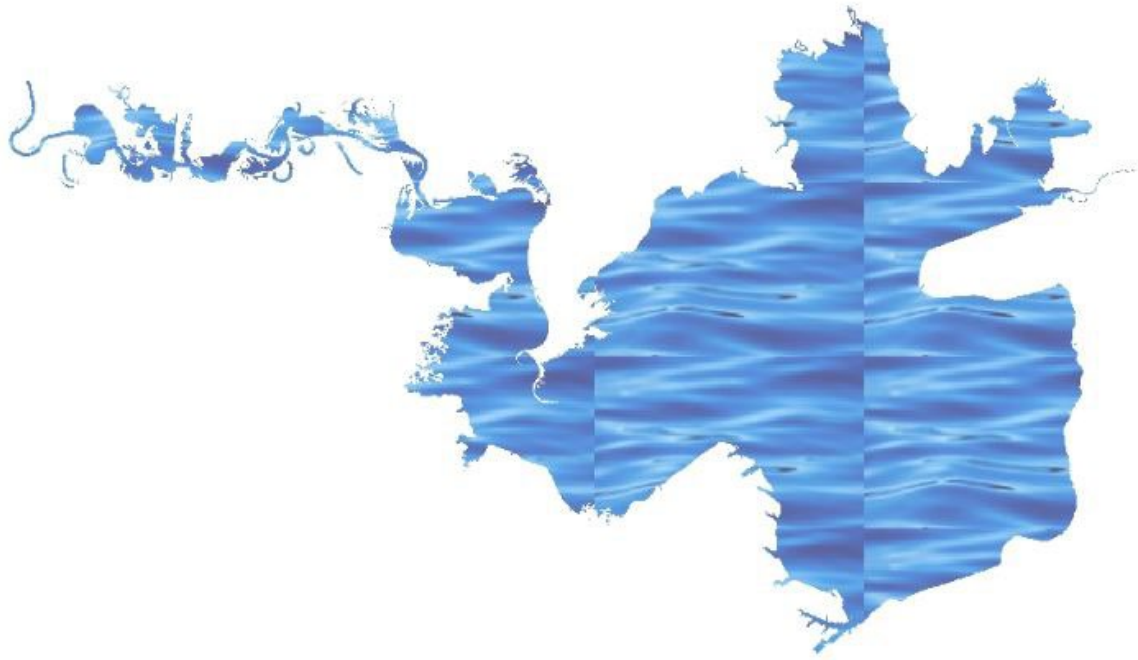


Shoreline Management Plan



**US Army Corps
of Engineers**®
Little Rock District

Millwood Lake

Little River and Tributaries, Arkansas

2022

Shoreline Management Plan
Appendix to the
Millwood Lake
Operational Management Plan

Department of the Army
US Army Corps of Engineers
Little Rock District
Little Rock, Arkansas
2022

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CHAPTER 1. INTRODUCTION

Purpose

The Shoreline Management Plan for Millwood Lake (hereafter, SMP) establishes US Army Corps of Engineers (USACE) policy and guidelines for the protection and preservation of the desirable environmental characteristics of the shoreline while maintaining a balance between public and private shoreline uses. This SMP is intended to develop management strategies for the review, approval, and administration of private shoreline uses on Millwood Lake. It does not establish policy for the review, approval or administration of public shoreline uses, such as commercial concession leases, limited motel/resort leases, and public utilities, except as specifically stated herein.

Management is necessary to prevent large sections and possibly all of the shoreline from becoming congested with private floating facilities and land-based private uses, which would potentially cause a loss of public use and enjoyment. Management of the shoreline will provide an opportunity for optimum recreational experiences for the maximum number of people and assure compatibility between the recreating public, the environment, and project resources.

Boat owners will be encouraged to moor their boats at commercial marinas, utilize dry storage facilities off project lands, or trailer their boats to public launching ramps located within the Corps parks or to one of the launch ramps developed by the county, state, or city governments.

Activities covered by the SMP, such as placing private floating facilities or modifying vegetation on public lands, require prior written approval, and/or a shoreline use permit from the Operations Project Manager (OPM) at Millwood Lake.

Policy

It is the policy of the Chief of Engineers to protect and manage shorelines of all Civil Works water resource development projects under USACE jurisdiction in a manner which will promote the safe and healthful use of these shorelines by the public while maintaining environmental safeguards to ensure a quality resource for use by the public. The objectives of all management actions will be to achieve a balance between permitted private uses and resource protection for general public use. Public pedestrian access to and exit from these shorelines shall be preserved.

The objectives of this plan are to manage and protect the shoreline, to maintain optimal fish and wildlife habitat, natural environmental conditions, and to promote the safe and enjoyable use of the lake and shoreline for recreational purposes.

In this SMP, the title Operations Project Manager is intended to include his or her authorized representatives, except where specifically excluded.

Authority

This SMP was prepared in accordance with the requirements of Title 36, Chapter III, Part 327, Code of Federal Regulations, "Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers". Part 327.30 specifically

addresses Shoreline Management on Civil Works Projects and has been implemented by USACE through publication of ER 1130-2-406, 31 Oct 1990. A complete copy of Title 36 Part 327, dated May 5, 2000, is attached at Exhibit A. The management and stewardship of lands and waters at USACE water resource development projects is guided by numerous public laws and executive orders, as listed below under References.

Relationship to Other Plans

Master Plan: The Master Plan for Millwood Lake is the strategic land use management document that guides the comprehensive management and/or development of all project recreational, natural, and cultural resources throughout the life of the water resource project. Shoreline allocations identified in the SMP shall complement, but certainly not contradict, the land classifications described in the Master Plan (see ER 1130-2-406, Sec 5.e.).

Operational Management Plan (OMP): The OMP is a five-year, task-oriented plan that implements the strategic resource objectives and conceptual development needs identified in the Master Plan. For the sake of administrative organization, the SMP is an appendix to the OMP.

References

- Section 4, 1944 Flood Control Act, as amended (16 USC 460d).
- The Rivers and Harbors Act of 1894, as amended and supplemented (33 USC 1).
- Section 10, Rivers and Harbors Act of 1899 (33 USC 403).
- National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915) as amended (16 USC 470 et seq.).
- The National Environmental Policy Act of 1969 as amended (42 USC 4321, et seq.).
- The Clean Water Act (33 USC 1344 et seq.).
- The Water Resources Development Act of 1986 (P.L. 99-662).
- Title 36, Chapter III, Part 327, Code of Federal Regulations, “Rules and Regulations Governing Public Use of Water Resources Development Projects Administered by the Chief of Engineers”.
- Executive Order 12088 (13 Oct 1978), Federal Compliance with Pollution Control Standards. See Exhibit A.
- 33 CFR 320-330, “Regulatory Programs of the Corps of Engineers”.
- ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, 15 Nov 1996.
- ER 1130-2-550, Recreation Operations and Maintenance Policies, 15 Nov 1996, as amended.
- The Federal Water Pollution Control Act of 1972 (FWPCA).
- Executive Order 11990, “Protection of Wetlands”.
- Endangered Species Act of 1973, as amended.
- Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended (P.L. 92 516).
- ER 1130-2-406, Shoreline Management at Civil Works Projects (31 Oct 1990).
- Reservoir/Forest Cover Act of Sept. 6, 1960 (P.L. 86-717).
- ER 405-1-12, Real Estate Handbook, as amended.
- Executive Order 13693, (19 March 2015) “Planning for Federal Sustainability in the Next Decade”
- Millwood Lake Shoreline Management Plan dated August 2012

- Millwood Lake Master Plan and Environmental Assessment, tentatively July 2022.
- National Electrical Code (NEC) or NFPA 70.

CHAPTER 2. HISTORY AND BACKGROUND

Millwood Lake

Millwood Lake was authorized for construction by the Flood Control Act, approved 3 July 1958 (Public Law 85-500, 85th Congress, S. 3901) as a modification of Millwood Reservoir authorized by the Flood Control Act, approved 24 July 1946 (Public Law 526, 79th Congress, Chapter 596, 2d Session, R.R. 6597). Millwood Lake is operated for flood control as a unit in the six-reservoir Little River Watershed System. This system includes the existing Pine Creek Lake formed by Little River, Broken Bow Lake formed by the Mountain Fork River, DeQueen Lake formed by the Rolling Fork River, Gillham Lake formed by the Cossatot River, and Dierks Lake formed by the Saline River. A seventh lake (Lukfata Lake), mentioned in the 1974 Master Plan, was authorized but never constructed. Lukfata Lake Project was deauthorized on April 16, 2002, under section 1001(B)(2) of the Water Resource Development Act (WRDA), as amended. Project purposes of Millwood Lake other-than flood control are fish and wildlife and water supply. Construction of Millwood dam and appurtenant works began in September 1961 and placed in operations in August 1966. The conservation pool was raised from the initial operating level, 257.0 feet above mean sea level (msl), to the ultimate elevation, 259.2 msl, in 1969 to enhance the recreation potential of the project. For a full list of project authorizations, reference the Millwood Lake Master Plan, tentatively dated January 2022.

Shoreline Management

Private floating facilities and limited private uses of the shoreline have been permitted on Millwood Lake since impoundment began. On 13 Dec 1974, USACE published Part 327.30 of Title 36, Chapter III, Code of Federal Regulations, which spelled out policy and procedures governing private uses. The new rule was then published by USACE as ER 1130-2-406. Central to the new rule was the requirement for USACE to prepare a Lakeshore Management Plan for all lakes where private floating facilities existed, as of that date. The rule further specified that private facilities would not be allowed at any lake completed after the 13 Dec 1974 date or at any existing lake that did not have private floating facilities, as of that date. To implement the new rule, the original Millwood Lake Lakeshore Management Plan was published in 1974. In 1990, ER 1130-2-406 was revised, resulting in a name change from Lakeshore Management Plan to Shoreline Management Plan. None of the private floating facilities on Millwood Lake are considered grandfathered within the parameters of SWLR 1130-2-48, dated January 2003. The SMP for Millwood Lake has undergone numerous revisions since its inception in 1976, including in 1982, 1993, and administrative reviews approved in 1998, 2007 and 2012.

The initial Millwood Lake Lakeshore Management Plan was developed and presented during a public meeting on 8 May 1975 in Ashdown, Arkansas. Public comments, recommendations, and objections were received from the public at the meeting and by mail for 30 days following the meeting. A series of meetings were subsequently held with the lake association to reevaluate and recommend changes for the finalized plan, approved on 13 May 1976.

During the 1982 Lakeshore Management Plan revision, two public meetings were held in Ashdown, Arkansas, the first, on 9 April 1981 and the other, on 4 May 1981. As a result of these meetings, a recommendation of an additional 5,700 feet of limited development area was approved. Of the 5,700 feet, an additional 3,785 feet of limited development area was added to the existing 1,300 feet of limited development area, in the Jack's Isle area, and a span of 1,900 feet of shoreline zoning was changed from protected, to a limited development area in the Cottonshed area. Lastly, the recommendation to allow roofs on community docks was approved. These revisions to the lakeshore management plan were approved, on 9 July 1982.

Revision of 36 CFR 327.30 in 1990 required the Little Rock District to convert its approved lakeshore management plans to shoreline management plans. The districts draft operating policy for shoreline management activities was discussed at a public workshop held at the Millwood-Tri Lakes Resident Office on 7 June 1991. No shoreline allocation changes were made to the 1992 Millwood Lakeshore Management Plan during the conversion to a shoreline management plan. The provisions of the finalized policy on 15 September 1992, SWLOM 1130-2-33, were included in the plan approved, on 11 March 1993.

A five-year administrative review of the 1993 Millwood Lake SMP was performed in 1998. A 30-day public comment period was advertised in the local newspaper to accompany the review process, and no responses were received. The Operations Project Manager and staff determined that no changes were needed to the 1993 Millwood Lake SMP, and the administrative review was approved, on 18 May 1998.

Administrative reviews were approved in 2007 and 2012 and minor changes were made to the SMP. Public Involvement was not required since there were no changes in shoreline allocations/zoning and no boat dock rezoning requests were considered. The content of these two administrative reviews and changes, primarily consisted of updating titles, definitions, policies, and current management objectives for Millwood Lake. These administrative reviews were approved, on 7 January 2007 and 14 August 2012, utilizing the existing 1982 shoreline allocation map.

CHAPTER 3. DESCRIPTION OF SHORELINE

Project Information

Millwood Dam is located on the Little River at navigation mile 16 and is located twelve miles east of Ashdown, Arkansas. Millwood Lake is centered at the junction of Little River, Hempstead, Howard, and Sevier Counties in southwestern Arkansas. Millwood Lake at conservation pool, elevation 259.2 is a wide shallow lake. The total water surface is about 27,125 acres. The shoreline is flat and marshy at most areas. The Little River and its three main tributaries, the Cossatot, Saline, and Rolling Fork Rivers, comprise the water source for Millwood Lake. The topography around Millwood Lake is characterized by a wide, flat valley which offers few significant variations in the configuration of the terrain. Exceptions are the bluffs which arise sharply out of the water along the east shore near the dam. The contrast that these bluffs offer to the otherwise flat, monotonous terrain makes them quite scenic. Hardwoods such as ash, hickory, water oak, willow, sycamore, and various other species of oak are predominant. Some of the area is classified as tall grass, but virtually no virgin vegetation remains in the area. Surface soils are mostly sandy loam and silty clay.

Standing timber was not removed prior to impoundment of the lake in 1966. The lake is generally shallow, so boaters need to be alert to potential underwater hazards, including submerged stumps, floating objects, and other obstructions. Logs and floating debris are a major hazard after each rise in lake elevations. A system of 27 miles of boating safety lanes and directional markers has been provided to assist boaters in emergency situations, inclement weather, and quicker access to the shoreline.

Present Land Use

Land classification categories specified in ER 1130-2-550, are included in the Millwood Lake Master Plan and provide the basic framework that guides the development, management, and operation of all resources and facilities. This SMP allocates the shoreline into five categories for the purpose of defining allowable private uses as described in the “Shoreline Allocation Section” below. The shoreline allocations and permitted activities shall not contradict the Millwood Lake Master Plan. Should there be cases where the Master Plan conflicts with this SMP, the Master Plan is the overriding document. For current land classifications at Millwood Lake, reference the Millwood Lake Master Plan.

General Public Use

Millwood Lake provides a wide variety of public outdoor recreation opportunities on Corps lands and waters. As of the date of this Plan, there are numerous county roads that end at the USACE property boundary that are used by residents and sportsmen as access points. In addition, there are 18 public boat launching ramps, 16 public use areas., and 1 commercial concessionaire offering 18 boat slips.

Private use

Private Shoreline Use. Definition per ER 1130-2-406, dated 31 Oct 1990: “Any action, within the context of this rule [36 CFR 327.30], which gives special privilege to an individual or group of individuals on land or water at a Corps project, that precludes use of those lands or waters by the general public, is considered private shoreline use.” Ownership of private land does not convey any exclusive rights to the use of the adjoining public lands. It is the objective of this Plan to manage private shoreline use of public property to the degree necessary to gain maximum benefit for the general public. The issuance of a private shoreline use permit does not convey any real estate, personal property rights, or exclusive use rights to the permit holder. Owners of private floating facilities may protect their facility by placing “no trespassing” signs on the facility, but the public's right of access and use of the surrounding land and water surface must be maintained and preserved.

At the time of writing this document, there were more than 444 privately owned land parcels adjacent to public property, with approximately 400 structures. There are 31 active vegetation modification permits and 6 active private floating facility permits (single owner/multi-owner docks) with 14 boat slips. There are approximately 12 outgrants for private use on Corps lands, such as steps/stairs, roads, tramways, water lines, and electric service lines to boat docks.

Boundary Line

The USACE property boundary line at Millwood Lake has been established and marked by surveyors, in accordance with standard survey techniques. Most surveys were completed in the 1960's. The boundary line is generally not located along a specific elevation and does not form a single contour around the lake, but rather was established by metes and bounds property descriptions. More information on the land acquisition policy for Millwood Lake can be found in the *Millwood Lake Master Plan*. The boundary line was marked with standard brass caps. Replacement monuments may have either a brass or aluminum cap. The year that the monument was set is stamped on the cap along with the monument number. These monuments were witnessed with a steel fence post that was painted orange. In open areas where the distance between corners is such that the monuments or pins are not visible, additional Point-on-Tangent (POT) monuments were installed. These POTs are designated with a letter on the end of the monument number. Additional boundary line posts were installed at some locations to help locate the line. Witness posts are used to mark the approximate boundary location but are not registered legal survey markers. The brass or aluminum caps designate the boundary. Removal or tampering with boundary line markers, line posts or witness posts on Federal land is a violation of Title 36 CFR.

USACE will provide information to surveyors or property owners which might assist in the location of boundary lines and property corners. This information is indexed by section, township, and range. A copy of this information is kept at the Millwood Lake Project Office and the master records are kept in the Little Rock District Office. Any discrepancies identified by the survey shall be resolved thru coordination between the Operations Project Manager; Chief, Real Estate Division; and the Chief, Survey Section.

Subject to available funding, each year USACE repaints witness trees and selectively removes vegetation along sections of the boundary line. The intent is to maintain a defined, recognizable line between private and public property around the project. However, due to the number of monuments and corner pins along the boundary line and the possibility they may have been disturbed or removed, USACE cannot guarantee the accuracy of these monuments. If a private need arises for the exact location of the common government/private property line, the adjacent property owner (at their own expense) should use licensed surveyors.

Adjacent property owners are encouraged to build permanent private structures on private land a sufficient distance back from the boundary line to allow for maintenance of the structure and reduce the possibility of an encroachment by the subsequent addition of decks, porches, steps, patios, extension of landscaping or backyard appearance, etc. Adjacent property owners should check deed restrictions and county ordinances for any building setback requirements.

Other than pedestrian access or general public recreation activities, any activity on public property not authorized by a Permit/Outgrant will be considered an encroachment, trespass, or degradation of public property and is a violation of the Rules and Regulations contained in 36 CFR, 327.14. Examples of these trespasses/encroachments include, but are not limited to unauthorized mowing, limbing and cutting of trees, gardens, landscaping, birdhouses, flagpoles, roads, etc.

Historical/Archeological/Cultural

The U.S. Army Corps of Engineers is charged by law (P.L. 96-515 Section 110) and regulation ER 1130-2-540 with the responsibility and efficient management of cultural resources, including

historic properties on USACE fee-owned lands. ER 1130-2-540 defines the term "Historic Properties" as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places. As funding becomes available, Section 106 desktop reviews or Section 110 surveys may be completed for compliance and to identify potential cultural resource or historic property sites.

Tribal Lands

There are no Tribal lands within the boundaries of the Millwood Lake project.

Joint Jurisdiction

No other Federal agencies have jurisdiction over administration of the shoreline covered by this SMP.

Water Quality

Water quality management is a complex and challenging task due largely to the extensive and varied human activity both in and around the lake. The broad goal of this management responsibility is to promote water quality adequate for safe and healthy public use, as well as conservation of wildlife, fish, and other beneficial aquatic life.

Currently, there is one commercial water customer that uses Millwood Lake for public water supply. It is operated by Southwest Arkansas Water District and provides a potable water supply to municipalities in a five-county area in Arkansas and Texas. The shoreline allocation around this area is designated as a Prohibited Access Areas and is shown in blue on the allocation maps.

Millwood Lake continues to provide a safe and dependable water supply for municipal and industrial use, as well as aquatic habitat, and recreational opportunities. Safeguarding the water quality of the lake is of utmost importance. The cooperation of all households, individuals, federal, state, and local agencies is necessary in this effort.

All permanently installed boat toilets must have a U.S. Coast Guard certified Marine Sanitation Device (MSD). The use of any type of MSD other than a U.S. Coast Guard approved "no discharge" type is prohibited. Proof of state certification must be displayed on the vessel. Only approved marine pump out locations may be used.

The discharge of any type of effluent in the waters of Little Rock District lakes, including Millwood Lake, is prohibited.

CHAPTER 4. Summary of the Shoreline Management Plan Revision

This list is not intended to be an all-inclusive list of changes, but rather to highlight major changes to the Plan.

Shoreline Allocations (Zoning)

- Park Buffers allocation name changed to Public Recreation Areas.
- Certain Public Recreation Areas around the lake have been reduced, thus allowing the potential for vegetation permits in some areas where previously not allowed.
- Certain limited development areas (LDAs) have been reduced in size, due to lack of potential for development around the lake.

Private Floating Facilities (Docks)

- Two printed and one electronic set of engineers stamped plans of the entire facility, are required for new facilities or any modifications to existing facilities. In addition to the actual structure, plans must include all amenities, including, but not limited to, lockers/storage, PWC moorage, and solar battery storage.
- Maximum size slip has changed from “the minimum size required to moor the owner’s vessel and not to exceed 3’ beyond the vessel’s length” to 12’ x 30’.
- Maximum walkway length changed from 50’ to 60’.
- Only alternative power sources (e.g., solar) will be allowed for new floating facilities or those existing facilities without service. Existing docks can maintain electrical systems as previously approved. Docks with overhead or underground electrical systems may be modified to accommodate additional electrical needs.
- Roofs must be unpainted or manufactured roofs must be black, blue, gray, tan, green, or brown (in natural tones).
- Permit applicants must own at least 75 feet of common boundary (within limited development areas) to be considered for a dock.
- Perpetual Easements will no longer be accepted as legal access for a new dock.

Vegetation Modification Permits

- Mowing and/or underbrushing will not be permitted across any natural or manmade break in vegetation such as a road, creek, electric distribution line, etc.
- Vegetation modification permits may allow the removal of a tree or shrub 2 inches or less in diameter, at ground level.

Other Permits/Outgrants

- Duck blinds must be portable and removed from project lands on a daily basis
- No ski course permits will be issued.
- New outgrants will not be issued for residential amenities, such as steps, stairs, water lines, tramways or private electrical service lines, that have not previously been issued an outgrant.

CHAPTER 5. SHORELINE ALLOCATION

General

To comply with ER 1130-2-406, the Millwood Lake shoreline has been divided into four allocations. These allocations are described below and are complementary to the land classifications in the Millwood Lake Master Plan. The shoreline allocations are intended to protect the natural beauty, wildlife habitat and public recreation opportunities of Millwood Lake, while honoring past commitments to private use and allowing limited expansion of private uses.

A map of the shoreline allocations, stored in GIS format, is readily available for viewing at the Millwood Project Office and will serve as the authoritative reference. Reduced or smaller scale maps may be developed for public dissemination. No changes will be made to shoreline allocations, except through the formal revision process.

Allocations

A comprehensive evaluation of the entire shoreline, involving public participation and review, resulted in development of a shoreline management plan for Millwood, establishing the following shoreline allocations:

Limited Development Areas (LDA)

(0.1% of Total Shoreline)

Approximately 0.2 miles of the shoreline is allocated for limited development. These areas are shown in red on the shoreline allocation maps. Private floating facilities (docks) may be permitted in areas designated for limited development, provided that all criteria are met. Reference Private Floating Facility section of this SMP for further information on criteria for dock placement. LDAs will not be reallocated without a formal SMP review and update process.

Public Recreation Areas (PRA)

(5.9% of Total Shoreline)

Approximately 26.3 miles of the shoreline is allocated for parks. These areas are shown in green on the shoreline allocation maps. Private floating facilities are not permitted within public recreation areas. No shoreline use permits for any purpose will be issued in areas allocated as public recreation areas. Commercial boat docks and concessions are permitted in public recreation areas.

Protected Shoreline Areas

(92.8% of Total Shoreline)

There are 411.3 miles of shoreline classified as Protected Shoreline Areas. Protected shoreline areas are designated primarily to protect or restore aesthetic, fish and wildlife, cultural, or other environmental values. The shoreline may also be designated in this category for physical protection reasons, such as heavy siltation, rapid dewatering, erosion, or exposure to high wind, wave, and current action. Pedestrian access and boating are allowed along the shoreline in this allocation, provided aesthetic, environmental and natural resource values are not damaged or destroyed, but private floating recreation facilities may not be moored in these areas. Modification of landform or vegetation by private individuals will be permitted only after due consideration of the effects of such action on the environmental and physical characteristics of the area, provided the request area is located inside the appropriate Master Plan land classification. These areas do not have a designated color on the SMP allocation maps.

Prohibited Access Areas

(1.2% of Total Shoreline)

Approximately 5.4 miles of shoreline are allocated as Prohibited Access Areas. These shoreline areas are those in which public access is not allowed or is restricted for health, safety, or operational security reasons. These could include hazardous areas near dams, spillways, hydro-electric power stations, work areas, water intake structures, etc. No shoreline use permits will be issued in these areas. These areas are shown in blue on the SMP allocation maps.

* Typically, shoreline allocations are based on conservation pool elevation. However, the shoreline of the Little River continues upstream, beyond the conservation pool at Millwood Lake. Shoreline allocation miles for Millwood Lake are based on the edge of the water to include shoreline on the Little River and its tributaries, associated with fee land upstream of the conservation pool. Total mileage of shoreline allocations is 443 miles while the total mileage of shoreline at conservation pool is 340 miles.

Flowage Easement

There are lands at Millwood Lake where USACE real estate interest is limited to the right to occasionally flood the privately owned property, commonly referred to as flowage easements. These easements were acquired for the operation of the Millwood Lake Project and are typically applicable to land lying between the Government boundary line and 290 msl elevation contour on the lake side and up to elevations 262, 261, 260 msl downstream of the Millwood dam along the river. The typical flowage easement grants the Government the perpetual right to occasionally overflow the easement area, if necessary, for the operation of the reservoir; and specifically provides that, “No structures for human habitation shall be constructed on the land [...]”; and provided further that, “No other structures of any other type shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project”. All flowage easement deeds should be checked for exact rights acquired prior to proceeding with any action on the easement.

Under *Title 36, Chapter III, Part 327, Code of Federal Regulations*, the Corps of Engineers has authority over all waters of the reservoir and all facilities thereon, regardless of ownership of the underlying land. Easement lands are therefore classified into shoreline use allocations, similar to fee-owned lands. Adjoining landowners who desire to place private floating facilities on waters over flowage easement lands must obtain a *Shoreline Use Permit* from the Operations Project Manager. There are currently 91,199 acres of land affected by flowage easements.

CHAPTER 6. SHORELINE USE PERMITS

All approved private activities or facilities on USACE lands must be authorized in writing, from USACE. The type of written authorization issued by USACE depends on the type of activity or facility.

A *Shoreline Use Permit* is required for most private activities and/or facilities on public property and waters owned by USACE at Millwood Lake. *Shoreline Use Permits* are issued for private

floating facilities and vegetation modifications. These are governed by the regulations referenced in this *SMP*.

Ownership, construction, operation, use, and maintenance of permitted/licensed facilities and/or activities are subject to all the permit conditions and all applicable federal, state, and local laws and regulations. Failure to abide by permit conditions, applicable laws, and regulations may be cause for revocation of the permit. The Millwood Project Office collects permittee and/or owner information including name, address, phone number, boat registration information, driver's license information, and email address to keep on file for permit administration purposes. This information will not be released to the general public except in accordance with the Freedom of Information Act (FOIA) and the Privacy Act of 1974. All general public requests for this information must be submitted to the Little Rock District Corps of Engineers FOIA Officer.

General Requirements

Shoreline Use Permits are generally issued for a period of five years. These documents contain general terms and conditions that are uniformly applicable to all permits issued (See Exhibit B). However, unique circumstances may require the establishment of additional terms and/or special conditions. All applications for Shoreline Use Permits on the reservoir are subject to approval by the Operations Project Manager. Requests for activities not specifically addressed in this plan should be submitted in writing to the Operations Project Manager for review.

All Shoreline Use Permits are issued and enforced in accordance with the provisions of Title 36, Chapter III, Part 327, and Code of Federal Regulations (CFR). The version of this CFR in place at the time of writing of this *SMP* is attached as Exhibit A. Failure to obtain the proper permits or noncompliance with any of the terms and conditions, general or special, may result in revocation of the permit or other enforcement actions.

The shoreline use program is intended only for private uses. Commercial development for financial gain will not be authorized or allowed. Private floating facilities cannot be developed or operated as a commercial enterprise.

Public's Right of Access and Use

The issuance of a Shoreline Use Permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. The public's right of access and use of the permit area must be maintained and preserved. Owners of permitted facilities may take reasonable precautions to protect their property from theft, vandalism, or trespass, but may in no way preclude the public's right of pedestrian or vessel access to the water surface or public land adjacent to the facility.

Private Floating Facility Permits (Docks)

Shoreline Use Permits are required for all private floating facilities (PFFs). Private floating facilities, as discussed in this plan, include single owner boat docks and multi-owner boat docks. No permits will be issued for stand-alone swim docks or mooring buoys.

Floating facilities are considered private structures. Because of this, the owners of the dock may restrict use of the facility. All new permits for private floating facilities and any modifications to existing facilities must meet the requirements in this plan. Dock and/or slip ownership is not limited to U.S. citizens. Vessels moored in a private floating facility must be registered to the owner of the slip. A permit for a private dock does not give the permittee or slip owners any exclusive rights to the use of Government lands for access, parking, or utilities to serve the dock.

Dock owners may not: (a) remove vegetation or trees without approval, (b) construct breakwaters to protect the dock from wave action or, (c) install buoys to restrict speed of passing boats. Docks are approved for the mooring of the owner's vessel and the storage of gear essential to the vessel's operation. All boats must be moored inside a slip. No other equipment or personal property is allowed to be stored on the dock. Private Floating Facilities are intended for boat moorage only and will not be used for human habitation. No items conducive to human habitation or recreation may be attached permanently to the docks or left unattended, including, but not limited to: diving boards, raised platforms, slides, ceiling fans, satellite dishes, refrigerators, swings etc.

The maximum slip ownership on Millwood Lake is, two slips per household, and a household may not own an interest in more than one permitted facility. Slips may be owned by an individual, a married couple, or a single or joint revocable or irrevocable trust. In the case of a trust, the trustee information shall be listed as a point of contact. Being listed as a trustee or point of contact for any slip will be construed as owning one slip, as it applies to the maximum ownership of two slips on the lake. When a slip is registered to a trust, boats using the slip must also be registered in the name of the trust. In a situation where a person acquiring more than two slips occurs, due to an inheritance, the slip or slips must be sold as soon as possible, so that ownership becomes compliant with the *SMP*. Ownership of more than two slips can be cause for termination of the permit and removal of the dock.

Slips will be allowed to have more than two owners only in cases of inheritance. For such transfers, estate documentation will be required, and the fractional interests may not be sold to an outside party, until the sale makes the slip ownership compliant with the ownership requirements previously stated. Being listed as an owner or point of contact for any slip interest will be construed as owning one slip, as it applies to the maximum ownership of two slips on the lake.

An applicant requesting change of ownership of an existing single owner private floating facility permit, must submit a signed application, a valid boat registration certificate, a bill of sale or other proof of ownership transfer from the current permittee, and a check, cash, or money order for the permit fee.

All permitted facilities are subject to periodic inspection by the Operations Project Manager. No deviation or changes from approved plans will be permitted without prior written approval of the Operations Project Manager. If inspection reveals conditions that make the dock unsafe, or any deviations from the approved plans, such conditions must be corrected within the time period specified by the Operations Project Manager.

Single Owner Docks

New permits may be issued for single owner docks within a LDA, subject to the restrictions listed herein. These docks may have one or two slips. A single owner dock may be owned by an individual, married couple, or a single or joint revocable or irrevocable trust.

Multi-Owner Docks

New permits may be issued for multi-owner docks within a LDA, subject to the restrictions listed herein. These docks may have a minimum of two slips and a maximum of 20 slips. The Operations Project Manager will approve the size, configuration, location, and anchoring plan based upon the criteria set forth in this plan.

Shoreline Use permits for multi-owner docks must be issued to an individual. This individual is the representative for all the slip owners in the dock and is referred to as the dock permittee. The dock permittee is the point of contact with USACE. To change the dock permittee, the new permittee must submit an *Application for Shoreline Use Permit/License*, have written approval from a majority of the slip owners, and provide an updated *Dock Owner Diagram*. The permittee will be provided an optional form that, once signed, will allow USACE to provide his/her contact information to any owners and future owners of slips in his/her dock. All owners in the dock are responsible to uphold the conditions of the permit.

When a slip in a multi-owner dock is transferred to a new owner, the seller and buyer must notify the dock permittee and provide a copy of the bill of sale for the slip and boat registration for the boat to be moored in the dock, and these documents must be provided to the Operations Project Manager, within 14 business days. Providing false information and/or otherwise not complying with this *SMP* and/or the terms and conditions of the permit can result in the revocation of the permit and the removal of the dock, from the lake.

Application

New and/or Structural Modifications of Existing Facilities

A request must be submitted to the Millwood Lake Office by the permittee for any new floating facility or modification to an existing floating facility. All new facilities or modifications must be located within a Limited Development Area. Upon request, a Corps employee will conduct a site inspection to determine if the location is physically suitable. If approved, the applicant will have six months (from date of site approval letter) to provide all required submittals. If the submittals are not received within the six-month period, the site approval becomes null and void. Upon approval of submittals, the applicant will have one year to complete construction. Construction cannot begin until all submittals have been approved and construction plans are stamped approved for construction. Upon completion, dock will be inspected by project personnel prior to a permit being issued.

Upon site approval, the applicant must provide the following submittals, to the Millwood Project Office (MWPO), Millwood 1528 Highway 32E, Ashdown, AR, 71822, prior to receiving construction approval:

1. Completed permit application ENG Form 4264-R.

2. Proof of ownership of adjacent property within 200 ft. of proposed dock location at normal conservation pool within an LDA (if applicable).
3. When replacing an existing dock: either a letter stating the old dock will be destroyed and removed from public lands and waters within 10-days of the installation of the new dock; or Bills of Sale, to new owners who have an approved location.
4. Two printed sets and one electronic copy of professional engineer stamped plans of the entire facility (new and/or structural modification to existing facilities) must be submitted to the Millwood Project Office, Millwood 1528 Highway 32E, Ashdown, AR, 71822. In addition to the actual structure, plans must include all amenities, including but not limited to, lockers/storage, PWC moorage, and solar battery storage. Written approval from the OPM must be received prior to construction.
5. Copy of current boat registration is required for each new slip. This requirement is necessary to prevent commercial activity on the floating facility.
6. A \$30 fee for permit application must be submitted to the MWPO. Private Floating Facility permits are non-transferable. A new permit will be issued upon change of ownership once all requirements are met. Payment may be made by cash, check (personal, certified, cashiers, etc.), or money order made payable to the Finance and Accounting Office, U.S. Army, Little Rock District.
7. Shoreline use permits are issued for a period of time, not to exceed 5 years, and may be subject to revocation by the District Commander whenever it is determined that the public interest requires such revocation, or the permittee fails to comply with the conditions of the permit. Facilities are subject to periodic inspection by Corps personnel, and permittee must allow access across private property for inspections.
8. For multi-owner docks, the permittee must submit a diagram to the MWPO that (See Figure 1) shows the name, address, telephone number, and state boat registration number for each slip. The permit for a multi-owner dock will be issued to the person designated as the authorized representative (Permittee) for the slip owners in the dock, and the authorized representative will be the point of contact for the Corps of Engineers. All slip owners of the multi-owner dock will have rights equal to that of the dock Permittee. Any structural changes to the dock must have the written approval of all slip owners.

Figure 1

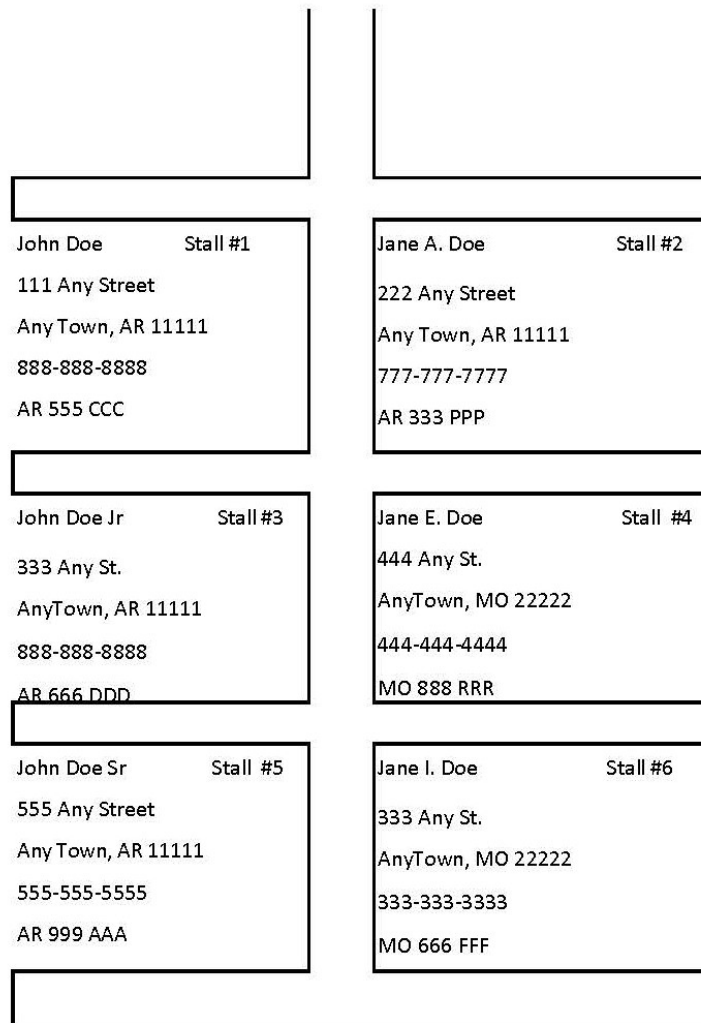


Figure 6-1 Example Dock Owner Diagram

9. A permit for a Private Floating Facility does not give the owners any exclusive rights with regard to the use of public land. The permit does not give the owners the right to construct breakwaters or install buoys to restrict the speed of passing boats. Parking and/or vehicular access is allowed only on authorized public roads and government-defined designated parking areas.
10. All houseboats, sailboats, and vessels with MSDs shall be moored at commercial marina concessionaire locations.
11. All vessels moored in Private Floating Facilities shall not extend beyond the full length of the slip. All vessels shall be moored in slips and shall not be tied to the outside of a dock.
12. Posting of Permit Number. Two permit plaques will be furnished to each permittee for posting on the dock. Plaques shall be posted on the permitted facility in a high,

easily visible location. One plaque will be displayed on the lake side and one on the land side of the Private Floating Facility.

Renewal Procedures

To renew an expiring permit, permittees must submit the following:

- A completed and signed shoreline use application.
- Check or money order for applicable fees.
- Current Dock Owner Diagram with all owner's names, addresses, telephone numbers, current boat registration numbers.
- Electrical Certification (if applicable).
- Signed statement that all noted deficiencies have been corrected.

When a permit for a private floating facility is renewed, the applicant will receive a signed copy of the shoreline use permit, ENG 4264-R. Fees for shoreline use permits are nonrefundable. Permit fees are subject to change in future years.

Mooring Buoy

The placement of mooring buoys is not allowed on Millwood Lake.

Dock Access Requirements

Reissue (Permit Renewals) and Change of Ownership of Existing Facilities

Dock/slip owners shall retain legal access to their private floating facilities. However, no documentation of this will be required at the time of application for reissue of existing permits provided ownership and access has not changed. In the event slip ownership changes, all access documentation must be provided within 14 days. Changes in ownership must comply with all "new slip construction and relocating existing facilities" requirements, listed below:

1. Ownership of adjacent private property within 200 feet of the location of the facility.
2. Perpetual access easements on private property will not be recognized as legal access for changes in ownership.

New Slip Construction and Relocating Existing Facilities

The applicant must have legal access to the LDA. Legal access is defined as:

1. Ownership of adjacent private property within 200 feet of the location of the proposed facility.
2. Perpetual access easements will not be recognized as legal access for new dock placement.
3. To be considered for a dock permit, the subject private property must share a common boundary with public property (classified as Limited Development Area) for a minimum width of 75 feet and the subject lot must be of a practical design, (e.g., extremely shallow or narrow lots, known as finger lots, will not qualify for permits).

4. Use of pre-existing access and parking on Corps property could be considered if the existing licensed area is large enough to accommodate additional slips. These areas include outgranted roads/parking areas licensed to homeowners' associations or like groups and county outgrant.

Vegetation modification for dock permits

A maximum four-foot-wide path can be maintained for access to the dock. Reference the Vegetation Modification, Foot Paths section in this plan, for additional requirements. Submerged and emergent vegetation located underneath a dock structure at the dock's approved site, at the 259.2 ft. elevation contour, may be removed with approval.

Location and Spacing

Location, Spacing, Density, and Depth will be determined at the 259.2 msl elevation contour.

Location

The location of a dock must be within an approved Limited Development Area (LDA), as indicated by shoreline allocation maps. Designation as a Limited Development Area does not guarantee the approval of dock placement.

Water Depth and Slope

New floating facilities or relocation of existing facilities must be placed to ensure a minimum water depth of four feet within the dock's footprint, measured at conservation pool elevation 259.2 msl, for all slips to provide adequate depth for mooring of boats, lifts, and underwater bracing. Ease of pedestrian access should be considered by the applicant, with the understanding that new construction of steps, stairs, or other improved access will not be allowed. A site that presents a severe slope, unsafe terrain features, destructive wave action, and/or bluffs may be denied at the discretion of the Operations Project Manager.

Spacing and Density

Docks may not extend out from the shore more than one-third of the cove width at 259.2 msl. Two-thirds of the cove width (measured at elevation 259.2 ft msl) will remain open for navigation and recreation purposes.

Docks will be spaced a minimum of 100 feet apart at conservation pool (elevation 259.2 msl), from closest point to closest point of an adjacent facility or obstruction.

The facilities in limited development areas will not occupy more than 50 percent of the total shoreline within the LDA. Density will be determined by measuring linear feet of shoreline in the zone and comparing it to the width of the facilities in the water plus associated moorage arrangements which restrict the full unobstructed use of that portion of the shoreline. When a LDA or a portion of a LDA reaches maximum density, notice should be given to the public and facility owners in that area that no additional facilities will be allowed. In those cases where current density of development exceeds the density level established in the Shoreline Management Plan, the density will be reduced to the prescribed level through attrition. At the time of writing this document, one of the two existing LDAs has reached maximum density. The

maximum density designation is not a shoreline allocation, it is a fluid status that changes as docks are added to or removed from the LDA.

The density of development in LDAs will depend upon and be consistent with the ecological and aesthetic characteristics of the particular area. The total width of all docks within the LDA must not exceed 50 percent of the entire length of the LDA at the top of the conservation pool. Once the LDA reaches ≥ 50 percent density of the length of the zoning, slip additions and/or modifications that increase the overall width of the facility along the shoreline, will not be allowed.

Dock Configuration

Docks may be configured perpendicular or parallel to the shoreline. The Operations Project Manager will approve the size, configuration, and anchoring plan for docks. The access ramp to the facility must be perpendicular to the shoreline and docks cannot be moored at an angle.

Pre-existing and Grandfathered Facilities

Existing Docks under Permit

Existing docks may be sold and remain at their presently approved location, or they may be relocated to an approved LDA, provided all criteria of the SMP are met and prior approval is obtained from the Operations Project Manager. Requests for modification of an existing dock will be subject to prior approval from the Operations Project Manager.

Non-Conforming Facilities

Facilities that were permitted and constructed in accordance with a previous *SMP* are authorized to remain in place, as long as the facility is maintained in accordance with the *Shoreline Use Permit Conditions*, even if not in compliance with the current *SMP*. These docks will be referred to as “non-conforming” docks. New docks with enclosed sides (e.g., boat houses) are prohibited, therefore, when an existing dock with enclosed sides is replaced, the new dock will not have enclosed sides. Other docks which are non-conforming may be rebuilt to the currently approved square footage, however, the new dock should comply with the current *SMP* to the maximum extent possible. If dock spacing is less than 100 ft., no slips shall be added and in no case will a modification be approved that decreases the distance between docks.

When structural changes to the dock are required, the permittee must submit engineer stamped plans to the OPM and must have prior approval from the OPM before making changes to the dock.

Facility Construction Requirements

Design Loads (Minimum)

1. Deck loads and access ramp loads (substructure) 30 psf.
2. Wind loads (sub and superstructure) 20 psf.
3. Roof loads (superstructure) 10 psf.

- (4) Bracing- All columns and/or studs must be adequately braced to resist wind loads. Bracing shall be designed and constructed to counteract design loads, while allowing sufficient flexibility so wave action will not damage the structural and/or roof system.

Flotation

1. Floats and the flotation material for all docks and boat mooring buoys shall be fabricated of materials manufactured for marine use. The float and its flotation material shall be 100% warranted for a minimum of 8 years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads. All floats shall resist puncture and penetration and shall not be subject to damage by animals under normal conditions for the area. All floats and the flotation material used in them shall be fire resistant. Any float which is within 40 feet of a line carrying fuel shall be 100% impervious to water and fuel. The use of new or recycled plastic or metal drums or non-compartmentalized air containers for encasement of floats, is prohibited.
2. Flotation may not be stacked under the dock structure.
3. Adequate flotation must be provided to maintain the substructure a minimum of 8 inches above the water's surface.

Roofs

Roofs are required for all Private Floating Facilities. Roofs may be gabled or single-pitched and must be metal. The roofs must be securely fastened to the superstructure to resist wind uplift. The minimum thickness required for a roof is: steel (28 ga.) or aluminum (0.032 inches). Roofs must be unpainted or manufactured roofs must be black, blue, gray, tan, green, or brown (in natural tones). Upper decks are prohibited on new floating facilities.

Anchorage

Design of these facilities will be submitted for each separate structure and will be developed in accordance with the site where the facility will be moored, taking into consideration the water depth, exposure to fetch, and wind loads.

If an anchorage system utilizes a dead man or ground stake, they shall be installed flush with the existing grade, where feasible. Anchor cables or other securing devices shall be maintained in good repair and located to minimize obstruction hazards to pedestrians, boaters, and vehicular traffic. Anchor cables will not be attached to trees, rocks, stumps, power poles, guardrail posts, etc. Minimum requirements for anchor cables: 3/8 inch or larger galvanized or stainless-steel cable may be used.

Additional Survey Requirements

If at any time during facility construction archeological or historic property remains are discovered, the permit holder must immediately cease facility construction and contact the Millwood Project Office for further direction and guidance. Additional archeological or historic property surveys may be required.

Minimum/Maximum Component Dimensions for the Main Walkway, Fingers, Slips, and Access Ramp

<u>Component</u>	<u>Minimum Size (feet)</u>	<u>Maximum Size (feet)</u>
Main Walkway/Head Pier (width)	4	6
Finger (width)	3	4
Slip (width)	N/A	12
Slip (length)	N/A	30
Access Ramp (width)	4	6
Access Ramp (length)	N/A	60

Construction Materials

1. All new docks will be galvanized metal construction with wood, composite, or concrete decking.
2. All materials used in construction of a new dock or repairs to existing docks must meet Environmental Protection Agency (EPA), National, State, and local guidelines.
3. Existing dock modifications or expansions must be constructed of similar type, design, and construction materials (e.g., wood, metal, aluminum).

Access Ramp

All floating facilities must have an access ramp that connects the facility to the shoreline. Each floating access ramp must have enough flotation to provide a stable walking platform or be one solid piece connecting the shoreline to the floating facility without touching water. Walkways should be a minimum length necessary to obtain adequate water depth but will not exceed 60 feet.

Handrails

1. Handrails will be provided on at least one side of the access ramp leading to the dock and perimeter areas of the dock. Gates or safety chains may be used in areas on the perimeter of the dock where frequent loading/unloading takes place. No gaps wider than 4 feet should be present.
2. Handrails shall be approximately 42 inches in height with a guardrail approximately 22 inches in height below the handrail.
3. Handrails must be structurally sound and maintained in a state of good repair.
4. Handrails must withstand a load of at least 200 pounds applied in any direction.

5. Upon inspection for permit renewal, all existing facilities must conform to handrail and guardrail requirements identified in this section prior to permit renewal.

Storage Lockers

An enclosed storage area or locker may be constructed for the storage of equipment necessary for recreational boating, such as oars or life preservers. The maximum size footprint allowed is 16 square-feet per slip. Cantilevered lockers must be located on the shore side only. Any other lockers must be located within the footprint of the dock and must allow a minimum of three feet pedestrian access on fingers and four feet pedestrian access on main walkways (head pier). Permanently attached lockers must be shown on the engineer certified docks plans provided to the Millwood Project Office.

Electrical

1. No new shore-based electrical service will be allowed on private floating facilities. Any electrical service must be self-contained on the dock and supplied from a renewable energy alternative power source (e.g., solar or wind). Two sets of engineer stamped plans must be provided to the Millwood Project Office for approval prior to installation. These systems are required to conform to the current National Electric Code (NEC), and the current Corps of Engineers, Little Rock District Dock Electrical Systems handout. Electrical certification must be submitted with permit renewal application.
2. Pre-Existing Shore-Based Electrical Service must meet the current National Electrical Code (NEC), current Corps of Engineers, Little Rock District Dock Electrical Systems handout, and state and local codes. The service must be in compliance with an existing, active Real Estate instrument. A copy of the electrical inspection form must be certified by a Master Electrician, licensed in the State of Arkansas, or a licensed electrical engineer, and provided to the Operations Project Manager at Millwood Lake before a Shoreline Use Permit will be issued or renewed.
3. Generators may be used but cannot be permanently affixed to the dock. Extension cords will be kept out of reach of pedestrian traffic and must be removed when not in use or fully supervised by the dock owner. Extension cords must be grounded (three-pronged).
4. Specific requirements for existing electrical service Include (but not limited to):
 - a. Fixtures must be Underwriters Laboratory (UL) listed for outdoor, damp locations.
 - b. Overhead powerlines must maintain a minimum vertical clearance of 12 feet above the walkway.
 - c. Lines and fixtures may not be affixed to trees.
 - d. All light fixtures must be globed or caged.
 - e. Receptacle and switch boxes must be grounded.

- f. Entire dock must be Ground Fault Circuit Interrupter (GFCI) protected.
- g. Service panel or disconnect switch must be located at minimum 3 feet above 287 msl.

Personal Watercraft (PWC) Mooring

PWC's shall not be moored on the exterior of a dock.

Swim Decks

Existing docks with extensions or sunbathing decks will be grandfathered and reissued until the dock requires major reconstruction or is moved to a different location. No further swim decks will be permitted on Millwood Lake.

Deck Over

Building a deck over a slip or any portion of a slip is prohibited.

Vegetation Modification Permits

Mowing, underbrushing, dead tree removal and all other related work performed on public property around the lake must have prior written approval from the OPM. The approval for a vegetation modification request is granted through a *Shoreline Use Permit*. Where significant wildlife habitat or scenic/aesthetic areas occur, requests for vegetation modification may be denied or additional restrictions may be included on the permit.

In all cases, the permittee will avoid creating the appearance of private exclusive use of public property. All lands covered by a *Shoreline Use Permit* will remain open at all times, for use by the general public. The placement of personal property on public property is prohibited. Vegetation modification permit placards will be attached to a fence post placed along the Government/private boundary line. Permit conditions are attached as Exhibit B.

Application

Adjacent landowners must obtain a permit from the Operations Project Manager prior to modification of vegetative characteristics of the area. Permits will not be granted for use of lands allocated as public recreation areas (park buffer) or lands allocated as prohibited access areas. In addition, permits will not be granted in lands classified in the Master Plan as Environmentally Sensitive, High Density Recreation, Wildlife Management, and Project Operations. Previously approved vegetation modification requests within a land classification which normally would not allow vegetation modification, shall be grandfathered and will be allowed to continue as long as the existing permit is in good standing. However, these grandfathered permits will not be transferrable to a new landowner should the properties be sold or transferred. Damage to public property and/or vegetation may result in criminal prosecution, monetary penalty, and/or termination of existing shoreline use permit(s). Restoration of the damaged public lands may be required.

New or Change of Ownership Permit Requests

Vegetation modification permits are non-transferable. All persons applying for a permit allowing vegetation modification in a new area or persons requesting a change of ownership of an existing *Shoreline Use Permit* must submit a completed *Application for Shoreline Use Permit* along with the required fee and proof of ownership of property adjacent to public property. Upon issuance of a permit, the boundary must be marked by installing a standard Corps-supplied permit sign on the common boundary line. The applicant must provide a metal T-post or 4"x4" wooden post and install the provided sign on the post, as directed. It is the responsibility of the applicant to establish the location of the common boundary. In cases where there is a boundary line dispute, a potential encroachment, and/or illegal vegetation modification, the applicant will be required to provide a survey, prior to being considered for a permit.

Reissue (renewal)

Applications for "renewal" of expiring permits to the same individual require the applicant to submit a signed *Application for Shoreline Use Permit* and a check or money order for the permit fee. The permit will then be reissued with a new expiration date to the existing permittee. All new permits will comply with the current SMP.

Fees

An administration fee of \$10 will be made for shoreline use permits issued for vegetation modification. The permits will generally be issued for a term of five years. Fees collected for vegetation modification permits are non-refundable. The administration fee is subject to change in future years.

Vegetation Modification

Absolutely no vegetation modification is authorized without written permission of Operations Project Manager, in the form of a Shoreline Use Permit. Once a permit has been obtained, the following requirements apply:

Mowing and underbrushing

Mowing and underbrushing will be limited to the area of Corps property between the adjacent private property lot lines, as though the lot lines were extended onto Corps property from the common private/Corps property line towards the shoreline, for up to a maximum of 200 feet from the base of the permanent habitable structure on the adjacent private property. In the case of a condominium/homeowner's association, or other similar situation where common ground exists between the habitable structure(s) and the Corps property line, mowing and underbrushing permits may be granted to an association. At no time should mowing or underbrushing occur in an area that exceeds 200 feet from a habitable structure, unless provided for specifically in this SMP. Within specified areas of the permitted vegetation modification request, turf-tired lawn mowers, string trimmers, and hand tools may be used. Use of tractors may be approved in specific situations with prior written approval. A Right of Entry from Real Estate Division may be required for equipment use on Federal lands. To determine the 200 feet requirement from a habitable structure, a degree of permanency will be determined by USACE where travel trailers or campers are in use on private lands. The determination of permanency will consider connection to utilities (water, electric, telephone, sewer, septic system, decks, and underpinning).

Any structure, such as a porch or garage, if attached to a habitable structure will be considered in determining the 200-foot requirement. Outbuildings or “vacant lots” will not be considered in the permit process.

Mowing and/or underbrushing permitted area may be limited in circumstances when determined to be in the best interest of the stewardship of the natural resources. For example, if a protected species habitat is discovered such as a Bald Eagle nest or if a safety issue is discovered on site such as crossing a creek, bluff, or a government-maintained road. The actual limits of vegetation modification in each case will be determined by the Operations Project Manager and defined on the Shoreline Use Permit. Trees and shrubs up to two (2) inches in diameter (measured at ground level) may be removed. In certain cases, the Operations Project Manager may restrict the cutting of trees less than 2 inches in diameter, if it is determined that it would create an erosion problem or similar adverse impact. Dogwood, redbud, or serviceberry trees cannot be removed, regardless of size. Trimming, limbing or topping of trees and chemical manipulation of vegetation is prohibited, unless provided for specifically in this SMP.

Foot Paths

In areas with a land classification of Low Density Recreation, a foot path may be permitted to elevation contour 259.2 msl. The path cannot exceed 4 feet in width and must be meandering to prevent erosion. The path route will be the shortest meandering distance between private property and the lake, keeping in mind possible safety issues. Natural colored wood mulch or wood bark may be used on the path. No materials such as stairs, steps, landscape blocks, or landscape timbers are permitted on the path. Delineation of the path can be done with natural rock or logs where needed to prevent erosion. Rocks and logs must be small enough to be placed by hand, can't be attached by mortar or permanently installed, and must come from the natural environment. No digging, fill material, or bridges will be allowed to be constructed on the path. Trees may be limbed along the path to keep the immediate area of the path clear for walking (maximum four feet wide and seven feet tall).

Path erosion is generally caused by overuse of the trail or use of the trail by vehicles. When an access route to the shoreline is creating an erosion problem, use of the trail must cease and the trail must be restored.

Unauthorized Vegetation Modifications

Any modification of vegetation on government owned land is illegal without a valid Shoreline Use Permit. Damage to public property and/or vegetation may result in criminal prosecution, monetary penalty, and/or termination of existing shoreline use permit(s). Restoration of the damaged public lands may be required.

Invasive Species Removal

The removal of invasive species from Government lands is encouraged. However, a *Shoreline Use Permit* for the activity is required. There will be no charge for a permit for the removal of invasive species from Government lands, provided no other vegetation modification is involved in the request. When other vegetation modification is requested in conjunction with the invasive species removal, the normal fee payment will be required. For the purpose of this *SMP*, invasive species is defined as those species of plants identified by the Millwood Project Office staff. An application for removal of an invasive species should include photos of the

area, identification of the invasive species, and the conceptual plan for removal of the species. Use of chemicals can be approved for this purpose. However, a use plan must be provided with the application. These permits are not subject to the mowing/underbrushing area distance limitations, nor are they subject to the 2” diameter at ground level size limitation for tree removal.

Dead Trees and Limb Hazards

Cutting of dead trees without a permit is prohibited. Dead trees which have fallen will be left for wildlife habitat. However, any dead tree that has the potential to strike a structure, fence, or cross a public roadway, may be removed with a permit. Contact the Millwood Project Office for a dead tree removal permit.

Landscaping

Landscaping in reference to this SMP, is defined as the planting of vegetation on public property. Landscaping may be allowed under a permit, provided it is in accordance with an approved planting plan. Planting of vegetation is encouraged. However, only native plants are approved for use. Upon planting, all vegetation is subject to current permit requirements. Ornamental flowers and other non-native plants are not authorized. Building structures, use of timbers, decorative rock, and similar items are prohibited.

Other shoreline use permits

Duck Blinds

A shoreline use permit will not be issued for duck blinds. However, those who hunt/view wildlife from the concealment of natural shoreline vegetation or portable blinds do not require a permit. These portable blinds shall be placed and removed on a daily basis.

All other Federal, State, and local hunting laws and regulations also apply.

Ski Courses

Ski courses are not allowed on Millwood Lake.

Erosion Control

When bank erosion occurs on Millwood Lake, certain measures may be approved to prevent further erosion. Federally funded erosion control is limited to protecting the Government's investment in the Project, such as the dam, overflow structure, or the shoreline of a park or other public use areas. Adjoining landowners may apply for a permit(s) to complete a bank stabilization project, subject to all current federal, state and local laws and regulations. Potential applicants should contact the Millwood Lake Office for current specific requirements. For additional information see Exhibit D, Shoreline Erosion Control.

CHAPTER 7. Unauthorized Activities, Facilities, and Violations

All Shoreline Use Permits are issued and enforced in accordance with the provisions of Title 36, Chapter III, Part 327, Code of Federal Regulations. Unauthorized activities are considered violations of the rules and regulations contained in Title 36, Chapter III, Part 327, Code of Federal Regulations. Violations can result in enforcement actions such as, but not limited to, removal, restitution, restoration, permit revocation, access restrictions, issuance of a citation requiring the payment of a fine and/or the appearance before a Federal Magistrate and/or recovery of damages through civil litigation, etc.

Placement of Personal Property on Public property

Personal property is not to be placed or stored on public property. This includes, but is not limited to, items such as, sheds, furniture, outdoor decor, swing sets, bird baths, firewood, boats, lights, hammocks, fire pits, landscaping materials/plantings, sewage, or outfall structure, etc. These items are subject to removal and impoundment by USACE personnel.

Landform Modification

Any type of landform modification, construction, or other activity that changes the original or present condition of the land will not be authorized.

Temporary Tie-Up of Vessels

Temporary tie-up is defined as the intermittent moorage of private watercraft along the shoreline or Private Floating Facility during a period of recreational activity, not to exceed 24 hours of non-use. All vessels shall be removed from public property if not in use, with the exception of those vessels that are authorized to be moored in a Private Floating Facility. Habitation is not allowed on Government lands, waters, or flowage easements. Watercraft owners needing non-temporary moorage of vessels are encouraged to contact local marinas or apply for a private floating facility permit.

Burning

Generally, no burning of any kind is allowed on Corps of Engineers property, except in designated recreational areas. In special circumstances, for instance after a flood event, permission may be granted by the Operations Project Manager, for limited burning of debris along the shoreline. Any burning must be performed in accordance with applicable state and local laws.

Unauthorized Vegetation Removal

Mowing beyond permit limits or without a shoreline use permit, trimming, limbing, or cutting down trees without authorization is prohibited. Application of chemicals on public property is also prohibited.

Other unauthorized activities/facilities

- Any type of fixed pier or platform, either on the land or extending into the water from the shoreline.
- Any type of piling or post driven into the lake bottom for the purpose of mooring or tying boats.
- Accumulation of garbage, trash, refuse, litter, or other similar personal items or materials.

Enforcement standards

Owners of permitted facilities and permittees will be held accountable to the conditions of the permit. The enforcement standards listed below will be considered for Millwood Lake in order to gain and maintain compliance.

For Private Floating Facilities with Vegetation Modification shoreline use permits, Minor Outgrants, Letter of Permissions (LOP), and/or Flowage Easements:

1st Offense: Citation with letter of warning of consequences for future offenses, up to recommendation of revocation of the permit, depending on the severity of the case.

2nd Offense: Restrict use of boat slip(s), by barricading slip(s) or dock, for a period of two years, regardless of sale of slip(s) or dock, up to recommendation of revocation of the permit, depending on the severity of the case.

3rd Offense: Recommendation to the District Commander for revocation of the permit or removal/permanent barricading of the slip(s), regardless of sale of slip(s) or dock.

Violating owner of permitted facilities and/or slips shall not be allowed slip ownership in another dock, for a period of up to 10 years.

For Vegetation Modification shoreline use permits, Minor Outgrants, and/or Flowage Easements:

1st Offense: Citation with letter of consequences for future offenses, and/or the establishment of restoration area, and payment of restitution, if required. A recommendation may also be made to the District Commander for revocation of the permit and/or to the Chief of Real Estate for termination of the outgrant, depending on the severity of the offense.

2nd Offense: A recommendation may also be made to the District Commander for revocation of the permit and/or to the Chief of Real Estate for termination of the outgrant.

Appeals Process

Shoreline use decisions may be appealed based on evidence of an administrative error to supervisory levels above that of the original decision. The appeal process will be afforded to individuals petitioning for shoreline use. Appeals may be forwarded to the Chief, Operations Division for a final decision. To request such an administrative appeal, an individual must submit a written request for action within ninety (90) days of the decision. The request should be accompanied by appropriate supporting documentation (letter, maps, diagrams, copies of correspondence, doctor's letters, etc., and mailed to Commander, Little Rock District, U.S. Army Corps of Engineers, ATTN: Chief, Operations Division, P.O. Box 867, Little Rock, Arkansas 72203-0867.

CHAPTER 8. FACILITIES REQUIRING A REAL ESTATE INSTRUMENT

Leases, licenses, and easements, collectively called “outgrants” by USACE, are real estate instruments and are governed by Corps real estate regulations. All real estate instruments are administered by the Corps of Engineers Real Estate Division. This section discusses only those uses associated with private use of public property. Uses of the project for the general public, such as public roads and highways or electric distribution lines, are not discussed in this *SMP*. A real estate instrument is required for the installation and maintenance of certain land-based, public facilities such as roads, parking areas, boat launching facilities, electric lines, or water lines. New outgrants will not be issued for private amenities, such as steps, stairways, water lines, tramways or private electric service lines. Renewal outgrants for existing structures may be reissued in accordance with current rules, regulations, and policies in place at the time of expiration or termination.

Fees will be collected for specific facilities prior to the issuance of an outgrant. These fees are separate from any *Shoreline Use Permit* fees for permitted activities or facilities. Individuals issued an outgrant must agree to give the Chief, Real Estate Division or his/her representative access across their properties for the purpose of inspecting outgranted facilities or other activities.

Application

Change of Ownership of Existing Structure

Applicants requesting a change of ownership of a land-based structure outgrant must submit a written request to the Millwood Project Office. The request must include a proof of ownership of the land adjacent to public property at the point the facility enters public property. Other documents may also be required. Contact the Millwood Project Office for current requirements.

Renewal

Current grantees may request to “renew” expiring outgrants by submitting a written request to the Millwood Project Office stating the intent to have the outgrant reissued to them. Other documents may also be required. Contact the Millwood Project Office for current requirements.

Electric Lines

Existing electrical services supplying private floating facilities or occupying public property must meet the standards set by the current National Electrical Code. Licenses are not required for solar or other alternative electric systems that are contained entirely upon a permitted boat dock.

Outgrants will not be issued for new electric service to private floating facilities. If electric service for new floating facilities or those existing facilities without service is installed, it must be supplied from a renewable energy alternative power source (e.g., solar or wind). This service must be installed and maintained to the standards established by the current National Electrical Code.

All electric service must be maintained in safe working condition and meet Corps standards (including license/easement and *SMP* conditions), meet all local and state codes, and meet all requirements of the National Electrical Code. All power systems will be inspected upon renewal of Shoreline Use Permit.

Roads, Parking Areas, and Boat Launching Ramps

Roads must comply with the Non-recreational outgrant policy (ER 1130-2-550 and Memorandum from CECW-CO/CEMP-CR dated 30 March 2009). No new roads will be constructed across public property for shoreline use.

Stairs/Steps

New steps and/or stairs are prohibited. Existing outgranted steps or stairs will be allowed to remain, in accordance with the regulations in place at the time of renewal, so long as they are maintained in safe working condition and meet Corps standards (including license/easement and *SMP* conditions).

CHAPTER 9. SPECIAL TOPICS

Reduction of LDA Zoning

Millwood Lake’s shoreline use program consists of relatively few Limited Development Areas as compared to other Projects, in Arkansas. The LDA along the shoreline of Millwood has been reduced by 92% (2.9 miles) to benefit special status species and cultural resources; and to limit destructive wave action and resulting soil erosion. Difficulty accessing the shoreline and lack of public demand for private floating facilities were also contributors to the reduction.

CHAPTER 10. CHANGES AND REVISIONS

USACE will continually work to protect and manage shoreline uses at Millwood Lake in a manner to promote the safe and healthful use by the public while maintaining environmental safeguards ensuring a quality resource, for use by the public. When needed, the SMP will be revised to better accomplish this goal. At a minimum, the SMP will be reviewed every five years, at which time minor changes in the SMP may be approved by the District Commander. When major revisions to the SMP are needed, including any changes in the Shoreline Allocations, the plan will be formally updated through the public participation process. Cumulative environmental impacts of permit actions and the possibility of preparing or revising project NEPA documentation will be considered.

Requests for reallocation of the shoreline (boat dock zoning) to permit additional or expanded Limited Development Areas (LDA) will not be considered or accepted. During a SMP revision, shoreline allocations will not be changed unless unique situations exist.

Five-Year Review

Shoreline management plans will be reviewed periodically, but no less often than every five years, by the Project Office to determine the need for update. The plan may be supplemented more frequently should regulations, project operations, project conditions, or management objectives change significantly. The District Commander may approve minor administrative revisions to the plan when the revisions are consistent with ER 1130-2-406 or 36 CFR 327.30. The addition or deletion of limited development areas is not considered a minor revision. Revisions of this nature will require public involvement and approval by the Division Commander.

Rezoning requests will not be considered or accepted.

Contact Information

Millwood Lake personnel are available to address requests or questions concerning the Shoreline Management Plan and its policies. The Millwood Project Office is located at Millwood Lake, 1528 Hwy 32, Ashdown, AR. You may make an appointment to speak with Millwood Lake personnel by calling 870-898-3343, ext.3.

CHAPTER 11. Conclusions and Recommendation

Conclusions

The shoreline management plan achieves a balance between permitted private uses and resource protection for general public use. The plan has taken into consideration the needs of both the present and future generations.

Review

The Operations Project Manager continually monitors the needs of the lake's recreational users, recommending revisions, in order to minimize conflicts, among the various interest groups. Additional public workshops will be held in advance of recommending any major revision to this plan.

Recommendation

Approval of this plan is recommended. Implementation of this updated shoreline management plan will take effect immediately upon signing of the Finding of No Significant Impact (FONSI) associated with the Environmental Assessment.

Exhibit A: Title 36, Part 327

Title 36: Parks, Forests, and Public Property

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

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327.30 Shoreline Management on Civil Works Projects.
327.31 Shoreline management fee schedule.
AUTHORITY: 16 U.S.C. 460d; 16 U.S.C. 4601–6a; Sec. 210, Pub. L. 90–483, 82 Stat. 746.; 33 U.S.C. 1, 28 Stat. 362.
SOURCE: 50 FR 35556, Sept. 3, 1985, unless otherwise noted.

§ 327.0 Applicability.
The regulations covered in this part 327 shall be applicable to water resources development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resources development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, state and local laws and regulations remain in full force and effect where applicable to those water resources development projects.
[65 FR 6898, Feb. 11, 2000]

§ 327.1 Policy.
(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing

the public with safe and healthful recreational opportunities while protecting and enhancing these resources.
(b) Unless otherwise indicated in this part, the term “District Commander” shall include the authorized representatives of the District Commander.
(c) The term “project” or “water resources development project” refers to the water areas of any water resources development project administered by the Chief of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resources development project.
(d) All water resources development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.
(e) In addition to the regulations in this part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Commander by lease, license or other written agreement.
(f) The regulations in this part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resources development projects administered by the Chief of Engineers, to the extent that the regulations in this part 327 are not inconsistent with such treaties and Federal laws and regulations.
(g) Any violation of any section of this part 327 shall constitute a separate violation for each calendar day in which it occurs.
(h) For the purposes of this part 327, the operator of any vehicle, vessel or aircraft as described in this part, shall be presumed to be responsible for its use on project property. In the event where an operator cannot be determined, the owner of the vehicle, vessel, or aircraft, whether attended or unattended, will be presumed responsible. Unless proven otherwise, such presumption

will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25.
(i) For the purposes of this part 327, the registered user of a campsite, picnic area, or other facility shall be presumed to be responsible for its use. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such facilities as provided for in § 327.25.
[65 FR 6898, Feb. 11, 2000]
§ 327.2 Vehicles.
(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, and trailers, campers, bicycles, or any other such equipment.
(b) Vehicles shall not be parked in violation of posted restrictions and regulations, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner’s expense.
(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Commander. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier is prohibited.
(d) Vehicles shall be operated in accordance with posted restrictions and regulations.
(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.
(f) At designated recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.
(g) Except as authorized by the District Commander, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.
(h) Vehicles shall be operated in accordance with applicable Federal, state and local laws, which shall be regulated by authorized enforcement officials as prescribed in § 327.26.

[65 FR 6899, Feb. 11, 2000]

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, personal watercraft, and any other such equipment capable of navigation on water or ice, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the Army. This paragraph shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations and restrictions, including buoys. All vessels or watercraft so required by applicable

Federal, state and local laws shall display an appropriate registration on board whenever the vessel is on project waters.

(d) No person shall operate any vessel or other watercraft in a careless, negligent, or reckless manner so as to endanger any person, property, or environmental feature.

(e) All vessels, when on project waters, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Commander is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement

agencies, aircraft used in emergency rescue in accordance with the directions of the District Commander or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person, property or environmental feature.

(d) Nothing in this section bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical

Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery or retrieval of any person, material or equipment by parachute, balloon, helicopter or other means onto or from project lands or waters without written permission of the District Commander is prohibited.

(f) In addition to the provisions in paragraphs (a) through (e) of this section, seaplanes are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff, in this part called seaplanes, at the risk of owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Commander (pursuant to part 328 of this title) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with U.S. Coast Guard navigation rules for powerboats or vessels and § 327.3.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Commander. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Commander, for periods less than 24 hours providing:

(i) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public, and

(ii) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Commander following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless approved by the District Commander.

[65 FR 6899, Feb. 11, 2000]

§ 327.5 Swimming.

(a) Swimming, wading, snorkeling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and public

docks, or other areas so designated by the District Commander.

(b) An international diver down, or inland diving flag must be displayed during underwater activities.

(c) Diving, jumping or swinging from trees, bridges or other structures which cross or are adjacent to project waters is prohibited.

[65 FR 6900, Feb. 11, 2000]

§ 327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Commander.

[65 FR 6900, Feb. 11, 2000]

§ 327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Commander.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Commander.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance at a campsite without daily occupancy for the purpose of reserving that campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Commander is prohibited.

(e) Occupying or placement of any camping equipment at a campsite which is posted or otherwise marked or indicated as "reserved" without an authorized reservation for that site is prohibited.

[65 FR 6900, Feb. 11, 2000]

§ 327.8 Hunting, fishing, and trapping.

(a) Hunting is permitted except in areas and during periods where prohibited by the District Commander.

(b) Trapping is permitted except in areas and during periods where prohibited by the District Commander.

(c) Fishing is permitted except in swimming areas, on boat ramps or other areas designated by the District Commander.

(d) Additional restrictions pertaining to these activities may be established by the District Commander.

(e) All applicable Federal, State and local laws regulating these activities apply on project lands and waters, and shall be regulated by authorized enforcement officials as prescribed in § 327.26.

[65 FR 6900, Feb. 11, 2000]

§ 327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, gray water, or any other waste material or waste liquid generated on the project and incidental to authorized

recreational activities shall be either removed from the project or deposited in receptacles provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Commander. For the purposes of this section, the owner of any garbage, trash, rubbish, debris, dead animals or litter of any kind shall be presumed to be responsible for proper disposal. Such presumption will be sufficient to issue a citation for violation.

(c) The spilling, pumping, discharge or disposal of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resources development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited. [65 FR 6900, Feb. 11, 2000]

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Commander.

(b) Fires shall be confined to those areas designated by the District Commander, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic and other floatation materials or treated wood products is prohibited. The District Commander may prohibit open burning of any type for environmental considerations.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited. [65 FR 6900, Feb. 11, 2000]

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed

recreation areas or adjacent waters unless penned, caged, on a leash under six feet in length, or otherwise physically restrained. No person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. No person shall allow animals to bark or emit other noise which unreasonably disturbs other people. Animals and pets, except properly trained animals assisting those with disabilities (such as seeing eye dogs), are prohibited in sanitary facilities, playgrounds, swimming beaches and any other areas so designated by the District Commander. Abandonment of any animal on project lands or waters is prohibited. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas or on trails except in areas designated by the District Commander.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Commander.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Commander, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

(g) Wild or exotic pets and animals (including but not limited to cougars, lions, bears, bobcats, wolves, and snakes), or any pets or animals displaying vicious or aggressive behavior or otherwise posing a threat to public safety or deemed a public nuisance, are prohibited from project lands and waters unless authorized by the District Commander, and are subject to removal in accordance with Federal, state and local laws. [65 FR 6901, Feb. 11, 2000]

§ 327.12 Restrictions.

(a) The District Commander may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Commander may close or restrict the use of a project or portion

of a project when necessitated by reason of public health, public safety, maintenance, resource protection or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of 10 p.m. and 6 a.m., or those hours designated by the District Commander.

Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of any person is prohibited.

Individuals who are boisterous, rowdy, disorderly, or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any sound producing or motorized equipment, including

but not limited to generators, vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) The possession and/or consumption of alcoholic beverages on any portion of the project land or waters, or the entire project, may be prohibited when designated and posted by the District Commander.

(f) Unless authorized by the District Commander, smoking is prohibited in Visitor Centers, enclosed park buildings and in areas posted to restrict smoking. [65 FR 6901, Feb. 11, 2000]

§ 327.13 Explosives, firearms, other weapons and fireworks.

(a) The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons is prohibited unless:

- (1) In the possession of a Federal, state or local law enforcement officer;
- (2) Being used for hunting or fishing as permitted under § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;
- (3) Being used at authorized shooting ranges; or
- (4) Written permission has been received from the District Commander.

(b) Possession of explosives or explosive devices of any kind, including fireworks or other pyrotechnics, is prohibited unless written permission has been received from the District Commander. [65 FR 6901, Feb. 11, 2000]

§ 327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public

property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, paleontological resources, boundary monumentation or markers and vegetative growth, is prohibited except when in accordance with written permission of the District Commander.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Commander.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted, unless prohibited and posted by the District Commander.

(d) The use of metal detectors is permitted on designated beaches or other previously disturbed areas unless prohibited

by the District Commander for reasons of protection of archaeological, historical or paleontological resources. Specific information regarding metal detector policy and designated use areas is available at the Manager's Office. Items found must be handled in accordance with §§ 327.15 and 327.16 except

for non-identifiable items such as coins of value less than \$25.

[65 FR 6901, Feb. 11, 2000]

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area or for the purpose of providing public safety or resource protection, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Commander, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) Personal property placed on Federal lands or waters adjacent to a private residence, facility and/or developments of any private nature for more than 24 hours without permission of the District Commander shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be sufficient to impound the property and/or issue a citation as provided for in § 327.25.

(c) The District Commander shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control.

However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if it has a fair market value of \$100 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Commander. The net proceeds from the sale of property shall be conveyed into the Treasury of the United States as miscellaneous receipts.

[65 FR 6901, Feb. 11, 2000]

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in § 327.15.

[65 FR 6902, Feb. 11, 2000]

§ 327.17 Advertisement.

(a) Advertising and the distribution of printed matter is allowed within project land and waters provided that a permit to do so has been issued by the District Commander and provided that this activity is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration, and location of the proposed advertising or the distribution of printed matter, the number of participants, and any other information required by the permit application form. Permit conditions and procedures are available from the District Commander.

(c) Vessels and vehicles with semi-permanent or permanent painted or insliped signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

(d) The District Commander shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the advertising or the distribution of printed matter will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the advertising or the distribution of printed matter exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to project resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities; or

(4) The location applied for has not been designated as available for the advertising

or the distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(e) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(f) The District Commander shall designate on a map, which shall be available for inspection in the applicable project office, the locations within the project that are available for the advertising or the distribution of printed matter. Locations may be designated as not available only if the advertising or the distribution of printed matter would:

(1) Cause injury or damage to project resources; or

(2) Unreasonably impair the atmosphere of the peace and tranquility maintained in natural, historic, or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Corps of Engineers; or

(4) Substantially impair the operation of public use facilities or services of Corps of Engineers concessioners or contractors.

(5) Present a clear and present danger to the public health and safety.

(g) The permit may contain such conditions as are reasonably consistent with protection and use of the project area for the purposes for which it is established.

(h) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(i) It is prohibited for persons engaged in the activity under this section

to obstruct or impede pedestrians or vehicles, harass project visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the advertising or the distribution of printed matter, or misrepresent whether the printed matter is available without cost or donation.

(j) A permit may be revoked under any of those conditions, as listed in paragraph (d) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

(k) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

[65 FR 26137, May 5, 2000]

§ 327.18 Commercial activities.

(a) The engaging in or solicitation of business on project land or waters without the express written permission of the District Commander is prohibited.

(b) It shall be a violation of this part to refuse to or fail to comply with any terms, clauses or conditions of any lease, license or agreements issued by the District Commander.

[65 FR 6902, Feb. 11, 2000]

§ 327.19 Permits.

(a) It shall be a violation of this part to refuse to or fail to comply with the fee requirements or other terms or conditions

of any permit issued under the provisions of this part 327.

(b) Permits for floating structures (issued under the authority of § 327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Commander under the authority of this section. District Commanders will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Manager's office.

(c) Permits for non-floating structures (issued under the authority of § 327.30) of any kind constructed, placed in or affecting waters of water resources development projects where such waters are deemed navigable

waters of the U.S. shall be issued under the provisions of section 10 of the Rivers and Harbors Act approved March 3, 1899 (33 U.S.C. 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344). (See 33 CFR parts 320 through 330.)

(d) Permits for non-floating structures (issued under the authority of § 327.30) of any kind in waters of water resources development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States, shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344) (See 33 CFR parts 320 through 330). Water quality certification may be required pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).

(e) Shoreline Use Permits to authorize private shoreline use facilities, activities or development (issued under the authority of § 327.30) may be issued in accordance with the project Shoreline Management Plan. Failure to comply with the permit conditions issued under § 327.30 is prohibited.

[65 FR 6902, Feb. 11, 2000]

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs, nonportable hunting stands or blinds, buoys, docks, or landscape features) of any kind under, upon, in or over the project lands, or waters is prohibited unless a permit, lease, license or other appropriate written authorization has been issued by the District Commander. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license, or other written authorization is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters.

Unauthorized structures are subject to summary removal or impoundment by the District Commander. Portable hunting stands, climbing devices, steps, or blinds, that are not nailed or screwed into trees and are removed at the end of a day's hunt may be used.

[65 FR 6902, Feb. 11, 2000]

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, fishing tournaments, music festivals,

dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Commander. Where appropriate, District Commanders can provide the state a blanket letter of permission to permit fishing tournaments while coordinating the scheduling and details of tournaments with individual projects. An appropriate fee may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Commander has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Commander shall have authority to revoke permission, require removal of any equipment, and require restoration of an area to prevent condition, upon failure of the sponsor to comply with terms and conditions

of the permit/permission or the regulations in this part 327.

[65 FR 6902, Feb. 11, 2000]

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining the same as a full-or part-time residence without the written permission of the District Commander is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Commander.

[65 FR 6903, Feb. 11, 2000]

§ 327.23 Recreation use fees.

(a) In accordance with the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601) and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, the Corps of Engineers collects day use fees, special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) Where such fees are charged, the District Commander shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88-578, 78 Stat. 897, as amended (16 U.S.C. 4601-6a), is prohibited and is punishable by a fine of not more than \$100.

(c) Failure to pay authorized day use fees, and/or properly display applicable receipt, permit or pass is prohibited.
(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at Federally operated areas.

Fraudulent use of a Golden Age or Golden Access Passport is prohibited.
[65 FR 6903, Feb. 11, 2000]

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 111 and 1114 of Title 18, United States Code, to forcibly assault, resist, oppose, impede, intimidate, or interfere with, attempt to kill or kill any civilian official or employee for the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out the regulations in this part are violation of such regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to the regulations in this part shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other information deemed necessary for identification upon request of the Federal employee, when that employee is authorized by the District Commander to issue citations in the performance of the employee's official duties.
[65 FR 6903, Feb. 11, 2000]

§ 327.25 Violations of rules and regulations.

(a) Any person who violates the provisions of the regulations in this part, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than \$5,000 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Persons designated by the District Commander shall have the authority to issue a citation for violation of the regulations in this part, requiring any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 111 or section 1114 of Title 18, United States Code or under provisions of pertinent state law may be tried and sentenced as further provided under Federal or state law, as the case may be.
[65 FR 6903, Feb. 11, 2000]

§ 327.26 State and local laws.

(a) Except as otherwise provided in this part or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

- (1) Operation and use of motor vehicles, vessels, and aircraft;
- (2) Hunting, fishing and trapping;
- (3) Use or possession of firearms or other weapons;
- (4) Civil disobedience and criminal acts;
- (5) Littering, sanitation and pollution; and
- (6) Alcohol or other controlled substances.

(b) These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.
[65 FR 6903, Feb. 11, 2000]

§§ 327.27–327.29 [Reserved]

§ 327.30 Shoreline Management on Civil Works Projects.

(a) *Purpose.* The purpose of this regulation is to provide policy and guidance on management of shorelines of Civil Works projects where 36 CFR part 327 is applicable.

(b) *Applicability.* This regulation is applicable to all field operating agencies with Civil Works responsibilities except when such application would result in an impingement upon existing Indian rights.

(c) *References.* (1) Section 4, 1944 Flood Control Act, as amended (16 U.S.C. 460d).

(2) The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1)

(3) Section 10, River and Harbor Act of 1899 (33 U.S.C. 403).

(4) National Historic Preservation Act of 1966 (Pub. L. 89–665; 80 Stat. 915) as amended (16 U.S.C. 470 *et seq.*).

(5) The National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

(6) The Clean Water Act (33 U.S.C. 1344, *et seq.*).

(7) The Water Resources Development Act of 1986 (Pub. L. 99–662).

(8) Title 36, chapter III, part 327, Code of Federal Regulations, “Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers.”

(9) Executive Order 12088 (13 Oct. 78).

(10) 33 CFR parts 320–330, “Regulatory Programs of the Corps of Engineers.”

(11) ER 1130–2–400, “Management of Natural Resources and Outdoor Recreation at Civil Works Water Resource Projects.”

(12) EM 385–1–1, “Safety and Health Requirements Manual.”

(d) *Policy.* (1) It is the policy of the Chief of Engineers to protect and manage shorelines of all Civil Works water resource development projects under Corps jurisdiction in a manner which will promote the safe and healthful use of these shorelines by the public while maintaining environmental safeguards to ensure a quality resource for use by the public. The objectives of all management

actions will be to achieve a balance between permitted private uses and resource protection for general public use. Public pedestrian access to and exit from these shorelines shall be preserved. For projects or portions of projects where Federal real estate interest is limited to easement title only, management actions will be appropriate within the limits of the estate acquired.

(2) Private shoreline uses may be authorized

in designated areas consistent with approved use allocations specified in Shoreline Management Plans. Except to honor written commitments made prior to publication of this regulation, private shoreline uses are not allowed on water resource projects where construction was initiated after December 13, 1974, or on water resource projects where no private shoreline uses existed as of that date. Any existing permitted facilities on these projects will be grandfathered until the facilities fail to meet the criteria set forth in § 327.30(h).

(3) A Shoreline Management Plan, as described in § 327.30(e), will be prepared for each Corps project where private shoreline use is allowed. This plan will honor past written commitments. The plan will be reviewed at least once every five years and revised as necessary. Shoreline uses that do not interfere with authorized project purposes, public safety concerns, violate local norms or result in significant environmental effects should be allowed unless the public participation process identifies problems in these areas. If sufficient demand exists, consideration should be given to revising the shoreline allocations (e.g. increases/decreases). Maximum public participation will be encouraged as set forth in § 327.30(e)(6). Except to honor written commitments made prior to the publication

of this regulation, shoreline management plans are not required for those projects where construction was initiated after December 13, 1974, or on projects not having private shoreline use as of that date. In that case, a statement of policy will be developed by the district commander to present the shoreline management policy. This policy statement will be subject to the approval of the division commander. For projects where two or more agencies have jurisdiction, the plan will be cooperatively prepared with the Corps as coordinator.

(4) Where commercial or other public launching and/or moorage facilities are not available within a reasonable distance, group owned mooring facilities may be allowed in Limited Development Areas to limit the proliferation of individual facilities. Generally only one permit will be necessary for a group owned mooring facility with that entity, if incorporated, or with one person from the organization designated as the permittee and responsible for all moorage spaces within the facility. No charge may be made for use of any permitted

facility by others nor shall any commercial activity be engaged in thereon.

(5) The issuance of a private shoreline use permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. The public's right of access and use of the permit area must be maintained and preserved. Owners of permitted facilities may take necessary precautions to protect their property from theft, vandalism or trespass, but may in no way preclude the public right of pedestrian or vessel access to the water surface or public land adjacent to the facility.

(6) Shoreline Use Permits will only be issued to individuals or groups with legal right of access to public lands.

(e) *Shoreline Management Plan*—(1) *General*. The policies outlined in § 327.30(d) will be implemented through preparation of Shoreline Management Plans, where private shoreline use is allowed.

(2) *Preparation*. A Shoreline Management Plan is prepared as part of the Operational Management Plan. A moratorium on accepting applications for new permits may be placed in effect from the time an announcement of creation of a plan or formal revision of a plan is made until the action is completed.

(3) *Approval*. Approval of Shoreline Management Plans rests with division commanders. After approval, one copy of each project Shoreline Management Plan will be forwarded to HQUSACE (CECW-ON) WASH DC 20314-1000. Copies of the approved plan will also be

made available to the public.

(4) *Scope and Format*. The Shoreline Management Plan will consist of a map showing the shoreline allocated to the uses listed in § 327.30(e)(6), related rules and regulations, a discussion of what areas are open or closed to specific activities and facilities, how to apply for permits and other information pertinent to the Corps management of the shoreline. The plan will be prepared in sufficient detail to ensure that it is clear to the public what uses are and are not allowed on the shoreline of the project and why. A process will be developed and presented in the Shoreline Management Plan that prescribes a procedure for review of activities requested but not specifically addressed by the Shoreline Management Plan.

(5) *Shoreline Allocation*. The entire shoreline will be allocated within the classifications below and delineated on a map. Any action, within the context of this rule, which gives a special privilege to an individual or group of individuals on land or water at a Corps project, that precludes use of those lands and waters by the general public, is considered to be private shoreline use. Shoreline allocations cover that land and/or water extending from the edge of the water and waterward with the exception of allocations for the purpose of vegetation modification which extends landward to the project boundary. These allocations should complement, but certainly not contradict, the land classifications in the project master plan. A map of sufficient size and scale to clearly display the shoreline allocations will be conspicuously displayed or readily available for viewing in the project administration office and will serve as the authoritative reference. Reduced or smaller scale maps may be developed for public dissemination but the information contained on these must be identical to that contained on the display map in the project administration office. No changes will be made to these maps except through the formal update process. District commanders may add specific constraints and identify areas having unique characteristics during the plan preparation, review, or updating process in addition to the allocation classifications described below.

(i) *Limited Development Areas*. Limited Development Areas are those areas in which private facilities and/or activities may be allowed consistent with § 327.30(h) and appendix A. Modification of vegetation by individuals may be allowed only following the issuance of a

permit in accordance with appendix A. Potential low and high water conditions and underwater topography should be carefully evaluated before shoreline is allocated as Limited Development Area.

(ii) *Public Recreation Areas*. Public Recreation Areas are those areas designated for commercial concessionaire facilities, Federal, state or other similar public use. No private shoreline use facilities and/or activities will be permitted within or near designated or developed public recreation areas. The term "near" depends on the terrain, road system, and other local conditions, so actual distances must be established on a case by case basis in each project Shoreline Management Plan. No modification of land forms or vegetation by private individuals or groups of individuals is permitted in public recreation areas.

(iii) *Protected Shoreline Areas*. Protected Shoreline Areas are those areas designated to maintain or restore aesthetic, fish and wildlife, cultural, or other environmental values. Shoreline may also be so designated to prevent development in areas that are subject to excessive siltation, erosion, rapid dewatering, or exposure to high wind, wave, or current action and/or in areas in which development would interfere with navigation. No Shoreline Use Permits for floating or fixed recreation facilities will be allowed in protected areas. Some modification of vegetation by private individuals, such as clearing a narrow meandering path to the water, or limited mowing, may be allowed only following the issuance of a permit if the resource manager determines that the activity will not adversely impact the environment or physical characteristics for which the area was designated as protected. In making this determination the effect on water quality will also be considered.

(iv) *Prohibited Access Areas*. Prohibited Access Areas are those in which public access is not allowed or is restricted for health, safety or security reasons. These could include hazardous areas near dams, spillways, hydro-electric power stations, work areas, water intake structures, etc. No shoreline use permits will be issued in Prohibited Access Areas.

(6) *Public Participation*. District commanders will ensure public participation to the maximum practicable extent in Shoreline Management Plan formulation, preparation and subsequent revisions. This may be accomplished by public meetings, group workshops, open houses or other public involvement techniques. When master plan updates and preparation of the

Shoreline Management Plans are concurrent, public participation may be combined and should consider all aspects of both plans, including shoreline allocation classifications. Public participation will begin during the initial formulation stage and must be broad-based to cover all aspects of public interest. The key to successful implementation is an early and continual public relations program. Projects with significant numbers of permits should consider developing computerized programs to facilitate exchange of information with permittees and to improve program efficiency. Special care will be taken to advise citizen and conservation organizations; Federal, state and local natural resource management agencies; Indian Tribes; the media; commercial concessionaires; congressional liaisons; adjacent landowners and other concerned entities during the formulation of Shoreline Management Plans and subsequent revisions. Notices shall be published prior to public meetings to assure maximum public awareness. Public notices shall be issued by the district commander allowing for a minimum of 30 days for receipt of written public comment in regard to the proposed Shoreline Management Plan or any major revision thereto.

(7) *Periodic Review.* Shoreline Management Plans will be reviewed periodically, but no less often than every five years, by the district commander to determine the need for update. If sufficient controversy or demand exists, consideration should be given, consistent with other factors, to a process of reevaluation of the shoreline allocations and the plan. When changes to the Shoreline Management Plan are needed, the plan will be formally updated through the public participation process. Cumulative environmental impacts of permit actions and the possibility of preparing or revising project NEPA documentation will be considered. District commanders may make minor revisions to the Shoreline Management Plan when the revisions are consistent with policy and funds for a complete plan update are not available. The amount and type of public involvement needed for such revision is at the discretion of the district commander.

(f) *Instruments for Shoreline Use.* Instruments

used to authorize private shoreline use facilities, activities or development are as follows:

(1) *Shoreline Use Permits.* (i) Shoreline Use Permits are issued and enforced in accordance with provisions of 36 CFR

327.19.

(ii) Shoreline Use Permits are required for private structures/activities of any kind (except boats) in waters of Civil Works projects whether or not such waters are deemed navigable and where such waters are under the primary jurisdiction of the Secretary of the Army and under the management of the Corps of Engineers.

(iii) Shoreline Use Permits are required for non-floating structures on waters deemed commercially non-navigable, when such waters are under management of the Corps of Engineers.

(iv) Shoreline Use Permits are also required for land vegetation modification activities which do not involve disruption to land form.

(v) Permits should be issued for a term of five years. To reduce administration costs, one year permits should be issued only when the location or nature of the activity requires annual reissuance.

(vi) Shoreline Use Permits for erosion control may be issued for the life or period of continual ownership of the structure by the permittee and his/her legal spouse.

(2) *Department of the Army Permits.*

Dredging, construction of fixed structures, including fills and combination fixed-floating structures and the discharge of dredged or fill material in waters of the United States will be evaluated under authority of section 10, River and Harbor Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344). Permits will be issued where appropriate.

(3) *Real Estate Instruments.* Commercial development activities and activities which involve grading, cuts, fills, or other changes in land form, or establishment of appropriate land-based support facilities required for private floating facilities, will continue to be covered by a lease, license or other legal grant issued through the appropriate real estate element. Shoreline Management Plans should identify the types of activities that require real estate instruments and indicate the general process for obtaining same. Shoreline Use Permits are not required for facilities or activities covered by a real estate instrument.

(g) *Transfer of Permits.* Shoreline Use Permits are non-transferable. They become null and void upon sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse.

(h) *Existing Facilities Now Under Permit.* Implementation of a Shoreline Management Plan shall consider existing permitted facilities and prior written Corps commitments implicit in

their issuance. Facilities or activities permitted under special provisions should be identified in a way that will set them apart from other facilities or activities.

(1) Section 6 of Pub. L. 97-140 provides that no lawfully installed dock or appurtenant structures shall be required to be removed prior to December 31, 1989, from any Federal water resources reservoir or lake project administered by the Secretary of the Army, acting through the Chief of Engineers, on which it was located on December 29, 1981, if such property is maintained in usable condition, and does not occasion a threat to life or property.

(2) In accordance with section 1134(d) of Pub. L. 99-662, any houseboat, boathouse, floating cabin or lawfully installed dock or appurtenant structures in place under a valid shoreline use permit as of November 17, 1986, cannot be forced to be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after December 31, 1989, if it meets the three conditions below except where necessary for immediate use for public purposes or higher public use or for a navigation or flood control project.

(i) Such property is maintained in a usable and safe condition,

(ii) Such property does not occasion a threat to life or property, and

(iii) The holder of the permit is in substantial compliance with the existing permit.

(3) All such floating facilities and appurtenances

will be formally recognized in an appropriate Shoreline Management Plan. New permits for these permitted facilities will be issued to new owners. If the holder of the permit fails to comply with the terms of the permit, it may be revoked and the holder required to remove the structure, in accordance with the terms of the permit as to notice, time, and appeal.

(i) *Facility Maintenance.* Permitted facilities must be operated, used and maintained by the permittee in a safe, healthful condition at all times. If determined

to be unsafe, the resource manager will establish together with the permittee a schedule, based on the seriousness of the safety deficiency, for correcting the deficiency or having it removed, at the permittee's expense. The applicable safety and health prescriptions

in EM 385-1-1 should be used as a guide.

(j) *Density of Development.* The density of private floating and fixed recreation

facilities will be established in the Shoreline Management Plan for all portions of Limited Development areas consistent with ecological and aesthetic characteristics and prior written commitments. The facility density in Limited Development Areas should, if feasible, be determined prior to the development of adjacent private property. The density of facilities will not be more than 50 percent of the Limited Development Area in which they are located. Density will be measured by determining the linear feet of shoreline as compared to the width of the facilities in the water plus associated moorage arrangements which restrict the full unobstructed use of that portion of the shoreline. When a Limited Development Area or a portion of a Limited Development area reaches maximum density, notice should be given to the public and facility owners in that area that no additional facilities will be allowed. In all cases, sufficient open area will be maintained for safe maneuvering of watercraft. Docks should not extend out from the shore more than one-third of the width of a cove at normal recreation or multipurpose pool. In those cases where current density of development exceeds the density level established in the Shoreline Management Plan, the density will be reduced to the prescribed level through attrition. (k) *Permit Fees.* Fees associated with the Shoreline Use Permits shall be paid prior to issuing the permit in accordance with the provisions of § 327.30(c)(1). The fee schedule will be published separately.

APPENDIX A TO § 327.30—GUIDELINES FOR GRANTING SHORELINE USE PERMITS

1. *General*

a. Decisions regarding permits for private floating recreation facilities will consider the operating objectives and physical characteristics of each project. In developing Shoreline Management Plans, district commanders will give consideration to the effects of added private boat storage facilities on commercial concessions for that purpose. Consistent with established policies, new commercial concessions may be alternatives to additional limited development shoreline. b. Permits for individually or group owned shoreline use facilities may be granted only in Limited Development Areas when the sites are not near commercial marine services and such use will not despoil the shoreline nor inhibit public use or enjoyment thereof. The inslipation and use of such facilities will not be in conflict with the preservation of the natural characteristics of the shoreline nor will they result in significant environmental damage. Charges will be made for Shoreline Use Permits in accordance with the separately published fee schedule. c. Permits may be granted within Limited Development Areas for ski jumps, floats, boat moorage facilities, duck blinds, and other private floating recreation facilities

when they will not create a safety hazard and inhibit public use or enjoyment of project waters or shoreline. A Corps permit is not required for temporary ice fishing shelters or duck blinds when they are regulated by a state program. When the facility or activity is authorized by a shoreline use permit, a separate real estate instrument is generally not required.

d. Group owned boat mooring facilities may be permitted in Limited Development Areas where practicable (e.g. where physically feasible in terms of access, water depths, wind protection, etc.).

2. *Applications for Shoreline Use Permits*

a. Applications for private Shoreline Use Permits will be reviewed with full consideration of the policies set forth in this and referenced regulations, and the Shoreline Management Plan. Fees associated with the Shoreline Use Permit shall be paid prior to issuing the permit. Plans and specifications of the proposed facility shall be submitted and approved prior to the start of construction. Submissions should include engineering details, structural design, anchorage method, and construction materials; the type, size, location and ownership of the facility; expected duration of use; and an indication of willingness to abide by the applicable regulations

and terms and conditions of the permit. Permit applications shall also identify and locate any land-based support facilities and any specific safety considerations.

b. Permits will be issued by the district commander or his/her authorized representative on ENG Form 4264-R (Application for Shoreline Use Permit) (appendix B). Computer generated forms may be substituted for ENG Form 4264-R provided all information is included. The computer generated form will be designated, "ENG Form 4264-RE, Oct 87 (Electronic generation approved by USACE, Oct 87)".

c. The following are guides to issuance of Shoreline Use Permits:

(1) Use of boat mooring facilities, including piers and boat (shelters) houses, will be limited to vessel or watercraft mooring and storage of gear essential to vessel or watercraft operation.

(2) Private floating recreation facilities, including boat mooring facilities shall not be constructed or used for human habitation or in a manner which gives the appearance of converting Federal public property on which the facility is located to private, exclusive use. New docks with enclosed sides (i.e. boathouses) are prohibited.

(3) No private floating facility will exceed the minimum size required to moor the owner's boat or boats plus the minimum size required for an enclosed storage locker of oars, life preservers and other items essential to watercraft operation. Specific size limitations may be established in the project Shoreline Management Plan.

(4) All private floating recreation facilities including boat mooring facilities will be constructed in accordance with plans and specifications, approved by the resource manager, or a written certification from a licensed engineer, stating the facility is structurally safe will accompany the initial submission of the plans and specifications.

(5) Procedures regarding permits for individual facilities shall also apply to permits for non-commercial group mooring facilities.

(6) Facilities attached to the shore shall be securely anchored by means of moorings which do not obstruct the free use of the shoreline, nor damage vegetation or other natural features. Anchoring to vegetation is prohibited.

(7) Electrical service and equipment leading to or on private mooring facilities must not pose a safety hazard nor conflict with other recreational use. Electrical inslipations must be weatherproof and meet all current applicable electrical codes and regulations. The facility must be equipped with quick disconnect fittings mounted above the flood pool elevation. All electrical inslipations must conform to the National Electric Code and all state, and local codes and regulations.

In those states where electricians are licensed, registered, or otherwise certified, a copy of the electrical certification must be provided to the resource manager before a Shoreline Use Permit can be issued or renewed. The resource manager will require immediate removal or disconnection of any electrical service or equipment that is not certified (if appropriate), does not meet code, or is not safely maintained. All new electrical lines will be installed underground. This will require a separate real estate instrument for the service right-of-way. Existing overhead lines will be allowed, as long as they meet all applicable electrical codes, regulations and above guidelines, to include compatibility and safety related to fluctuating water levels.

(8) Private floating recreation facilities will not be placed so as to interfere with any authorized project purposes, including navigation, or create a safety or health hazard.

(9) The district commander or his/her authorized representative may place special conditions on the permit when deemed necessary. Requests for waivers of shoreline management plan permit conditions based on health conditions will be reviewed on a case by case basis by the Operations Manager. Efforts will be made to reduce onerous requirements when a limiting health condition is obvious or when an applicant provides a doctor's certification of need for conditions which are not obvious.

(10) Vegetation modification, including but not limited to, cutting, pruning, chemical manipulation, removal or seeding by private individuals is allowed only in those areas designated as Limited Development Areas or Protected Shoreline Areas. An existing (as of July 1, 1987) vegetation modification permit, within a shoreline allocation which normally would not allow vegetation modification, should be grandfathered. Permittees will not create the appearance of private ownership of public lands.

(11) The term of a permit for vegetation modification will be for five years. Where possible, such permits will be consolidated with other shoreline management permits into a single permit. The district commander is authorized to issue vegetation modification permits of less than five years for onetime requests or to aid in the consolidation of shoreline management permits.

(12) When issued a permit for vegetative modification, the permittee will delineate the government property line, as surveyed and marked by the government, in a clear but unobtrusive manner approved by the district commander and in accordance with the project Shoreline Management Plan and the conditions of the permit. Other adjoining owners may also delineate the common

boundary subject to these same conditions. This delineation may include, but is not limited to, boundary plantings and fencing. The delineation will be accomplished at no cost to the government.

(13) No permit will be issued for vegetation modification in Protected Shoreline Areas until the environmental impacts of the proposed modification are assessed by the resource manager and it has been determined that no significant adverse impacts will result. The effects of the proposed modification on water quality will also be considered in making this determination.

(14) The original of the completed permit application is to be retained by the permittee. A duplicate will be retained in the resource manager's office.

3. Permit Revocation

Permits may be revoked by the district commander when it is determined that the public interest requires such revocation or when the permittee fails to comply with terms and conditions of the permit, the Shoreline Management Plan, or of this regulation. Permits for duck blinds and ice fishing shelters will be issued to cover a period not to exceed 30 days prior to and 30 days after the season.

4. Removal of Facilities

Facilities not removed when specified in the permit or when requested after termination or revocation of the permit will be treated as unauthorized structures pursuant to 36 CFR 327.20.

5. Posting of Permit Number

Each district will procure 53-83 or larger printed permit tags of light metal or plastic for posting. The permit display tag shall be posted on the facility and/or on the land area covered by the permit, so that it can be visually checked, with ease in accordance with instructions provided by the resource manager. Facilities or activities permitted under special provisions should be identified in a way that will set apart from other facilities or activities.

APPENDIX B TO § 327.30—APPLICATION FOR SHORELINE USE PERMIT [RESERVED]
APPENDIX C TO § 327.30—SHORELINE USE PERMIT CONDITIONS

1. This permit is granted solely to the applicant for the purpose described on the attached permit.

2. The permittee agrees to and does hereby release and agree to save and hold the Government harmless from any and all causes of action, suits at law or equity, or claims or demands or from any liability of any nature whatsoever for or on account of any damages to persons or property, including a permitted facility, growing out of the ownership, construction, operation or maintenance by the permittee of the permitted facilities and/or activities.

3. Ownership, construction, operation, use and maintenance of a permitted facility are subject to the Government's navigation servitude.

4. No attempt shall be made by the permittee to forbid the full and free use by the public of all public waters and/or lands at or adjacent to the permitted facility or to unreasonably interfere with any authorized project purposes, including navigation in connection with the ownership, construction, operation or maintenance of a permitted facility and/or activity.

5. The permittee agrees that if subsequent

operations by the Government require an alteration in the location of a permitted facility and/or activity or if in the opinion of the district commander a permitted facility and/or activity shall cause unreasonable obstruction to navigation or that the public interest so requires, the permittee shall be required, upon written notice from the district commander to remove, alter, or relocate the permitted facility, without expense to the Government.

6. The Government shall in no case be liable for any damage or injury to a permitted facility which may be caused by or result from subsequent operations undertaken by the Government for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. This includes any damage that may occur to private property if a facility is removed for noncompliance with the conditions of the permit.

7. Ownership, construction, operation, use and maintenance of a permitted facility and/or activity are subject to all applicable Federal, state and local laws and regulations. Failure to abide by these applicable laws and regulations may be cause for revocation of the permit.

8. This permit does not convey any property rights either in real estate or material; and does not authorize any injury to private property or invasion of private rights or any infringement of Federal, state or local laws or regulations, nor does it obviate the necessity of obtaining state or local assent required by law for the construction, operation, use or maintenance of a permitted facility and/or activity.

9. The permittee agrees to construct the facility within the time limit agreed to on the permit issuance date. The permit shall become null and void if construction is not completed within that period. Further, the permittee agrees to operate and maintain any permitted facility and/or activity in a manner so as to provide safety, minimize any adverse impact on fish and wildlife habitat, natural, environmental, or cultural resources values and in a manner so as to minimize the degradation of water quality.

10. The permittee shall remove a permitted facility within 30 days, at his/her expense, and restore the waterway and lands to a condition accepted by the resource manager upon termination or revocation of this permit or if the permittee ceases to use, operate or maintain a permitted facility and/or activity. If the permittee fails to comply to the satisfaction of the resource manager, the district commander may remove the facility by contract or otherwise and the permittee agrees to pay all costs incurred thereof.

11. The use of a permitted boat dock facility shall be limited to the mooring of the permittee's vessel or watercraft and the storage, in enclosed locker facilities, of his/her gear essential to the operation of such vessel or watercraft.

12. Neither a permitted facility nor any houseboat, cabin cruiser, or other vessel moored thereto shall be used as a place of habitation or as a full or part-time residence or in any manner which gives the appearance of converting the public property, on which the facility is located, to private use.

13. Facilities granted under this permit will not be leased, rented, sub-let or provided to others by any means of engaging in commercial activity(s) by the permittee or his/her agent for monetary gain. This does not

preclude the permittee from selling total ownership to the facility.

14. Floats and the flotation material for all docks and boat mooring buoys shall be fabricated of materials manufactured for marine use. The float and its flotation material shall be 100% warranted for a minimum of 8 years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads. All floats shall resist puncture and penetration and shall not be subject to damage by animals under normal conditions for the area. All floats and the flotation material used in them shall be fire resistant. Any float which is within 40 feet of a line carrying fuel shall be 100% impervious to water and fuel. The use of new or recycled plastic or metal drums or non-compartmentalized air containers for encasement or floats is prohibited. Existing floats are authorized until it or its flotation material is no longer serviceable, at which time it shall be replaced with a float that meets the conditions listed above. For any floats insliped after the effective date of this specification, repair or replacement shall be required when it or its flotation material no longer performs its designated function or it fails to meet the specifications for which it was originally warranted.

15. Permitted facilities and activities are subject to periodic inspection by authorized Corps representatives. The resource manager will notify the permittee of any deficiencies and together establish a schedule for their correction. No deviation or changes from approved plans will be allowed without prior written approval of the resource manager.

16. Floating facilities shall be securely attached to the shore in accordance with the approved plans by means of moorings which do not obstruct general public use of the shoreline or adversely affect the natural terrain or vegetation. Anchoring to vegetation is prohibited.

17. The permit display tag shall be posted on the permitted facility and/or on the land areas covered by the permit so that it can be visually checked with ease in accordance with instructions provided by the resource manager.

18. No vegetation other than that prescribed in the permit will be damaged, destroyed or removed. No vegetation of any kind will be planted, other than that specifically prescribed in the permit.

19. No change in land form such as grading, excavation or filling is authorized by this permit.

20. This permit is non-transferable. Upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void.

21. By 30 days written notice, mailed to the permittee by certified letter, the district commander may revoke this permit whenever the public interest necessitates such revocation or when the permittee fails to comply with any permit condition or term. The revocation notice shall specify the reasons for such action. If the permittee requests a hearing in writing to the district commander through the resource manager within the 30-day period, the district commander shall grant such hearing at the earliest opportunity. In no event shall the hearing date be more than 60 days from the date of the hearing request. Following the hearing, a written decision will be rendered and

a copy mailed to the permittee by certified letter.

22. Notwithstanding the conditions cited in condition 21 above, if in the opinion of the district commander, emergency circumstances dictate otherwise, the district commander may summarily revoke the permit.

23. When vegetation modification on these lands is accomplished by chemical means, the program will be in accordance with appropriate

Federal, state and local laws, rules and regulations.

24. The resource manager or his/her authorized representative shall be allowed to cross the permittee's property, as necessary to inspect facilities and/or activities under permit.

25. When vegetation modification is allowed, the permittee will delineate the government property line in a clear, but unobtrusive manner approved by the resource manager and in accordance with the project Shoreline Management Plan.

26. If the ownership of a permitted facility is sold or transferred, the permittee or new owner will notify the Resource Manager of the action prior to finalization. The new owner must apply for a Shoreline Use Permit within 14 days or remove the facility and restore the use area within 30 days from the date of ownership transfer.

27. If permitted facilities are removed for storage or extensive maintenance, the resource manager may require all portions of the facility be removed from public property.

APPENDIX D TO § 327.30—PERMIT [RESERVED]
[55 FR 30697, July 27, 1990, as amended at 57 FR 21895, May 26, 1992; 57 FR 29220, July 1, 1992; 63 FR 35828, July 1, 1998]

EFFECTIVE DATE NOTE: The amendment to § 327.30 revising the last sentence of paragraph (k), published at 56 FR 29587, June 28, 1991, was deferred indefinitely. See 56 FR 49706, Oct. 1, 1991. The administrative charges contained in § 327.30, Shoreline Management

on Civil Works Projects, published in the July 1, 1991 edition of the Code of Federal Regulations will remain in effect. Any future decisions affecting this regulation will be published in the FEDERAL REGISTER at a later date by the Corps of Engineers, Department

of the Army. For the convenience of the user, the rule published on June 28, 1991, at FR page 29587, is set forth as follows:

§ 327.30 Shoreline Management on Civil Works Projects.

* * * * *

(k) * * * The Fee Schedule is published in § 327.31.

§ 327.31 Shoreline management fee schedule.

A charge will be made for Shoreline Use Permits to help defray expenses associated

with issuance and administration of the permits. As permits become eligible for renewal after July 1, 1976, a charge of \$10 for each new permit and a \$5 annual fee for inspection of floating facilities will be made. There will be no annual inspection fee for permits for vegetative modification on Shoreline areas. In all cases the total administrative charge will be collected initially at the time of permit issuance rather than on a piecemeal annual basis.

[56 FR 61163, Dec. 2, 1991; 56 FR 65190, Dec. 16, 1991]

Exhibit B: Shoreline Use Permit Conditions

THIS SHORELINE USE PERMIT/LICENSE is not subject to Title 10, United States Code, Section 2262, as amended.

1. THIS PERMIT IS GRANTED SOLELY TO THE APPLICANT FOR THE PURPOSE DESCRIBED ON THE ATTACHED PERMIT.
2. THE PERMITTEE AGREES TO AND DOES HEREBY RELEASE AND AGREE TO SAVE AND HOLD THE GOVERNMENT HARMLESS FROM ANY AND ALL CAUSES OF ACTION, SUITS AT LAW OR EQUITY, OR CLAIMS OR DEMANDS OR FROM ANY LIABILITY OF ANY NATURE WHATSOEVER FOR OR ON ACCOUNT OF ANY DAMAGES TO PERSONS OR PROPERTY, INCLUDING A PERMITTED FACILITY, GROWING OUT OF THE OWNERSHIP, CONSTRUCTION, OPERATION OR MAINTENANCE BY THE PERMITTEE OF THE PERMITTED FACILITIES AND/OR ACTIVITIES.
3. OWNERSHIP, CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF A PERMITTED FACILITY ARE SUBJECT TO THE GOVERNMENT'S NAVIGATION SERVITUDE.
4. NO ATTEMPT SHALL BE MADE BY THE PERMITTEE TO FORBID THE FULL AND FREE USE BY THE PUBLIC OF ALL PUBLIC WATERS AND/OR LANDS AT OR ADJACENT TO THE PERMITTED FACILITY OR TO UNREASONABLY INTERFERE WITH ANY AUTHORIZED PROJECT PURPOSES, INCLUDING NAVIGATION IN CONNECTION WITH THE OWNERSHIP, CONSTRUCTION, OPERATION OR MAINTENANCE OF A PERMITTED FACILITY AND/OR ACTIVITY.
5. THE PERMITTEE AGREES THAT IF SUBSEQUENT OPERATIONS BY THE GOVERNMENT REQUIRE AN ALTERATION IN THE LOCATION OF A PERMITTED FACILITY AND/OR ACTIVITY OR IF IN THE OPINION OF THE DISTRICT COMMANDER A PERMITTED FACILITY AND/OR ACTIVITY SHALL CAUSE UNREASONABLE OBSTRUCTION TO NAVIGATION OR THAT THE PUBLIC INTEREST SO REQUIRES, THE PERMITTEE SHALL BE REQUIRED, UPON WRITTEN NOTICE FROM THE DISTRICT COMMANDER TO REMOVE, ALTER, OR RELOCATE THE PERMITTED FACILITY, WITHOUT EXPENSE TO THE GOVERNMENT.
6. THE GOVERNMENT SHALL IN NO CASE BE LIABLE FOR ANY DAMAGE OR INJURY TO A PERMITTED FACILITY WHICH MAY BE CAUSED BY OR RESULT FROM SUBSEQUENT OPERATIONS UNDERTAKEN BY THE GOVERNMENT FOR THE IMPROVEMENT OF NAVIGATION OR FOR OTHER LAWFUL PURPOSES, AND NO CLAIMS OR RIGHT TO COMPENSATION SHALL ACCRUE FROM ANY SUCH DAMAGE. THIS INCLUDES ANY DAMAGE THAT MAY OCCUR TO PRIVATE PROPERTY IF A FACILITY IS REMOVED FOR NONCOMPLIANCE WITH THE CONDITIONS OF THE PERMIT.
7. OWNERSHIP, CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF A PERMITTED FACILITY AND/OR ACTIVITY ARE SUBJECT TO ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS. FAILURE TO ABIDE BY THESE APPLICABLE LAWS AND REGULATIONS MAY BE CAUSE FOR REVOCATION OF THE PERMIT.
8. THIS PERMIT DOES NOT CONVEY ANY PROPERTY RIGHTS EITHER IN REAL ESTATE OR MATERIAL; AND DOES NOT AUTHORIZE ANY INJURY TO PRIVATE PROPERTY OR INVASION OF PRIVATE RIGHTS OR ANY INFRINGEMENT OF FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, NOR DOES IT OBIVIATE THE NECESSITY OF OBTAINING STATE OR LOCAL ASSENT REQUIRED BY LAW FOR THE CONSTRUCTION, OPERATION, USE OR MAINTENANCE OF A PERMITTED FACILITY AND/OR ACTIVITY.
9. THE PERMITTEE AGREES TO CONSTRUCT THE FACILITY WITHIN THE TIME LIMIT AGREED TO ON THE PERMIT ISSUANCE DATE. THE PERMIT SHALL BECOME NULL AND VOID IF CONSTRUCTION IS NOT COMPLETED WITHIN THAT PERIOD. FURTHER, THE PERMITTEE AGREES TO OPERATE AND MAINTAIN ANY PERMITTED FACILITY AND/OR ACTIVITY IN A MANNER SO AS TO PROVIDE SAFETY, MINIMIZE ANY ADVERSE IMPACT ON FISH AND WILDLIFE HABITAT, NATURAL, ENVIRONMENTAL, OR CULTURAL RESOURCES VALUES AND IN A MANNER SO AS TO MINIMIZE THE DEGRADATION OF WATER QUALITY.
10. THE PERMITTEE SHALL REMOVE A PERMITTED FACILITY WITHIN 30 DAYS, AT HIS/HER EXPENSE, AND RESTORE THE WATERWAY AND LANDS TO A CONDITION ACCEPTED BY THE RESOURCE MANAGER UPON TERMINATION OR REVOCATION OF THIS PERMIT OR IF THE PERMITTEE CEASES TO USE, OPERATE OR MAINTAIN A PERMITTED FACILITY AND/OR ACTIVITY. IF THE PERMITTEE FAILS TO COMPLY TO THE SATISFACTION OF THE RESOURCE MANAGER, THE DISTRICT COMMANDER MAY REMOVE THE FACILITY BY CONTRACT OR OTHERWISE AND THE PERMITTEE AGREES TO PAY ALL COSTS INCURRED THEREOF.
11. THE USE OF A PERMITTED BOAT DOCK FACILITY SHALL BE LIMITED TO THE MOORING OF THE PERMITTEE'S VESSEL OR WATERCRAFT AND THE STORAGE, IN ENCLOSED LOCKER FACILITIES, OF HIS/HER GEAR ESSENTIAL TO THE OPERATION OF SUCH VESSEL OR WATERCRAFT.
12. NEITHER A PERMITTED FACILITY NOR ANY HOUSEBOAT, CABIN CRUISER, OR OTHER VESSEL MOORED THERETO SHALL BE USED AS A PLACE OF HABITATION OR AS A FULL OR PART-TIME RESIDENCE OR IN ANY MANNER WHICH GIVES THE APPEARANCE OF CONVERTING THE PUBLIC PROPERTY, ON WHICH THE FACILITY IS LOCATED, TO PRIVATE USE.
13. FACILITIES GRANTED UNDER THIS PERMIT WILL NOT BE LEASED, RENTED, SUB-LET OR PROVIDED TO OTHERS BY ANY MEANS OF ENGAGING IN COMMERCIAL ACTIVITY(S) BY THE PERMITTEE OR HIS/HER AGENT FOR MONETARY GAIN. THIS DOES NOT PRECLUDE THE PERMITTEE FROM SELLING TOTAL OWNERSHIP TO THE FACILITY.
14. FLOATS AND THE FLOTATION MATERIAL FOR ALL DOCKS AND BOAT MOORING BUOYS SHALL BE FABRICATED OF MATERIALS MANUFACTURED FOR MARINE USE. THE FLOAT AND ITS FLOTATION MATERIAL SHALL BE 100% WARRANTED FOR A MINIMUM OF 8 YEARS AGAINST SINKING, BECOMING WATERLOGGED,

CRACKING, PEELING, FRAGMENTING, OR LOSING BEADS. ALL FLOATS SHALL RESIST PUNCTURE AND PENETRATION AND SHALL NOT BE SUBJECT TO DAMAGE BY ANIMALS UNDER NORMAL CONDITIONS FOR THE AREA. ALL FLOATS AND THE FLOTATION MATERIAL USED IN THEM SHALL BE FIRE RESISTANT. ANY

Effective Date Note:

FLOAT WHICH IS WITHIN 40 FEET OF A LINE CARRYING FUEL SHALL BE 100% IMPERVIOUS TO WATER AND FUEL. THE USE OF NEW OR RECYCLED PLASTIC OR METAL DRUMS OR NON-COMPARTMENTALIZED AIR CONTAINERS FOR ENCASEMENT OR FLOATS IS PROHIBITED. EXISTING FLOATS ARE AUTHORIZED UNTIL IT OR ITS FLOTATION MATERIAL IS NO LONGER SERVICEABLE, AT WHICH TIME IT SHALL BE REPLACED WITH A FLOAT THAT MEETS THE CONDITIONS LISTED ABOVE. FOR ANY FLOATS INSPLIPED AFTER THE EFFECTIVE DATE OF THIS SPECIFICATION, REPAIR OR REPLACEMENT SHALL BE REQUIRED WHEN IT OR ITS FLOTATION MATERIAL NO LONGER PERFORMS ITS DESIGNATED FUNCTION OR IT FAILS TO MEET THE SPECIFICATIONS FOR WHICH IT WAS ORIGINALLY WARRANTED.

15. PERMITTED FACILITIES AND ACTIVITIES ARE SUBJECT TO PERIODIC INSPECTION BY AUTHORIZED CORPS REPRESENTATIVES. THE RESOURCE MANAGER WILL NOTIFY THE PERMITTEE OF ANY DEFICIENCIES AND TOGETHER ESTABLISH A SCHEDULE FOR THEIR CORRECTION. NO DEVIATION OR CHANGES FROM APPROVED PLANS WILL BE ALLOWED WITHOUT PRIOR WRITTEN APPROVAL OF THE RESOURCE MANAGER.

16. FLOATING FACILITIES SHALL BE SECURELY ATTACHED TO THE SHORE IN ACCORDANCE WITH THE APPROVED PLANS BY MEANS OF MOORINGS WHICH DO NOT OBSTRUCT GENERAL PUBLIC USE OF THE SHORELINE OR ADVERSELY AFFECT THE NATURAL TERRAIN OR VEGETATION. ANCHORING TO VEGETATION IS PROHIBITED.

17. THE PERMIT DISPLAY TAG SHALL BE POSTED ON THE PERMITTED FACILITY AND/OR ON THE LAND AREAS COVERED BY THE PERMIT SO THAT IT CAN BE VISUALLY CHECKED WITH EASE IN ACCORDANCE WITH INSTRUCTIONS PROVIDED BY THE RESOURCE MANAGER.

18. NO VEGETATION OTHER THAN THAT PRESCRIBED IN THE PERMIT WILL BE DAMAGED, DESTROYED OR REMOVED. NO VEGETATION OF ANY KIND WILL BE PLANTED, OTHER THAN THAT SPECIFICALLY PRESCRIBED IN THE PERMIT.

19. NO CHANGE IN LANDFORM SUCH AS GRADING, EXCAVATION OR FILLING IS AUTHORIZED BY THIS PERMIT.

20. THIS PERMIT IS NON-TRANSFERABLE. UPON THE SALE OR OTHER TRANSFER OF THE PERMITTED FACILITY OR THE DEATH OF THE PERMITTEE AND HIS/HER LEGAL SPOUSE, THIS PERMIT IS NULL AND VOID.

21. BY 30 DAYS WRITTEN NOTICE, MAILED TO THE PERMITTEE BY CERTIFIED LETTER, THE DISTRICT COMMANDER MAY REVOKE THIS PERMIT WHENEVER THE PUBLIC INTEREST NECESSITATES SUCH REVOCATION OR WHEN THE PERMITTEE FAILS TO COMPLY WITH ANY PERMIT CONDITION OR TERM. THE REVOCATION NOTICE SHALL SPECIFY THE REASONS FOR SUCH ACTION. IF THE PERMITTEE REQUESTS A HEARING IN WRITING TO THE DISTRICT COMMANDER THROUGH THE RESOURCE MANAGER WITHIN THE 30-DAY PERIOD, THE DISTRICT COMMANDER SHALL GRANT SUCH HEARING AT THE EARLIEST OPPORTUNITY. IN NO EVENT SHALL THE HEARING DATE BE MORE THAN 60 DAYS FROM THE DATE OF THE HEARING REQUEST. FOLLOWING THE HEARING, A WRITTEN DECISION WILL BE RENDERED AND A COPY MAILED TO THE PERMITTEE BY CERTIFIED LETTER.

22. NOTWITHSTANDING THE CONDITIONS CITED IN CONDITION 21 ABOVE, IF IN THE OPINION OF THE DISTRICT COMMANDER, EMERGENCY CIRCUMSTANCES DICTATE OTHERWISE, THE DISTRICT COMMANDER MAY SUMMARILY REVOKE THE PERMIT.

23. WHEN VEGETATION MODIFICATION ON THESE LANDS IS ACCOMPLISHED BY CHEMICAL MEANS, THE PROGRAM WILL BE IN ACCORDANCE WITH APPROPRIATE FEDERAL, STATE AND LOCAL LAWS, RULES AND REGULATIONS.

24. THE RESOURCE MANAGER OR HIS/HER AUTHORIZED REPRESENTATIVE SHALL BE ALLOWED TO CROSS THE PERMITTEE'S PROPERTY, AS NECESSARY TO INSPECT FACILITIES AND/OR ACTIVITIES UNDER PERMIT.

25. WHEN VEGETATION MODIFICATION IS ALLOWED, THE PERMITTEE WILL DELINEATE THE GOVERNMENT PROPERTY LINE IN A CLEAR, BUT UNOBTRUSIVE MANNER APPROVED BY THE RESOURCE MANAGER AND IN ACCORDANCE WITH THE PROJECT SHORELINE MANAGEMENT PLAN.

26. IF THE OWNERSHIP OF A PERMITTED FACILITY IS SOLD OR TRANSFERRED, THE PERMITTEE OR NEW OWNER WILL NOTIFY THE RESOURCE MANAGER OF THE ACTION PRIOR TO FINALIZATION. THE NEW OWNER MUST APPLY FOR A SHORELINE USE PERMIT WITHIN 14 DAYS OR REMOVE THE FACILITY AND RESTORE THE USE AREA WITHIN 30 DAYS FROM THE DATE OF OWNERSHIP TRANSFER.

27. IF PERMITTED FACILITIES ARE REMOVED FOR STORAGE OR EXTENSIVE MAINTENANCE, THE RESOURCE MANAGER MAY REQUIRE ALL PORTIONS OF THE FACILITY BE REMOVED FROM PUBLIC PROPERTY.

Exhibit C: Electrical Certification Form

CERTIFICATE OF ELECTRICAL INSPECTION

This is to certify that the electrical facilities on and in conjunction with dock number _____ on _____ Lake were inspected on this ____ day of _____, 20____, and to the best of my knowledge, they appear to be in compliance with the requirements of the National Electrical Code. This inspection is solely for the use of the Little Rock District, Corps of Engineers, P.O. Box 867, Little Rock, Arkansas 72203-0867.

This inspection is not applicable to any electrical changes (additions or deletions) to the above facilities after the date of this inspection.

Comments: _____

Name of Electrician
or Electrical Contractor
(Print)

Inspector's Name
(Print)

Telephone Number

Inspector's License Number

Inspector's Signature

Exhibit D: Shoreline Erosion Control

1. Purpose. This appendix establishes policy and provides guidance whereby individuals may perform bank stabilization to protect the shoreline of a US Army Corps of Engineers project from further erosion.
2. Applicability. This regulation applies to all Little Rock District Civil Works projects.
3. Policy. When bank erosion occurs on US Army Corps of Engineers lakes that are managed by the Little Rock District, certain measures may be approved by the District Engineer or his authorized representative to prevent further erosion. This appendix establishes district shoreline management policies regarding bank stabilization. Federally funded erosion control is limited to protecting the Government's investment in the project, such as the dam, overflow structure, or the shoreline of a park or other public use areas. Private bank stabilization has previously been limited to the protection of commercial marinas and the shoreline within the commercial lease area using breakwaters and/or stabilizing structures made from wood, rock, or concrete.
4. General. The water level of a lake fluctuates because of the various requirements of flood control and water supply. Shoreline erosion is recognized as a natural process in the ecological cycle of a lake. Plate 1 is a typical cross section of a bank stabilization project. Any fill material placed below the ordinary high-water mark requires a permit pursuant to Section 404 of the Clean Water Act. Information on Nationwide Permit Conditions for bank stabilization is available at the Millwood Lake Project Office.
5. Review, Approval, and Appeal Process. Requests and plans for bank stabilization will be submitted to the Operations Project Manager for review. Requests denied by the Operations Project Manager may be appealed for reconsideration at the District level. The Operations Project Manager will forward the appeal and the reasons for denial at the project level to the Chief, Operations Division for reconsideration. Requests denied by the Chief, Operations Division may be appealed to the District Engineer. Determinations by the District Engineer are final and may not be appealed.

Permit Requirements:

The extent and type of corrective measures are site specific and may vary. Shoreline protection allowed by this regulation is for bank stabilization and erosion control of the existing shoreline only to prevent further erosion. Shoreline protection for the purposes of restoring the shoreline to a previous location, landscaping, or beautification of the area will be denied. The proposed project shall be submitted to the District Engineer for Section 404 Permit evaluation if fill material will be placed below the ordinary high-water mark of a specific lake. A representative of the Regulatory Branch should be contacted concerning the elevation of the ordinary high-water mark.

1. General:

- a. A right-of-entry from Real Estate Division may be required to obtain land-based access to the work site. For construction of a retaining wall, a Real Estate easement must be obtained prior to any work being done.
- b. All bank stabilization structures will follow the existing shoreline and blend uniformly with the natural contour of the existing bank. No restoration of the shoreline to a previously existing condition will be allowed.

2. Riprap:

- a. Riprap is the preferred method of bank stabilization. The stone gradation shall be equivalent to quarry-run stone with 50% of the individual stones by weight being comprised of individual stones weighing more than 25 lbs. Broken cinder blocks, bricks, asphalt, or other debris shall not be authorized.
- b. Filter fabric should be used where appropriate.

3. Retaining Walls:

- a. Generally, retaining walls will not be considered. Retaining walls may be considered on a case-by-case basis for unusual and compelling circumstances.

4. Construction:

- a. Site preparation will be limited to obtain proper slope and stability for the structure with every effort being made not to damage shoreline vegetation. Disturbed slopes landward of the bank stabilization structure will be stabilized immediately upon completion of work and in no case more than 7 days after completion of work.
- b. Removal of any trees on public lands must be approved by the Operations Project Manager and is limited to obtain access to the work site. Replacement trees may be required for some or all trees removed at a ratio determined by the Millwood Project Office.
- c. Damages resulting from the activity will be restored to the satisfaction of the U.S. Army Corps of Engineers. Violations of the terms and conditions of this permit may result in the issuance of a violation notice requiring the payment of a fine or appearance before the U.S. Magistrate, restitution, restoration of the site, and/or revocation of all or part of the individual's Shoreline Use Permit.
- d. Sloping or grading of the shoreline before placement of material is permitted only to the extent necessary to place the materials.

5. Special Conditions:

- a. No material will be placed in special aquatic sites, including wetlands, nor will it be placed to impair surface water flow into and out of any wetland area. Wetlands are defined as areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances support a prevalence of vegetation typically adapted for life in saturated conditions. Wetlands generally include swamps, marshes, bogs, fens, and similar areas.
- b. If any materials or sites of cultural, historical, or archeological significance are discovered within the project boundaries at any time preceding or during construction,

the Operations Project Manager will be immediately notified, and work will cease until further notice.

- c. Work may not be authorized within the known habitat of a threatened or endangered species (Federal or State listed) as identified under the Endangered Species Act.

Plate 1 Typical Cross Section for Bank Stabilization

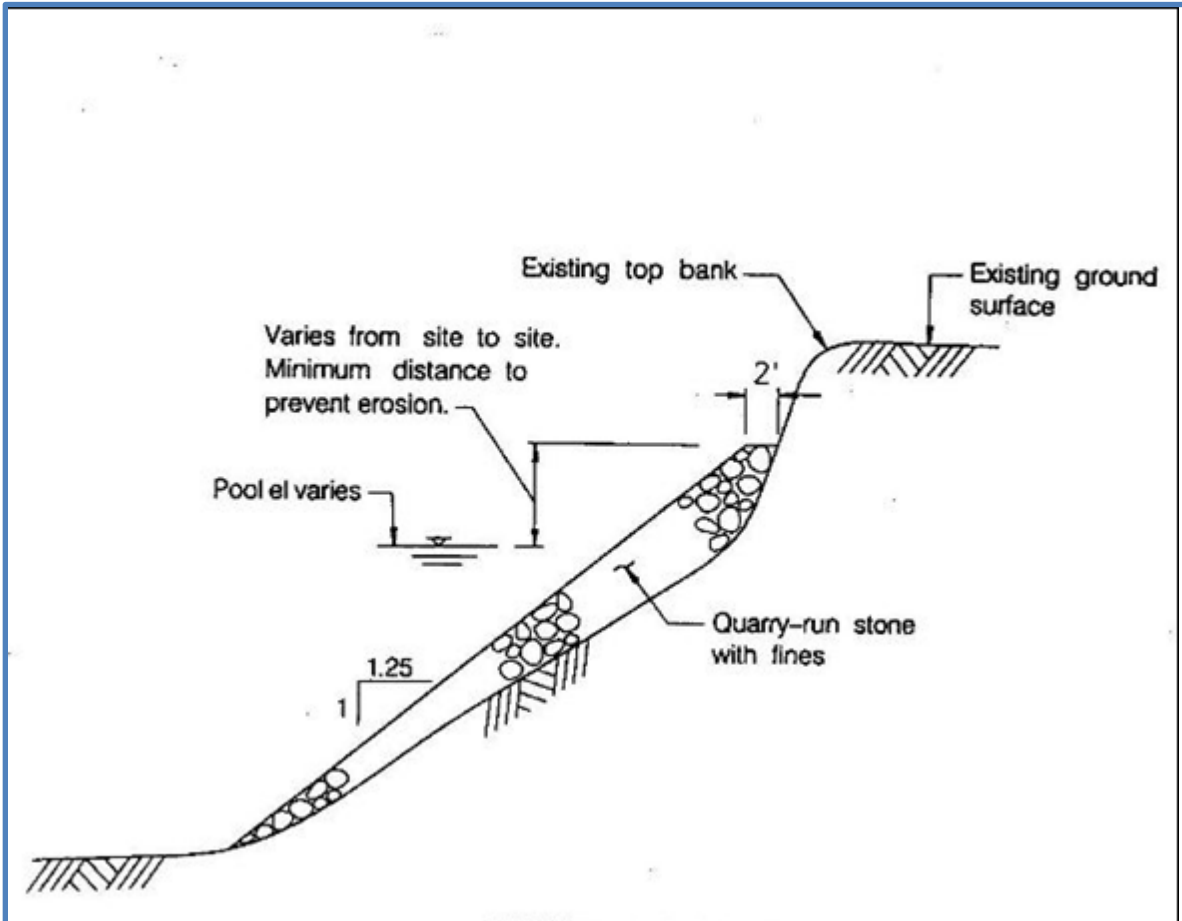


Exhibit E: Section 1134 of the Water Resources Development Act of 1986 (PL. 99-662)
SEC. 1134. CABIN SITE LEASES.

(a) On and after December 31, 1989, the Secretary shall continue in effect any lease or assignment thereof to which this section applies, until such time as such lease is terminated by the leaseholder, any successors or assigns of the leaseholder, or by the Secretary under subsection (b) of this section. Any such continuation beyond the date of expiration of such lease as in effect on December 31, 1989, shall be at fair market rentals and on such other reasonable terms and conditions not inconsistent with this section as the Secretary deems necessary. No continuation shall be made beyond such date unless the leaseholder agrees (1) to hold the United States harmless from any claim for damages or injury to persons or property arising from occupancy of or through the use of the property subject to such lease, and (2) to not unreasonably expand existing improvements.

(b)(1) On and after December 31, 1989, the Secretary and any other officer or employee of the United States shall not terminate a lease to which this section applies, except as provided in paragraph (2) of this subsection.

(2) On and after December 31, 1989, the Secretary may terminate a lease to which this section applies only if--

(A) the property covered by the lease is needed for immediate use for public park purposes or other higher public use or for a navigation or flood control project; or

(B) the leaseholder substantially violates a provision of such lease.

(c) Subsections (a) and (b) of this section apply to (1) any cottage site lease of property, which lease was entered into by the Secretary of the Army pursuant to section 4 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 889; 16 U.S.C. 460d), and is in effect on December 31, 1989, and (2) any assignment of such a lease.

(d) On and after December 31, 1989, no houseboat, boathouse, floating cabin, sleeping facilities at marinas, or lawfully installed dock or appurtenant structures shall be required to be removed from any Federal water resources reservoir or lake project administered by the Secretary on which it was located on the date of enactment of this Act, if (1) such property is maintained in usable and safe condition, (2) such property does not occasion a threat to life or property, and (3) the holder of the lease, permit, or license is in substantial compliance with the existing lease or license, except where necessary for immediate use for public purposes or other higher public use or for a navigation or flood control project.

In any case in which a person holds a lease of property at Clarks Hill Reservoir, Georgia, which is terminated under this section on or after December 31, 1989, the Secretary shall offer for sale to such person real property at Clarks Hill Reservoir which is owned by the United States and is not needed for the project (if there is any such property). The property offered for sale shall be approximately equal in size to the property that was subject to such lease. The Secretary shall offer any such property for sale at the fair market value of the property, as determined by the Secretary. Each offer under this subsection shall be made on or before the date on which the lease is terminated and shall be open to such person for 18 months from the time the offer is made. As a condition to a sale under this subsection, the leaseholder shall restore the property subject to the terminated lease to a condition acceptable to the Secretary.

Appendix A

Millwood Lake Shoreline Management Plan NEPA Documents

Reference Environmental Assessment