded at the local county court house. This notice of restoration area will have a sunset clause causing the document to self-terminate. The violator is responsible for all costs incurred to register the document. Evidence of this action should be provided.

(2) A sign will be placed near the Corps fee boundary line designating the location as a restoration area (Appendix B). Only existing six-foot wide meandering paths through restoration areas that provide authorized access to a previously permitted private floating facility may be allowed to remain.

e. Prosecution. Trespasses should be resolved at the project office level if possible and in the most timely manner. Trespasses not resolved satisfactorily to the Government, and/or involve persons wanting to pursue the matter in court, should be turned over to the U.S. Attorney or their representative. Once referred to the U.S. Attorney, all future contact will be between the violator and the U.S. Attorney. The U.S. Attorney or their representative should coordinate proposed resolution actions with Operations Manager's.

f. Future Permitting. Immediately upon the finding of an encroachment, trespass, or damage to government property, the Operations Manager will place a "red flag" or hold on the present or future permit actions for the alleged violator. The Corps will not give affirmative action to any permit action in the District while there is a case or dispute outstanding. This shall include the renewal of any single or group permits, which the alleged violator have or be connected.

g. Permit Revocation. In cases involving extensive damage to Government property, repeat violators, uncooperative violators, or cases that are being prosecuted revocation of existing Shoreline Use Permits may be considered. Procedures as outlined in SWLOM 1130-2-33, Shoreline Management at Civil Works Projects will be followed. Correspondence sent to the permittee should include a notice of possible permit revocation in order to expedite the process while adhering to SWLOM 1130-2-33 guidance.

5. Personal Property. Structural encroachments will be administered in accordance with procedures outlined in SWLR 405-1-14. Trespass involving personal property on public lands will be resolved according to CFR Title 36. Request the owner to remove all personal property from public lands. Record items to be removed along with the date the action is to be completed (Appendix C). New Shoreline Use Permits will not be issued until all property has been removed.

6. Management Accounting. Project personnel will enter collected restitution funds into CEFMS. Funds should be entered under the "damages" collection code with a work category of 68031 and a remittance type of "C" for Civil Appropriations Reimbursement Activity. Each project will establish an ordering work item in CEFMS. This ordering work item will be used when the expenditure of funds occurs. This category will be unique and will enable the tracking of the expenditure of restitution funds.

7. Expenditures. Expenditure of restitution funds for natural resources activities only is paramount. The Operations Manager will expend restitution funds with priority given to restoration of damaged areas. The Operations Manager shall insure that the terms of any settlement agreement and expenditure of funds is carried through. Other uses of funds with written Operations Manager approval may include:

- (1) Natural shoreline improvements.
- (2) Fish and wildlife habitat improvements.
- (3) Erosion control.
- (4) Boundary maintenance activities.
- (5) Designation of restoration areas.
- (6) Re-surveying for encroachment verification.
- (7) Purchase of equipment and materials for natural resources management activities.

(8) Payment of salaries associated with any of the above activities.

To ensure budget execution, August 1st will be the cut-off date for restitution payments. After this date, it is recommended payments be delayed until October 1st of the next fiscal year.



THOMAS A. HOLDEN JR.
Colonel, Corps of Engineers
District Engineer

- 3 Apps
1. Settlement of MOA
 2. Sign Samples
 3. Boundary Trespass Resolution Agreement

Distribution A

APPENDIX A
SETTLEMENT AND MEMORANDUM OF AGREEMENT

COMES NOW the United States, represented by _____, Special Assistant United States Attorney, the U.S. Army Corps of Engineers (the Corps) represented by the Lake Manager _____, and the landowners, _____, represented by _____.

WHEREAS, _____ have property located in Section _____, Township _____ N, Range _____ W, _____ County, State of _____, Tract No. _____, and his property is adjacent to public property of the United States located on _____ Lake, and

WHEREAS, _____ had written permit issued on _____, for the period until _____, and for the limited purposes of underbrushing, planting, erosion control, mowing, and a footpath, which the Government maintains was for a distance of up to 50 feet from the public property boundary and to insure that at least a 50 foot buffer of untouched land along the lake edge, and

WHEREAS, - *Note the specific points of the case, especially points of contention. Specify what the government maintains as true and the violator's position.*

WHEREAS, the government maintains the tree and limb cutting improved the appearance of _____ private property and makes the differentiation of public and private property hard for the general public to distinguish and _____ disagrees, and

WHEREAS, the Government maintains that it has lost almost all of the vegetative buffer zone that helps protect _____ Lake and provides habitation for various native plants and animals near the _____ property and _____ disagrees, and

WHEREAS, the Government hired two certified landscape appraisers, the first who found the removal of ___#___ trees and the limbing of ___#___ trees caused a lost value of \$_____ and the second who found the removal of ___#___ trees and the limbing of ___#___ trees caused a lost value of \$_____, and the trees removed varied in diameter from _____ inch (es) to _____ inch (es).

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WHEREAS, the Corps has already paid _____ for the before mentioned appraisals, and

WHEREAS, the public's land around the _____ property is now mostly large trees and non-native grass, and

WHEREAS, there were two small gardens on the public's property which are not permitted, and

WHEREAS, there are indications that persons have been driving on the public property along a permitted path to a multi-stall dock on _____ lake, and

WHEREAS, the Parties want to settle the above matters concerning the adjacent public lands to the private land of _____, as of this date _____.

THEREFORE the Parties agree to the following:

1. A footpath with a maximum width of 6 feet shall be delineated from the edge of the private property to the ordinary high water point of the lake by the multi-stall boat dock.

2. _____ will work immediately with the Corps rangers to develop a delineation of the Government take or boundary line using natural or low visibility materials.

3. The remaining government areas shall be designated as a restoration area and said area will carry said designation for ten (10) years. No permits or impacting human activity shall be allowed in this restoration area during the period of restoration, in order to allow property to return to its natural state. The restoration area will remain open to the _____ and the general public for cleanups, walking the shoreline, and reasonable short-term visits.

4. _____ agrees to plant _____ trees of various species between the take line of his property and the water's edge. Said trees will have an average height of 4 feet and must have a 5-year survivability from the date of planting. _____ shall coordinate the appropriate location and species of trees to be planted with the head ranger at _____ or his designee.

The trees shall be planted during the time period of _____ to _____. If a tree dies and is not replaced, or there are other problems or a reason to change this settlement, each tree shall have an agreed upon value of _____.

5. As compensation to the Corps for the damage done in the past, _____ agrees to pay a _____ restoration fee. Payment of such fee shall be made upon signing of this agreement. The remaining _____ shall be paid as indicated: _____ . Each payment is separate and will be suspended provided that _____ has no further violations on the subject property and complies with the above listed requirements. The Corps will give _____ notice by regular mail if the amount is not suspended.

6. The _____ agree to refrain from any unauthorized use of public lands without written approval in the future.

7. The _____ agree that this Settlement and Memorandum of Agreement will be filed in local county recorder's office, which shall be paid for by the _____ and had an estimated filing cost of about _____ .

8. _____ are aware that if this agreement is not met by _____, a citation will be issued for violation of Title 36, for a mandatory appearance before the U.S. Magistrate in _____, who both Parties agree will hear the case.

9. _____ agree that the Government and/or contractors of the Government for the purpose of restoration or restoration inspection, will be allowed rights of entry for access to the disturbed site.

10. All Parties agree that this agreement settles all known disputes between the Corps and the landowner, _____ as of this date _____ .

11. Upon the signing of this agreement, it shall be effective as of _____ .

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Corps of Engineers

Date: _____

Date: _____

Special Assistant United States Attorney
P.O. Box 867
Little Rock, Arkansas 72203-0867

Date: _____

Date: _____

APPENDIX B

RESTORATION

AREA

Do Not Disturb

ALTERING, DESTROYING, OR
MODIFYING THE LANDSCAPE OR VEGETATION
IS PROHIBITED.

FOR INFORMATION CALL:



**US Army Corps
of Engineers**

Refer to Boundary signs, Section 10 of the U.S. Army Corps of Engineers Sign Standards Manual, for standard sign type and design.



US Army Corps
of Engineers

Appendix C

Boundary Trespass Resolution Agreement

Date: _____ - _____ - _____
 Name: _____ Phone No.: (_____) _____ - _____
 Address: _____

On _____ - _____ - _____ during an inspection of public lands on _____ Lake
 in Section _____, Township _____ N, Range _____ W, _____ County, State
 of _____,
 Tract No. _____ Park Ranger _____ observed
 the following unauthorized items adjacent to your property.

1. _____	6. _____
2. _____	7. _____
3. _____	8. _____
4. _____	9. _____
5. _____	10. _____

It is a violation of Title 36, Code of Federal Regulations to construct any structure, or store any personal items on lands managed by the Corps of Engineers without the written consent of the District Engineer or his representative. You are hereby directed to correct the above listed deficiencies within thirty (30) days of the date on this notice. If all deficiencies are not corrected within the established time frame, legal action will be initiated.

Contact Park Ranger _____ when you have corrected all deficiencies so a final inspection can be made. Ph. #. _____ ext. _____

I agree to the above terms and will accomplish all work within the allotted time and to the satisfaction of the Corps of Engineer's representative.

Signature _____ Date: _____

Final inspection has shown all work is accomplished satisfactorily within the allotted time as previously agreed.

_____ Date: _____
 Park Ranger, USACE