CESWL-RE-M

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

SWLR 405-1-14

Regulation
No. 405-1-14

30 JANUARY 1998

Real Estate
ENCROACHMENT ADMINISTRATION FOR CIVIL WORKS

1. Purpose. This memorandum provides policy for encroachment administration at Civil Works projects only.

2. Applicability.

a. This memorandum applies to all district office and project elements.

b. This memorandum shall not be construed as a basis for review of requests to construct on fee lands, or to construct human habitation, or other improvements on flowage easement lands.

3. Encroachments on fee and easement lands are resolved by application of the guidelines of ER 405-1-12.

4. Memorandum Format.

a. Section I provides policy for administration of unauthorized improvements constructed on flowage easements.

b. Section II provides policy for administration of unauthorized improvements constructed on fee land.

SECTION I: ENCROACHMENT ON FLOWAGE EASEMENT LAND

1. References.

a. Policy Guidance Letter No. 32, Use of Corps Reservoir Flowage Easement Lands, issued by the Director of Civil Works, dated 28 April 1993. This reference is applicable only to proposals for new construction on easement. However, this reference will be consulted as an aid to decision-making under paragraph 8-27(a) and (b) of ER 405-1-12, 30 Sep 94.

b. Chapter 8, Paragraph 8-4h of "General Introduction", and paragraphs 8-23 through 8-31 of "Real Estate Management Programs, Encroachment and Trespass" of ER 405-1-12, 30 Sep 94.

2. The primary concerns on flowage easement encroachment are the potential restraint on impounding flood water; the duration of impoundment; the threat to human life, health and safety; and the reduction in flood storage capacity.

3. The Chief, Real Estate Division, is primarily responsible for administering the resolution of encroachments on flowage easement land.

4. This memorandum addresses the administration, by Appendixes referenced hereinafter, of the four general categories of encroaching improvements most frequently encountered. The four categories are:

a. Residences. Any improvement or personal property suitable for human habitation, such as houses "stick-built" on site; house trailers transported to the site; modular homes transported to the site and assembled; recreational vehicles; travel/camping trailers; and tents. The administration of houses, house trailers, and modular homes at Appendix "A-1". The administration of facilities to accommodate recreational vehicles, recreational trailers and tents at Appendix "A-2".

b. Amenities, Other Than Sewage Disposal Systems. Any improvement adding utility or value to the private ownership which is encumbered with the flowage easement. The administration of this category at Appendix "A-3".

c. Sewage Disposal Systems. Any improvement designed to dispose of human or animal waste, such as holding tank with discharge into absorption field; self-contained treatment plant with open discharge of effluent; oxidation pond, or a vault below ground surface. The administration of this category at Appendix "A-4".

d. Cuts and Fills. Any activity that alters the natural contour of the land encumbered with the flowage easement. The administration of this category at Appendix "A-5".

SECTION II: ENCROACHMENT ON FEE LAND

1. References:

a. ER 405-1-12, 30 Sep 94, paragraph 8-4h.

b. ER 405-1-12, 30 Sep 94, paragraphs 8-23 through 8-31.

c. SWLOM 1-1-25 6(f), 24 Nov 92, "Coordination of Civil Works Real Estate Action."

d. LRDOM 405-1-9, 2 May 1986, "Exchange of Lands."

e. LRDOM 405-1-8, dated 20 Mar 86, "Outgrant for Roads."

f. SWLOM 1130-2-31, 24 Sep 90, "Resolution of Timber Cutting Encroachments."

g. LRDR 405-1-7, 8 Dec 75, "District Policy Against Illegal Trespass."

2. The improvements listed in Appendixes "A-1" through "A-6", will be administered under the guidelines of this memorandum. The issuance of citations under Chapter III, Title 36 CFR for those improvements will not occur without the approval of the Chief, Construction Operations Division. This prohibition does not apply to trespass, and resolution of trespasses, which are administered in accordance with reference 1g, without reference to this memorandum. For the purpose of this memorandum, trespass is defined as the temporary, unauthorized use and occupancy of fee owned project land, which is an activity, or minor improvement, or minor disturbance to fee-owned land. Examples of trespass are flower beds, vegetable gardens, small storage sheds, dog kennels, paths, unauthorized lanes providing vehicle access to the shoreline, brush and timber cutting, livestock grazing, and shoreline mowing. Unauthorized timber cutting is administered in accordance with reference 1f, without reference to this memorandum.

3. It is Real Estate Division policy that the project boundary, as monumented, is correct. However, the Chief, Real Estate Division will accept for review, any land survey performed by a registered land surveyor, that is purported by the land owner, to invalidate the location of the boundary, as monumented.

4. It is Real Estate Division policy to verify by land survey the relative position of all encroaching improvements to the boundary line, when the encroaching improvement is of substantial value, and when the curative action is removal. It is Real Estate Division policy to prepare a Fact Sheet, prior to contacting property owners, with a removal determination, for all encroachments of substantial value, especially when the encroachment is a residence.

5. This memorandum addresses the administration, by Appendixes referenced hereinafter, of the three general categories of encroaching improvements most frequently encountered on fee land.

The categories are:

a. Residences. Houses "stick-built" on site; house trailers transported to the site; and modular homes transported to the site and assembled. The administration of houses, house trailers, and modular homes at Appendix "A-6".

b. Amenities, Other Than Sewage Disposal Systems. Improvements, other than landscaping, that are ordinarily associated with residential construction. These are classified primarily upon the permanence of the construction technique, and are defined as semi-permanent or permanent. The improvement may be a type that would have been outgranted, had authorization preceded construction, or a type not routinely pre-approved for placement on project land. The administration of this category at Appendix "A-6".

c. Sewage Disposal Systems. Any improvement designed to dispose of human or animal waste, such as holding tank with discharge into absorption field; self-contained treatment plant with open discharge of effluent; oxidation pond, or a vault below ground surface.

6. Encroachments are resolved by the following basic methods: removal, outgrant, sale of land, exchange of land, boundary line agreement, and administrative finding, except for encroachment on Public Domain land. Outgrants, as curative actions, are authorized for Public Domain, but all other curative actions on Public Domain are administratively different, and beyond the scope of this memorandum.

7. Encroachments indicated by Appendixes "A-1" through "A-6" shall be administered under this memorandum, and will be coordinated with other district elements to assure consistency of resolution action initiated.

8. Project personnel are tasked with gathering the initial information needed for actions reported to the Chief, Real Estate Division, as per reference 1(c). The information to be provided:

a. Semi-permanent and Permanent Amenities. Provide the name, address, and telephone number of the property owner; prepare a simple sketch; indicate the general location on a real estate segment map, and furnish any information helpful to understanding how the encroachment occurred.

b. Residences.

(1) Name, address, and telephone number of owner.

(2) The owner's explanation on how the encroachment occurred.

(3) Copy of the owner's deed, or other instrument by which title is claimed.

(4) Copy of subdivision plat, and/copy of owner's private survey.

(5) Photographs and simple sketch of the site, with approximate location of the boundary line, and general location shown on a real estate segment map.

(6) A brief description of the foundation in order to determine the extent of the structure's permanence.

(7) For any utilities on fee land, provide information in order to evaluate the permanence, and indicate the general location on the sketch prepared above.

c. Sewage Disposal Systems.

(1) Comment on whether or not the system is displaying indication of malfunction, such as odor, altered condition of ground surface, appearance of visible components.

(2) Prepare a simple sketch, which also indicates the approximate location of the boundary line, and general location on a real estate segment map.

(3) Provide any information available from the property owner explaining how the system came to be placed on project land.

9. For Semi and Permanent Amenities, for which a removal determination has been made, the guidance of ER 405-1-12, paragraph 8-28 (a) shall apply. All information specific to the situation, available to the Chief, Real Estate Division, to include recognition of situations intrinsic to removal of improvements, will be considered, with a view toward successfully negotiating a voluntary removal. The Chief, Real Estate Division, will write the owner, and ask for a commitment, as to a date, by which the improvement will be removed and the area restored. The proposed date is subject to approval of the Chief, Real Estate Division. The owner will be advised concurrently

with the request for commitment, that if voluntary removal is not accomplished, a resolution will be sought under 36 CFR Part 327.20, with copy enclosed for the owner's review. As a last resort, the improvement may be removed by purchase order contract provided: (1) the property owner is given written notice by certified mail that removal has been scheduled (due to the administrative aspect of purchase order work, the exact date will be an unknown), and if desired, any salvage of materials should be accomplished within the next 15 days, and; (2) the improvement is wholly on project land, and; (3) the adjoining private property will not be physically damaged by debris or equipment maneuvering to remove the improvement, and; (4) that a legal right-of-entry is available to the purchase order contractor.

10. For residences, for which a removal determination has been made, the guidance of ER 405-1-12, paragraph 8-28 (a) shall apply. All information available to the Chief, Real Estate Division will be considered with a view toward successfully negotiating a voluntary removal. The Chief, Real Estate Division, will write the owner, and ask for a commitment, as to a date, by which the improvement will be removed and the area restored. The proposed date is subject to review and approval of the Chief, Real Estate Division, and is predicated on a good faith effort at all times by the owner to pursue removal. The review will recognize that voluntary removal may require a long period of time due to the complexities of removal, litigation between the private parties, and other factors. The owner will be advised concurrently with the request for commitment, that if voluntary removal is not accomplished, or a good faith effort is not maintained in pursuit of the removal, the matter will be litigated in Federal court.

11. Sewage Disposal Systems. A sewage disposal system is defined, for administrative purposes, as a Permanent Improvement, as per Appendix "A-6."

a. If a suitable site exists on the private ownership, then removal is the preferred action. If not feasible to relocate, then a determination on encroaching sewage disposal systems will be a review process, which considers if the system is functioning properly, the horizontal distance from the fee boundary line; the elevation, and a finding on the intentional/unintentional aspects.

b. If the initial site inspection indicates the system is suspected to be malfunctioning, then the Chief, Real Estate Division will request the appropriate State/County authority to investigate the district's complaint under 36 CFR Part 327.26 (e).

c. The Chief, Real Estate Division will make a determination on the intentional/unintentional aspects, or hardship aspects of ER 405-1-12, paragraph 8-27(b). This review will be concurrent with the State/County investigation.

d. Sewage disposal systems will not be outgranted, or outgrants renewed, if malfunctioning, or do not meet the intentional/unintentional aspects or hardship aspects. If the State/County authority states the system is malfunctioning, then the system must be corrected, or removed from project land, regardless of the intentional/unintentional aspects, or hardship aspects.

12. An Administrative Finding can be applied to instances where the extension onto project land is minor, such as improvements astride, or overhanging, the boundary line. Examples of encroachments frequently found in this category are the outer most portion of roof overhangs, the outside edge of patios, and outside edge of retaining walls. The owner will be advised in writing of the encroachment, and of the district's intention to take no further action for the present time. If the owner asks for a resolution, then the district's preference is to grant a temporary interest in project land, such as a license or easement.

13. If construction is in progress at tl
project personnel will address the activ:
appropriate Appendix. The Chief, Real Es
immediately notified of the action taken.

Clearwater
GF
Millwood
Mt Home
Norfolk / Blue Mt.
Pine Bluff
Russellville
Upper White River
Nat Resource
Hydrology

P.S. Mori
Colonel, C
District E

6 APP
1. App A-1, Houses
2. App A-2, Facilities
3. App A-3, Amenities
4. App A-4, Sewer Systems
5. App A-5, Cuts & Fills
6. App A-6, Curative Actions

DISTRIBUTION D
All Project Engrs/Mgrs
Chief, Natural Resources Management Sectio
Chief, Hydrology and Hydraulics Branch
Beaver Project Ofc, Karen Neisler
Mtn Home Project Ofc, Mike Teter

Appendix A

IMPROVEMENT: Houses, House Trailers, and Modular Houses.

POLICY STATEMENT: A house which meets Policy Letter No. 32 criteria should not be removed. The "practicable alternate" concept to a location on the easement will be emphasized in the review of house trailers and modular houses. A "practicable alternate" is deemed to exist when relocation to another spot on the lot, above the easement contour, is feasible. However, house trailers with substantial additions, and modular houses with permanence, will be reviewed like houses. No habitation will be approved which is below the flood control pool or navigation pool.

PURPOSE OF REVIEW: to determine the circumstances by which the habitation came to be on the easement; to evaluate the threat to human life, health, or safety; to determine compatibility with project operation; and to determine the feasibility of removal.

KEY ELEMENTS OF REVIEW: (1) Name, address and telephone number of the property owner. (2) Photographs and initial sketch of the site, with location on a real estate segment map. (3) Information available, or not available, to the property owner concerning the easement's existence. (4) The relationship of the first floor elevation, in vertical and horizontal measurement, to the top of flood control pool and to the base floodplain elevation. (5) If applicable, determine the anticipated frequency and duration of flood waters at the site. (6) The probable rate of rise for the water at this location. (7) The approximate horizontal distance from the main egress of the residence to the easement guide contour. (8) All particulars of the foundation in order to determine the extent of the structures permanence. (9) The particulars about the water, electrical power, and sewage system, in order to evaluate the permanence of the installations. (10) If construction is in progress at the time of discovery, the OPM will promptly visit the site, and determine if construction should cease. The OPM will advise the Real Estate Division by telephone, and will monitor and verify that construction has ceased while review is underway. (11) Review all of the above against Paragraph 8-27(a) of ER 405-1-12, 30 Sep 94.

PROCEDURE FOR REVIEW: Project personnel shall have the primary responsibility to gather information concerning Key Elements (1), (2), (7), (8), (9), and (10). This information will be forwarded to Real Estate Division for review and consultation with the Chief, Construction Operations Division. The Chief, Real Estate Division has the primary responsibility to gather the other key elements that are applicable to the review.

CURATIVE ACTION: Removal, or authorization to remain in place under the terms of a legal document entitled "Partial Release of Human Habitation Restriction."

AUTHORITY TO APPROVE CURATIVE ACTION: A removal determination can be made at the district level. The grant of a Partial Release of Human Habitation can be accomplished by the district if fair market value is less than $1000. If fair market value is $1000, or greater, approval must be granted by higher authority.

IMPROVEMENT: Facilities to Accommodate Recreational Vehicles, Travel Trailers, Tents.

POLICY STATEMENT: Policy to is seek removal, because requests to use the easement in this manner are denied.

PURPOSE OF REVIEW: To determine the circumstances by which the site came to be on the easement; to evaluate the threat to human life, health, or safety; to determine if the site will place a restriction on project operation; and to determine the feasibility of removal.

KEY ELEMENTS OF REVIEW: (1) Name, address and telephone number of the property owner. (2) Photographs and initial sketch of the site, with a reference to location on a real estate segment map. (3) Information available, or not available, to the property owner concerning the easement's existence. (4) The relationship of the camp pad elevation, in vertical and horizontal measurement, to the top of flood control pool, and to the base floodplain elevation. (5) The anticipated frequency and duration of flood waters at the location. (6) The probable rate of rise for the water at this location. (7) The approximate horizontal distance for egress to the easement guide contour. (8) The particulars about the water, electrical power, and sewage system, in order to evaluate the permanence of the installations. (9) If construction is in progress at the time of discovery, the OPM or his designated representative, will promptly visit the site, and determine if the construction or activity should cease. The OPM will advise the Chief, Real Estate Division by telephone, and will monitor, and verify that the construction/activity has ceased while review is underway. (10) Review all of the above against Section III of ER 405-1-12, 30 Sep 94.

PROCEDURE FOR REVIEW: Project personnel shall have the primary responsibility to gather information concerning Key Elements (1), (2), (7), (8) and (9). This information will be forwarded to Real Estate Division for review and consultation with the Chief, Construction Operations Division. The Chief, Real Estate Division has the primary responsibility to gather the other key elements that are applicable to the review.

CURATIVE ACTION: Removal, or authorization to remain in place under the terms of a legal document entitled "Partial Release of Human Habitation Restriction."

AUTHORITY TO APPROVE CURATIVE ACTION: A removal determination can be made at the district level. The grant of a Partial Release of Human Habitation can be accomplished by the district if the fair market value is less than $1000. If fair market value is $1000 or more, approval must be granted by higher authority.

IMPROVEMENT: Amenities, Other Than Sewer Systems.

POLICY STATEMENT: It is policy to approve any structure which meets the criteria of Policy Letter No. 32, or type of improvement for which consent would have been granted, had approval preceded construction.

PURPOSE OF REVIEW: To determine if the improvement is compatible with project operation and if not, to determine the feasibility of removal, or alteration.

KEY ELEMENTS OF REVIEW: (1) Name, address and telephone number of the property owner. (2) Description of the improvement with sketch, and a general location on a real estate tract map. (3) Information available, or not available, to the property owner concerning the easement's existence. (4) The anticipated frequency and duration of flood waters at the location. (5) Review all of the above against Policy Letter No. 32.

PROCEDURE FOR REVIEW: Project personnel shall have the primary responsibility to gather information concerning Key Elements (1), and (2). This information will be forwarded to Real Estate Division for review and consultation with the Chief, Construction Operations Division. The Chief, Real Estate Division has the primary responsibility to gather the other key elements that are applicable to the situation.

CURATIVE ACTION: Removal, or authorization to remain in place under the terms of a legal document entitled "Consent to Easement Structures."

AUTHORITY TO APPROVE CURATIVE ACTION: A removal determination, or grant of a Consent to Easement Structures can be accomplished at the district level.

30 JAN 98

IMPROVEMENT: Sewer Systems.

POLICY STATEMENT: Those portions of systems below flood pool elevations are to be removed. No system will be approved that is not in compliance with State statutes.

PURPOSE OF REVIEW: To determine if the improvement is compatible with project operation and if not, to determine the feasibility of removal or alteration.

KEY ELEMENTS OF REVIEW: (1) Name, address and telephone number of the property owner. (2) Description of the system, the location on a real estate tract map, and site sketch with approximate location of the easement boundary. (3) Information available, or not available, to the property owner concerning the easement's existence. (4) The relationship of the system, in vertical and horizontal measurement, to the top of flood control pool and the base floodplain elevation. (5) The anticipated frequency and duration of flood waters at the location. (6) Review all of the above against Policy Letter No. 32.

PROCEDURE FOR REVIEW: Project personnel shall have the primary responsibility to gather information concerning Key Elements (1) and (2). This information will be forwarded to Real Estate Division for review and consultation with the Chief, Construction Operations Division. The Chief, Real Estate Division has the primary responsibility to gather the other key elements that are applicable to the situation.

CURATIVE ACTION: Removal, or authorization to remain in place under the terms of a legal document entitled "Consent to Easement Structures."

AUTHORITY TO APPROVE CURATIVE ACTION: A removal determination or grant of a Consent to Easement Structures can be made at the district level.

30 JAN 98

IMPROVEMENT: Cuts and Fills.

POLICY STATEMENT: Paragraph a(b) of Policy Letter No. 32, which is a policy addressing applications for proposed, new construction on easement lands, will be used as a guideline. No landfill can be approved without providing equal flood storage. Minor cuts and fills, associated with amenities, will not be reviewed separately as cut and fill. Cuts or fills below the flood control pool are subject to further review, except for improvements that facilitate water-based recreational activities. All cuts and fills below the flood control pool are subject to further review.

PURPOSE OF REVIEW: To determine if the cut/fill is compatible with project operation, and the effect on flood storage.

KEY ELEMENTS OF REVIEW: (1) Name, address and telephone number of the property owner. (2) Sketch of the cut/fill, with approximate location of the easement boundary, and the location on a real estate tract map. (3) Information available, or not available, to the property owner concerning the easement's existence. (4) The relationship of the system, in vertical and horizontal measurement, to the top of flood control pool, and to the base floodplain elevation. (5) Review all of the above against Policy Letter No. 32.

PROCEDURE FOR REVIEW: Project personnel shall have the primary responsibility to gather information concerning Key Elements (1) and (2). This information will be forwarded to Real Estate Division for review and consultation with the Chief, Construction Operations Division. The Chief, Real Estate Division has the primary responsibility to gather the other key elements that are applicable to the situation.

CURATIVE ACTION: Removal, or authorization to remain in place under the terms of a legal document entitled "Consent to Easement Structures." A modification of the cut/fill can be accomplished to make the improvement acceptable.

AUTHORITY TO APPROVE CURATIVE ACTION: A removal determination or grant of a Consent to Easement Structure can be accomplished at the district level.

GENERALIZATION OF CURATIVE ACTIONS
BY TYPE OF IMPROVEMENT

	Removal Determination	Non-removal Determination	Non-removal Sale	Non-removal Exchange
SEMI-PERMANENT	Items not ordinarily outgranted. Interferes with project operation. Hardship exemption not available.	Items ordinarily outgranted.	Not available.	Not generally available, unless land to be acquired is below the acquisition contour.
	Removal Determination	Non-removal Determination	Non-removal Sale	Non-removal Exchange
PERMANENT	Items not ordinarily outgranted, except review septic systems further. Interferes with project operation.	Items ordinarily outgranted. Hardship exemption of ER 405-1-12 8-27b a possibility.	Not available.	Possible, if not intentional or hardship, and land acquired meets project needs equally or better than the encroachment site.
	Removal Determination	Non-removal Determination	Non-removal Sale	Non-removal Exchange
RESIDENCE	A willful seizure of land. Facts do not support an unintentional finding. Interferes with project operation. The residence a house trailer, or modular house without permanence.	Not intentional. Any residence meeting ER 405-1-12 8-26, to include a Trailer with substantial room addition, or Modular House with permanence.	Possible, if not intentional encroachment. The parcel will be the smallest practicable to cure the encroachment of the residence. Amenities are addressed as semi or permanent improvements.	Possible, if not intentional, and if private land meets project needs equally, or better than the encroachment site.