

## Required Information

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Name / Organization MJ Hurney  
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## Comments

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Dear Committee,

I write concerning the proposal for smaller docks and their zoning.

-New, small docks-

I understand there is a plan to possibly allow private single or double-stall dock installations within certain distances (200') of existing properties. I would offer my support for this, if done with proper regulation, but do question the ability to implement it as existing zones stand.

We own a full-time residence lakeside, just outside of Kimberling City. The current "red-line" dock zone literally ends inside the boundaries of our existing vegetation permit (in front of our property). However, due to the way the existing docks were staggered in that zone, there is no area to accommodate a small dock.

I understand these red/dock-zones were created without much rhyme or reason many years ago. My concern is that the current zones, as drawn, will allow for few-to-none of these newly proposed docks. I've spoken with 3 rangers about this very issue; I have never got an exact answer if there's any plans to extend these existing zones.

I'll use my cove as an example. Coming into the cove, the existing zone ends where larger docks consume about 1/4 to 1/3 of the cove. Extending the zone (or making a "small dock" zone) further into the cove would accommodate smaller docks without exceeding the 1/3 cove-width. In my opinion, adding to existing zones (or extending for a "small dock" zone) keeps docks confined to existing coves and is better than establishing new zones from scratch.

-Proper regulation-

I would urge the Corps to limit these smaller docks to adjoining landowners and enforce that provision each time a dock permit is due for renewal. Without doing so, you're going to have a situation where zones are again full and owned by visitors, with zones not available to landowners. This will cause more congestion and parking problems when those now-visitors try to access the docks they once lived near.

I am very pro-visitor, I just recognize the ease which visitors from KC, Springfield, Little Rock, etc. have in utilizing different points on the lake with minimal re-routing and not much (if any) additional travel time.

I appreciate your time and consideration. I believe the new plans should be fair to everyone- local and visitors alike. I believe good use can be made of the lake while maintaining its beauty.

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#### Required Information

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#### Comments

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I am requesting that with the New Regulations that our shoreline be rezoned for private dock permitting. We have spoken with the Tablerock Lake Office on several occasions concerning this but now seems to be the time to put it in writing. I know We are late in the process but would appreciate consideration for rezoning. The last information we received was that the May meeting had been postponed due to the Corona Virus issues. We Love Tablerock Lake and thank You for your care in the management of the lake. Thank You again for the opportunity to to voice our request.  
Max Carney/ Mary Maxwell 700 Paradise Cove Drive Lampe Mo.65681.

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#### Required Information

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Name / Organization Vincent Fulgenzi  
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#### Comments

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Good Afternoon,  
Thank you for taking the time to review and revise Table Rock Lake Shoreline Management Plan. The objectives are clearly to keep Table Rock Lake as one of the very best places to enjoy lake life in the USA. You are to be complimented on your intent and efforts thus far.

With regards to the following items I have these comments:

#### Increase Of The Limit On Slips / Parking Spaces:

Until a Complete and Detailed review of Carrying Capacity on Table Rock Lake (TRL) based on current boat size, horsepower, and usage can be completed, I feel the Corp should reinstate the moratorium on new docks or ramp parking.

The proposed increase of 60% over 2009 based on a target of 10 acres per boat is not supported by experience or the 2009 study itself. Further, according to USACE sources, the Corp nationwide targets 16-18 acres per boat on the lakes that it manages, would translate to approximately 20,000 total slips and parking spaces for TRL access. This number has been already exceeded.

A study completed on Beaver Lake in 2016 recommends a target of 14.5 acres per boat. That is also the approximate boating density of Table Rock Lake when it was studied in 2009. The 2009 study reported that 68% of survey respondents thought that level was "about right" although many also said that they avoided several areas of the Lake as "too crowded". TRL access is currently about 10% higher than the recommended. As an example, Mill Creek cove will regularly become too crowded to enjoy on a weekend. Boaters pulling water sports riders, come too close to each other and the skiing/wakeboarding riders.

A target of one boat per 10 acres on Table Rock Lake is simply not defensible. The 2009 Study suggests that 10 acres per boat may be adequate for a fishing lake, but that recreational boating use should target 20 acres per boat. Although excerpts taken from the Study that appear in the Carrying Capacity presentation could be interpreted to suggest 10 acres per boat as the limit, in totality the Study suggests this level should be avoided if at all possible. Since that level that would undermine the safety and enjoyment of the current users.

The Commercial community argues that the new limit is not a threat because:

- 1) There isn't enough Limited Development Area (LDA) to accommodate this huge an increase
- 2) Projecting the historical growth rate suggests that this new limit will not be reached for many, many (i.e. 60+ years).

These arguments are disingenuous.

Those same commercial interests have been working, and continue to lobby, for:

- 1) More LDA.
- 2) Relaxed dock placement minimum distances to cram more docks into existing LDA.

Arguments that it will take 60+ years to reach the 160% level is based on an observed growth rate of 6.9%, which is misleading. Corp data reveals that total number slips / spaces has increased by 10% since the 2009 study. The only logical conclusion is that there wouldn't be this level of effort, to increase the limit to unsafe levels, if there wasn't a plan to get there in the first place.

Please do not agree to this increase to appease members of the Committee. The public is not being adequately represented on the committee. Raising the access to accommodate more boats on Table Rock is putting the financial interests of a few ahead of the safety of the many.

#### Vegetation Permits:

Allows owners of property which adjoin Corp property to mow and clear property from the foundation of their home 200' onto the Corp property if they obtain a permit. Property owners are allowed to remove vegetative growth which is less than 2" in diameter (restrictions based on the type vegetation applies) at shoulder height (approx. 4.5' high). The Corps wants to change this for most vegetation to 2" in diameter at ground level and 3" in diameter at ground level for cedar trees, there are restrictions

based on the type of vegetation. The reason for this change is so the Corp can tell how big the vegetation was when it was removed. The 200' distance would also be limited if it would cross a road, creek, stream, or other natural changes in the topography.

I recommend the cutting of vegetation to be changed to ground level and the diameters to be 3" for most vegetation and 4" for cedar trees. This would allow the Corp to tell the size of vegetation removed and would also allow for the approximately same size vegetation to be removed as the current regulation. I also recommend that no changes be made to the 200' distance. The current regulation for vegetation permits has helped keep our lake beautiful and clean, the only issue appears to be the Corps ability to determine the size of vegetation removed and my recommendation accomplishes this.

Kindest Regards,  
Vince Fulgenzi

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#### Required Information

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#### Comments

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I DO NOT think anymore dock permits should be issued for ANY community docks.  
We have more than enough traffic on the lake now!  
Also I feel that wake boats should be BANNED on Table Rock Lake!  
They cause erosion on the shoreline and damage to the structure of the docks.

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#### Required Information

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#### Comments

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I am not in favor of eliminating the Commercial Remote Service Dock Program. My observation is that marina operators maintain those facilities to a high standard, and this is a way for property owners adjacent to the marina buffer area to have access to boat slips. I believe cedar trees are like flowering pear trees should be classified as an invasive specie that could be removed regardless of size, but I understand that my belief is not shared by Missouri Department of Conservation. Instead of the proposed 3" at ground level for cedar trees I would suggest 4" at ground level.  
Under the current plan vegetation mowing and/or underbrushing is permitted across natural and manmade breaks. In my opinion this does not need to change.

I don't have a problem with having a plan regarding maximum total number of access opportunities on Table Rock Lake, but I believe the public needs to be given the opportunity to give input before any change is made to the proposed cap.

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#### Required Information

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#### Comments

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April 26, 2020

US Corp of Engineer Officials,

Thank you for your oversight of Table Rock Lake region.

This letter is referencing the Proposed Shoreline Management Plan (SMP). I am concerned about the SMP's proposal to increase ramp parking and slips to a maximum of 30,806. That is 9,589 additional ones. As it is the summer and especially holidays are extremely busy during the prime time of each day.

The negative impact of having 9,500 + additional boats creates a safety hazard as well as accessibility for everyone.

Also, in referencing the SMP, it is stated that the Corp will provide a Boating Use Study sometime in the future when funding will be available. The study will hopefully provide additional data to establish a "red line" of the number of slips/ramp parking allowed. The Boating Use Study should be done prior to making the decision on number of slips/ramp parking allowed. It would provide the core direction for the SMP based on data. We should keep safety and the lake integrity as the premise for every decision. We do NOT want beautiful Table Rock Lake to become the southern Lake of the Ozarks.

Once again thank you for overseeing this important process.

Respectfully,  
Mark Thode

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#### Required Information

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#### Comments

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April 26, 2020

US Corp of Engineer Officials,

Thank you for your oversight of Table Rock Lake region.

This letter is referencing the Proposed Shoreline Management Plan (SMP). I am concerned about the SMP's proposal to increase ramp parking and slips to a maximum of 30,806. That is 9,589 additional ones. As it is the summer and especially holidays are extremely busy during the prime time of each day. The negative impact of having 9,500 + additional boats creates a safety hazard as well as accessibility for everyone.

Also, in referencing the SMP, it is stated that the Corp will provide a Boating Use Study sometime in the future when funding will be available. The study will hopefully provide additional data to establish a "red line" of the number of slips/ramp parking allowed. The Boating Use Study should be done prior to making the decision on number of slips/ramp parking allowed. It would provide the core direction for the SMP based on data. We should keep safety and the lake integrity as the premise for every decision. We do NOT want beautiful Table Rock Lake to become the southern Lake of the Ozarks.

Once again thank you for overseeing this important process.

Respectfully,  
Mark Thode

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Required Information

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Name / Organization   Kae M Fenster  
Address  
1041 Dogwood Village Lane  
LAMPE MO US 65681-0025

Phone 7134433566  
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## Comments

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Thank you for allowing comments/input from lake residents, since we have no representation on the committee.

1. I think the increase in slips by 60% is excessive and will reduce the lake enjoyment. A more gradual, increase would prevent overcrowding and the 'Lake of the Ozarks' problem.
  2. At one of the meetings a suggestion to allow case by case dock electrical service was made for those locations where alternative energy sources would be unacceptable. This seems a reasonable option and would prevent unauthorized usage of gasoline generators and enable battery charging for fishing boats.
  3. The loss of dock/slip for a first offense vegetation infractions seems over reaching and extremely punitive. While possible for some permit holders to be irresponsible, I would expect the majority of permit holders want to maintain the beauty and health of the shoreline and the lake.
  4. The increasing proliferation of 'cedar' trees is evident along the shoreline. While I understand the premise that the trees prevent shoreline erosion in some areas, I have seen the increased cedar trees are choking out native oak trees and the flowering trees. Perhaps consideration could be given to some targeted removal of cedar trees that are clearly overshadowing other trees. In our permitted area are approximately 50 cedar trees, with 2 that are encroaching on dogwood and red-bud trees, and gradually killing the oak trees they are near.
  5. I agree with another comment that allowing a 70/30 spit on vegetation removal allowing property owners with a permit to better manage this beautiful area we live in. After the horrendous forest fires in California due at least in part, if not totally due to poorly managed forest areas, we should learn how to reduce uncontrolled fires in our area. Cedar trees are extremely combustible, and not all areas are accessible by our volunteer fire fighters.
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## Required Information

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Name / Organization   randall snider

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## Comments

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As a local resident and lake user thank you for allowing comments, since we have no representation on the committee and limited opportunity of input.

1. I think the increase in slip numbers by 60% is excessive and will increase crowding and decrease safety and enjoyment. A more gradual, increase would prevent overcrowding and the 'Lake of the Ozarks' problem. Would be great to find a way to limit surf and wake-board boats from continuous activity near docks!!!
  2. A suggestion to allow case by case dock electrical service was made for those locations where alternative energy sources would not be usable. This seems a reasonable option and would prevent unauthorized usage of gasoline generators and enable battery charging for fishing boats.
  3. The loss of dock/slip for a first offense vegetation infractions seems over reaching and extremely punitive. While it is possible some permit holders may be irresponsible, I would expect the majority of permit holders want to maintain the beauty and health of the shoreline and the lake.
  4. The increasing proliferation of 'cedar' trees is evident along the shoreline. While I understand the premise that the trees prevent shoreline erosion in some areas, I have seen the increased cedar trees are choking out native oak trees and the flowering trees. Perhaps consideration could be given to some targeted removal of cedar trees that are clearly overshadowing other trees. In our permitted area are approximately 50 cedar trees, with 2 that are encroaching on dogwood and red-bud trees, and gradually killing the oak trees they are near.
  5. I agree with another comment that allowing a 70/30 split on vegetation removal allowing property owners with a permit to better manage this beautiful area we live in. After the horrendous forest fires in California due at least in part, if not totally due to poorly managed forest areas, we should learn how to reduce uncontrolled fires in our area. Cedar trees are extremely combustible, and not all areas are accessible by our volunteer fire fighters. Allowing removal of excessive, and downed combustible debris would be a significant help.
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#### Required Information

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#### Comments

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This will be our final post in our continued effort to have the USACE grant authority to removed hazardous and dangerous vegetation growing on USACE property directly adjacent to a habitable dwelling. If the USACE continues to deny such requests, then we would strongly endorse the formulation of an appeal process comprised of up to date and current experts.

According to the USACE, an emergency situation is one that result in an unacceptable hazard to life, a significant loss of property, or and an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedure.

There is a current habitable dwelling current on Table Rock Lake the was built in 1999 adjacent to the USACE property line. In the last 21 years, vegetation (trees, brush, shrubs, vines and dead trees) have grown to within a few feet from most of the SUNROOMS of the condominiums. The TANEY COUNTY ASSISTANT CHIEF, PREVENTION DIVISION, HAS STATED: "The buildings are lake front property and border the Corps of Engineers property. Vegetation along the property line has become overgrown. The vegetation along the property line is within that defensible zone. Some tree branches are within a couple feet of upper floors. It is our recommendation the vegetation along the property line be cleared back so there is a defensible zone".

To clarify, the Cedar and the Eastern red ARE NOT CEDAR TREES. THEY ARE ACTUALLY A JUNIPER, (JUNPTERUS COMMUNIS). Many experts call them a juniper shrub, obnoxious weed, juniper bush and there is no ecological value of the Juniper.

At any given time considering the weather (ICE STORMS, TORNADOS, WIND, THUNDERSTORM, AND FIRE), in the Branson area, the hazardous vegetation (directly next to the SUNROOM) could easily be blown or fall into the SUNROOMS and injure or kill innocent children or adults watching television. We have numerous drone and ground pictures to prove the tremendous dangers the condominiums owners must live under. And, we have a significant number of pictures of trees that have fallen into and killed children and adults due to ice storms, wind/thunderstorms, and fire throughout the country.

All dangerous and hazardous vegetation of any kind and in any area must be removed as soon possible after a permit is issued. It is not our fault that the vegetation has grown into a jungle over 20 years. WE WERE TOLD THAT "AREAS THAT WERE PREVIOUSLY CLASSIFIED AS NATURAL AREA AND HAD NO ACTIVE SHORELINE USE PERMITS WERE RETAINED AS ENVIRONMENTALLY SENSITIVE AREA". Then a few sentences later, we are told "The Table Rock Lake Project Office's issuance of previous mowing /underbrushing permit at your location was in ERROR". Had the permit been active and maintained in compliance it would have been honored. Now, it gets really confusing – We were somehow informed that the area in question was never classified as a Natural Area and has always been an Environmentally Sensitive Area. So, no permit was issued. Soon thereafter, I received copies of the permits in question and maps showing what areas were covered by the permits. If we had known that the permits were not issued or issued in error, or were going to expire, of course we would have renewed them.

Considering the hazardous and dangerous vegetation situation, we feel that all vegetation directly adjacent to any habitable dwelling be completely removed 200' feet from the base of the dwelling, even if that requires clearing of vegetation on USACE property. As recommend by the Missouri Department of Conservation, replacing the dangerous vegetation with Missouri native grasses would be an excellent solution. If the USACE continues to deny the permits to remove Hazardous and Dangerous vegetation which would injury, main, or kill lives, it would be imperative that we have an appeal process of experts to intercede. In closing, if any of the TRLAC members would like copies of the drone and ground pictures, or other pictures of trees falling into dwellings, please let me know.

There are many states and cities that are issuing grants to assist in removing cedar and hazardous vegetation. Some reasons are because cedar fever can result in serious health issues, safety issues, and create soil erosion issues and getting rid of the obnoxious weed/shrub to plant either grasses or native trees. Boy scouts in the Kansas City area are also being involved to get rid of the cedar. And, replacing hazardous vegetation with native grasses is encouraged by experts and much more ecologically soil erosion friendly then a cedar. Considering what area, the hazardous vegetation is located is totally irrelevant when trying to save lives and prevent property damage. Most of the vegetation is on USACE property directly adjacent to the condominiums and has been allowed grow uncontrollably.

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#### Required Information

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Name / Organization Paul Horak  
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#### Comments

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I have enjoyed coming to the Lake for 56 years. I made my first trip at the age of one standing between my parents on the seat of a GMC pickup with a camper in the bed. My wife and I have owned a house on the lakefront near Baxter since 2003, have constructed one additional house in our neighborhood and will soon be starting on another. We also own a two stall private dock in front of our home. Needless to say we are heavily invested and committed to the future of the Lake and shoreline. When we became aware of the huge increase in boat slips and ramp parking spots being contemplated we were shocked. In the past twenty years we've seen a large increase in boat traffic on the Lake and point out the ramifications of that increased traffic below:

More boating accidents - with such an expansion of easy access for weekend or even daily use boaters it will naturally lead to concentrating that usage to weekends and especially holiday weekends. A good number of these people lack boating experience and when this is mixed with increased concentration there will be accidents and fatalities.

More shoreline erosion - More boats means more wave action and more shoreline erosion especially when the Lake is above pool level. Our cove is normally crystal clear but on a weekend boat wakes turn our shoreline into a muddy mess.

More surfing boats - In the past 15 years the most popular behind the boat activity has migrated from water skiing and tubing to wake surfing. The wakes created by wake surfing boats is horrendous and very damaging. More boats will mean a disproportionate increase in wake surfing which will end up concentrating itself in the coves where the wake damage is more focused and increased.

More damage to docks from boat wakes - As mentioned above, the increase in wake surfing boats will cause damage to docks, injuries to persons working on lifts and docks and a real disruption to the people on their dock wanting to enjoy some relaxation. This will rise during periods of concentration on weekends and holidays.

Impact on water quality - Tablerock has always been a jewel when it comes to nice clean water. To find out what more boat traffic does one only needs to make the trip up to Lake of the Ozarks.

Strain on law enforcement resources - More boats will come on weekends and there will be more partying, more drinking and more reckless behavior. We are not party poopers but we already have a lake 2 1\2 hours to the northeast that caters to that crowd. Most residents and visitors to Tablerock are trying to avoid that kind of experience.

Our thanks to the Corps for all you do in managing our lake. Your efforts have made it such a special place for us and three generations of our family and we genuinely appreciate it.

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#### Required Information

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Name / Organization    George Donner  
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## Comments

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I would like the dock permittee be able to request dock modifications every 2 years

1st time dock infractions should be limited to no more than a warning that has a 60 day time frame to make the correction. 2nd offense can be a \$1,000 and so on. Offense is tied the the individual, not all slip owners on a dock.

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## Required Information

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## Comments

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US Corp of Engineer Officials and committee members, My family and I have been enjoying Table Rock Lake for over 30 years. We appreciate the decades of oversight and leadership the Corp has provided. With your efforts, Table Rock has maintained a lake that is well balance with conservation, development, and family recreation interests. Thank you for the tireless and many times thankless efforts. It is appreciated.

In reading the Proposed Shoreline Management Plan (SMP), I'm concerned the Corp and Table Rock Lake will quickly lose control of the balance you have maintained so well. Specifically speaking, I am opposed to the SMP's proposal to increase ramp parking and slips to a maximum of 30,806. That is 9,589 additional to present day. I'm sure most of you have experience how busy the lake becomes over summer weekends and holidays. It is to the point where I have advised my family to park the boat between the hours of 11 am to 6 pm. Adding the potential of 9,500 + boats will absolutely choke the lake and create an unsafe boating environment. I oppose this drastic increase and ask the Corp to reevaluate a much lower and safer number of slips/ramps spots.

Secondly, in referencing the SMP, it is stated that the Corp will provide a Boating Use Study sometime in the future when funding will be available. The study will hopefully provide additional data to establish a "red line" of the number of slips/ramp parking allowed. In my opinion, isn't this completely backwards? A Boating Use Study should be the backbone of the SMP. The Boating Use Study should provide the core direction for the SMP. I suggest the current SMP be suspended until a Boating Use Study is funded and enacted. The Corp should closely guard adding slips until the completion of a Boating Use Study.

Third, I am concerned of the encroachment of the Cedar trees. I believe a more aggressive management strategy could be put into practice. The cedars are choking out new growth of oaks, redbuds, dogwoods and native grasses. I suggest allowing slightly larger cedars of 4 inches at ground level could be removed with appropriate permitting.

Finally, due to weather issues and COVID-19, I would advise that the committee and the Corp should delay any implementation of the SMP. Residence were not able to attend many of the public input meetings. It is also alarming how many residence and lake users are unaware of the proposed SMP. Without resident and lake user input, it is likely commercial and development group interests will go unchecked.

Thank you for your attention and the opportunity to voice my concerns and opinions.

Sincerely,

Luke Horak  
526 Palomino Trail  
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319-461-0009

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Required Information

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108 Timeline

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Comments

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Where is the green, slimy moss on the shoreline coming from this year? I have boated on this lake for decades and have never seen this so widespread? Especially this early in the year! I boated yesterday near Baxter on Little Indian, Big Indian and the White River Arm and it's all over the shoreline in this area. I've contacted the Table Rock Water Quality but no response.

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Required Information

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## Comments

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USACE, Little Rock District, Natural Resources Management Section May 4, 2020  
ATTN: Table Rock Lake SMP Planner  
P.O. Box 867  
Little Rock, AR 72203

Ref: Comments and Opposition for the SMP changes to increase access to Table Rock Lake

Bill Coe and Wendy Coe are writing to urge the Corp to pause and reconsider the major changes to Private Floating Facilities (Docks).

We are opposed to the changes to increase access to Table Rock Lake and urge the Corp to reconsider especially due to the recent pandemic of Covid19 and now social distancing becoming "The New Normal"

The 60% increase in lake access is extremely alarming. We believe these changes will not only be a Safety Concern for property owners, fisherpersons, and boaters but also for "The Highway Patrol" that has to police and monitor the Lake. This Covid19 pandemic with all the new rules and regulations being written as I write this opposition; placing us all into uncharted waters should be enough to pause and re-studied this proposal.

Please reconsider any increase of new docks or ramp parking – with perhaps a provision for grandfathering those already promised – until a review of Carrying Capacity on Table Rock Lake (TRL) based on current boat size, horsepower, and usage can be completed. The proposed increase of 60% over 2009 based on a target of 10 acres per boat is not supported by experience or the 2009 study itself. According to USACE sources, the Corp nationwide targets 16-18 acres per boat on the lakes that it manages. This would translate to approximately 20,000 total slips and parking spaces for TRL access. This number has been already exceeded.

A study completed on Beaver Lake in 2016 recommends a target of 14.5 acres per boat. That is also the approximate boating density of Table Rock Lake when it was studied in 2009. The 2009 study reported that 68% of survey respondents thought that level was "about right" although many also said that they avoided several areas of the Lake as "too crowded". TRL access is currently about 10% higher than the recommended.

A target of one boat per 10 acres on Table Rock Lake is simply not defensible. The 2009 Study suggests that 10 acres per boat may be adequate for a fishing lake but that recreational boating use should target 20 acres per boat. Although excerpts taken from the Study that appear in the Carrying Capacity presentation could be interpreted to suggest 10 acres per boat as the limit, in totality the Study suggests

this level should be avoided if at all possible. A train wreck. A level that would undermine the safety and enjoyment of the current users.

The Commercial community argues that the new limit isn't a threat because 1) there isn't enough Limited Development Area (LDA) to accommodate this huge an increase and 2) projecting the historical growth rate suggests that this new limit will not be reached for many, many years. These arguments are disingenuous. Those same interests have been working, and continue to lobby, for 1) more LDA and 2) relaxed dock placement minimum distances to cram more docks into existing LDA. Arguments that it will take 60+ years to reach the 160% level based on an observed growth rate of 6.9% is also misleading. Corp data reveals that total number slips / spaces has increased by 10% since the 2009 study. Please do not agree to this increase to appease members of the Committee. The public is not represented. Raising the access to accommodate more boats on Table Rock is putting the financial interests of a few ahead of the safe enjoyment of the Lake by the many.

In closing Bill Coe and Wendy Coe are requesting the U S Army Corp of Engineers to consider this opposition to increase access as (2), two, formal complaints and should be counted as such.

Regards,

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Required Information

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## Comments

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Issue: Solar power for private floating facilities: design standards, market and infrastructure support for existing facilities as well as market and infrastructure support for future facilities.

Abbreviations: Shoreline Master Plan (SMP), Table Rock Lake Oversight Committee (TRLOC), Table Rock Lake (TRL), U S Army Corps of Engineers (USACE).

Reference material: SMP draft Section titled "Facility Construction Requirements" paragraph 1 page 25, Initial Power Point presentation to the TRLOC slide 15 and Dock Electrical Systems packet prepared by the USACE Little Rock Division on June 3, 2013.

Purpose: Provide future actions for the USACE to undertake so that an ultimate conversion from shore based electrical power to alternative energy sources can be implemented.

COMMITTEE ACTION: Recommend the USACE Table Rock; 1) develop a "Dock Alternative Energy Systems" packet, similar to the "Dock Electrical Systems" packet developed in 2013, 2) continue to require new private docks (not community docks) be completed with alternative energy or other non-shore based electrical connections, 3) develop a database of potential alternative energy companies within the area exhibiting the expertise and personnel required to service a large population of alternative powered facilities, 4) develop a data base of existing alternative energy powered docks on TRL, 5) utilize that database to document and categorize the experiences of those private dock permit holders and 6) for the next required SMP update, present this information to the public to determine IF there is the infrastructure to support a larger conversion to alternative energy sources for dock power.

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## Discussion and reasoning:

Since 2013, new private docks have been required to be serviced by non-land based electrical service, i.e. alternative energy sources. In the initial TRL Draft SMP, a conversion of all private and community docks to alternative energy sources by 2027 was included. In the Initial presentation by the USACE to the TRLOC, slide 15 (Tab 2) showed this requirement had been deleted.

According to the presentation by the USACE to the TRLOC on March 5, 2020, to date, roughly 215 new alternative energy power private docks exist on TRL. For the 2019 SMP, the USACE contacted these permittees and roughly 80% responded to questions posed by the USACE about their experiences with alternative energy powering their docks. The results were included in the USACE presentation.

Nathan Jones, of Solar Dock Power LLC, spoke after the USACE's presentation. Mr. Jones addressed several of the concerns the USACE uncovered in the survey of existing TRL alternative powered private docks. Solar is the only alternative power source currently in use on TRL.

One of the more interesting comments Mr. Jones made was the lack of any specific design recommendations or requirements issued by the USACE. It has been left up to the private dock owners themselves to decide on the system installed. This lack of guidance has resulted in multiple different systems with varying degrees of complexity, performance and costs. This lack of guidance has also increased the potential for environmental problems should a facility with batteries, experience a battery failure and contaminate the water surrounding the facility.

The discussion around community docks and alternative energy sources focused on the power requirements for holiday weekend peak usage. While the systems can be built with the necessary power to handle this situation, according to Mr. Jones, should the weather either prior to or during the week be overcast (assuming solar is utilized), but not sufficiently lousy to keep boaters away, power issues could develop. The larger the dock the larger the level of concern. Back up gasoline generators, while an interesting back-up plan, provide their own environmental issues.

Tab 3: The SMP 2019 draft on page 24 under the Facilities Construction Requirements states in the first sentence, "New facilities or modifications to existing facilities must include plans signed and stamped by a licensed engineer". There is no definition of "licensed engineer" and therefore no distinction between a licensed chemical engineer, licensed aeronautical engineer, a licensed electrical engineer or a licensed architectural engineer. Apparently to the USACE, all engineers are created equally.

According to Mr. Jones, a dock powered by an alternative energy source is going to be required to support more weight (batteries), potentially more rooftop attachments (solar panels) or a potential large windmill attached to the dock superstructure than a land based electrically powered dock. Not having specific design standards was a major concern for him.

Specific USACE Table Rock actions:

- 1) Accept the recommendations of the TRLOC and implement their recommendations
- 2) Correct and update the "Dock Electrical Systems" (Tab 4) guide dated June 3, 2013 on page 2 where it says "Dock service will have a disconnect switch 3' above the 1130' elevation." Since this would be roughly 175' above the top of the flood pool at Table Rock, the wording needs to change.
- 3) Develop specific standards for alternative energy sources much like the "Dock Electrical Systems" pamphlet mentioned earlier. These standards could include:
  - a) the system design requirements be signed and stamped by a licensed electrical engineer with an alternative energy specialization
  - b) the structural support for the dock be signed and stamped by a licensed structural engineer and
  - c) the requirements for the type of battery used to store excess power.
- 3) Develop, survey and catalog the experiences of existing alternative energy powered docks.
- 4) Develop and maintain a list of potentially "approved" companies to install and maintain alternative energy system on docks on TRL,

5) Prepare a report for the 2024 SMP covering the results of the user surveys, the companies approved to install and maintain alternative energy sources and the design and construction requirements for private floating facilities powered by alternative energy sources.

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#### Required Information

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#### Comments

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Issue: Conflicting portions of the SMP draft, the Environmental Assessment draft and the FONSI draft concerning "No-Wake" buoys" on Table Rock Lake.

Abbreviations: Table Rock Lake (TRL), U S Army Corps of Engineers (USACE), Shoreline Master Plan (SMP), Table Rock Lake Oversight Committee (TRLOC), Finding of No Significant Impact study (FONSI), Environmental Assessment (EA).

Reference material: SMP draft Section titled "Private Floating Facility permits", sub title Private Docks paragraph 3 page 14, SMP draft Section titled "Private Floating Facility permits", sub title Community

Docks paragraph 2 page 14, SMP draft Section titled “Regulatory Buoys” page 40, Initial PowerPoint presentation to TRLOC slide 17, EA draft page 9, Draft FONSI page 3 bullet 20.

Purpose: Eliminate the conflicting statements regarding “No-Wake” buoys found in the various drafts titled: SMP 2019, EA and FONSI.

COMMITTEE ACTION: Recommend the USACE Table Rock 1) correct conflicts within the SMP and supporting drafts and 2) work with the Missouri Highway Patrol, Water Patrol Division to establish a process for private and community dock permit holders to apply for “No-Wake” buoys.

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Discussion and reasoning:

Tab 2: The SMP draft 2019 on page 14 paragraph two, Private Docks states that “Dock owners may not... or, (c) install buoys to restrict the speed of passing boats”. The SMP draft 2019 on page 14 paragraph five, Community Docks states that “Members may not ... or, (c) install buoys to restrict the speed of passing boats”.

Tab 3: The SMP draft 2019 on page 40 under Regulatory Buoys in the last sentence states “The Corps of Engineers does not recommend the installation of “No Wake” buoys to restrict the speed of passing boats at private/community docks.”

Tab 4: The initial PowerPoint presentation states on slide 13 that Alternative 4(A) – Revised Neutral Changes (Proposed Preferred Alternative) is the USACE preference for the SMP for TRL 2019 version.

Tab 5: In the initial PowerPoint presentation given to the TRLOC on slide 17, it shows a reference to “No Wake” buoys for private docks not being allowed. There is no reference to community docks and “No Wake” buoys in the slide presentation. The slide shows the private dock “No Wake” reference lined out potentially implying that for private docks, this provision has been deleted.

Tab 6: The draft EA on page 9 under the heading 3.5 Revised Neutral Change (Alternative 4a) (preferred) in the last bullet point states “Any existing “No Wake” buoys at private floating facilities will be allowed to remain.”

Tab 7: In the draft FONSI, page 3, bullet 20 (second from last), states “Existing “No Wake” buoys at private floating facilities will be allowed to remain until December 31, 2020.”

These differences in language are creating confusion on the part of both Private Dock and Community Dock permittees. Since the water within TRL is owned by the State of Missouri and the USACE has been contracted with the State of Missouri to managed TRL, jurisdictional issues over “No Wake” buoys occur. The USACE needs to make it clear what they mean and what the USACE’s intentions are regarding “No Wake” buoys and private floating facilities.

As a committee, the TRLOC is charged with making recommendations. By providing potential solutions, the TRLOC is functioning in its Advisory Role as outlined in FACA regulations. In that spirit and within this submission, the TRLOC is making specific recommendations for the USACE to consider that assure compliance with T36, C3, S327 of the CFR.



Specific USACE Table Rock actions:

- 1) Accept the recommendations of the TRLOC and implement their recommendations
- 2) Within the draft SMP page 14 in the second full paragraph first sentence, the USACE needs to correct the language referring to a private dock holder as a "member".
- 3) Within the TRL SMP and related documents, assure comments remain within the jurisdictional limits of the USACE's responsibilities associated with the management of what happens on the water within TRL for the State of Missouri
- 4) Work with the Missouri Highway Patrol, Water Patrol Division to develop a process for private and community dock permittees to apply for "No Wake" signs and buoys.

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Comments

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Issue: Lack of trust and communication with permittees, especially those who do not live in the immediate area, due to limited or no notification of USACE TR public meetings and other actions

Abbreviations: Table Rock Lake (TRL), Shoreline Master Plan (SMP), U S Army Corps of Engineers (USACE), Electronic Data Base (EDB).

Reference material: Title 36, Chapter III, Section 327 Item 30 paragraph C item 6 titled Public Participation, Application for Shoreline Use Permit, ER 1130-2-406 amended May 28, 1999, SWLR 1130-2-48 Appendix E revised June 21, 2007 item 4 titled : Opportunities for Public Participation and Item 5 titled: Public Notification Responsibilities

Authority for actions: ER 1130=2-406, revised May 28, 1999, Appendix A paragraph C item 9

Purpose: To better comply with Title 36, Chapter III, Section 327 provisions requiring maximum public participation and the establishment of a “computerized program” as well as increased transparency between the UASCE and permit holders

COMMITTEE ACTION: Recommend the USACE Table Rock; 1) establish an EDB of e-mail addresses of all permit holders to allow for better public dissemination of USACE news, public events and potential regulatory changes concerning TRL, 2) update the EDB every 6 months to assure # 1 above can be properly executed.

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Discussion and reasoning:

Tab 2: Title 36, Chapter III, Section 327 item 30 paragraph C item 6 states “...Projects with significant numbers of permits should consider developing computerized programs to facilitate exchange of information with permittees and to improve program efficiency.”

Tab 3: ER 113-2-406, Appendix A paragraph C item 9 states “The District Commander or his/her authorized representative may place special conditions on the permit when deemed necessary.”

Tab 4: SWLR 1130-2-48, Appendix E Items 4 and 5 directly relate to public notification. Item 4 again states “...ensure public participation to the maximum practicable extent in the SMP formulation, ...” Item 5 instructs the Public Affairs office to “...notify the general public through media releases to applicable state-wide and local newspaper, television and radio outlets.” Since many permittees are not residents of the local area or even the state of Missouri, notification rarely occurs.

In the normal course of daily operations, many permittees now communicate with the USACE Table Rock duty officer via e-mail instead of telephone. This allows for a written record of the conversations to help eliminate potential mis-remembered discussions. Telephone messages can potentially be inadvertently overlooked or forgotten causing a potential lack of trust between the USACE and permit holders.

E-mail is also a substantially less expensive method of communication when compared to the posting of public notices in local media or mailings to permittees. This also allows the USACE to be able to show each permittee was notified of any meetings or pertinent information further reducing potential conflicts or claims of failure to notify.

It will be up to the permittee to assure the USACE has the best e-mail address and up to the permittee to assure USACE e-mails do not go into a “Junk” or Spam” folder. When a permittee notifies the USACE

of a new address, the USACE would then update the permit information as well as the communication database.

As a committee, the TRLOC is charged with making recommendations. By providing potential solutions, the TRLOC is functioning in its Advisory Role as outlined in FACA regulations. In that spirit and within this submission, the TRLOC is making specific recommendations for the USACE to consider that assure compliance with T36, C3, S327 of the CFR.

Specific USACE Table Rock actions:

- 1) Accept the recommendations of the TRLOC and implement their recommendations.
- 2) Have the USACE District Commander issue notice of a new permit condition requiring an e-mail address as well as mailing address for any new or renewal permit of any type.
- 3) Tab 5: On the existing application for a Shoreline Use Permit, in the space below the permittee's signature, have the permittee list a preferred e-mail contact address.
- 4) in the 2019 SMP, under section "Major Changes from the Previous Plan", add the following item:

Communication improvements

To enhance the ability of the USACE Table Rock to communicate with permittees of all types, all new permit applications will include a viable e-mail address associated with the permit requested. For existing permittees, the e-mail may be provided at any time but becomes required when any permit comes up for renewal. It is up to the permittee to assure the USACE Table Rock always has the preferred email address on file for the permit holder.

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## Comments

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Issue: Cedar trees within LDAs which prevent other vegetation from growing to prevent erosion of soil into TRL especially during period of heavy rains.

Abbreviations: Table Rock Lake (TRL), Shoreline Master Plan (SMP), U S Army Corps of Engineers (USACE), Limited Development Area (LDA), Table Rock Lake Oversight Committee (TRLOC), Missouri Department of Conservation (MDC), Freedom of Information Act (FOIA)

Reference material: TRL SMP draft 2019 page 10 and page 40, Summary of TRL Focus Group recommendations, Meeting memorandum from TRL SMP focus group 2015 meetings 1, 2 and 3, MDC letters to the USACE dated 12/14/12, 8/29/13 and 4/29/15

Purpose: To allow for vegetation modification plans developed in conjunction with a licensed landscape architect and designed to reduce soil erosion into TRL from shoreline use permitted areas within the LDAs.

COMMITTEE ACTION: Recommend the USACE Table Rock allow, ONLY within LDAs covered by shoreline use permits, vegetation modification plans designed to reduce erosion of soil into TRL which includes the removal of any cedar trees and their replacement with native warm season grasses and forbs as recommended by the MDC.

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## Discussion and reasoning:

Tab 2, Item 1: According to the proposed 2019 SMP for TRL, page 10 states that only 12% of the shoreline is within the LDA designation. These areas are the only areas where private activity such as shoreline use and private floating facility permits may be granted. That said, 88% of the shoreline around TRL is not part of this discussion.

Tabs 3,4 & 5: In 2015, in preparation for the new TRL SMP, the USACE hosted three Focus Groups. According to meeting documents, the purpose of these groups "...was to elicit input from stakeholder perspectives via focus group members on potential updates to the current SMP". The three groups were; 1) Vegetation modification, 2) Docks and 3) Shoreline allocations. To the USACE's credit, these are arguably, the three most contentious issues within the development of a new SMP.

Tab 6: After three meetings, each group made recommendations. Of the recommendations made by the Vegetation group, one made it into the 2019 TRL SMP draft. This concerned the USACE approval of removing dead or diseased trees using photographic proof.

Tab 7: Throughout the TRL SMP process, the MDC has been actively involved. In multiple letters and communications provided by the MDC in reference to a FOIA request, that Department's concerns have been consistent. 1) Identify measures that will increase water quality at TRL, 2) minimize impacts to the forest, fish and wildlife resources, 3) preserve the riparian buffer zone at the lake's edge, 4) assure steps are taken to ensure invasive species from other lakes are not allowed to infiltrate TRL and 5) provide sufficient water flow to support the Missouri fish hatchery.

Tab 8: MDC, through MDC employee Greg Cassell, participated in the Vegetation Focus Group. Just prior to these meetings, the MDC reiterated their concerns to the USACE in a letter dated April 29, 2015. This is the letter the USACE appears to reference in the TRL SMP.

The MDC's letter actually says, "If the opportunity exists to improve upland wildlife habitat (for example, removing cedar and replanting native warm season grasses and forbs), Department biologists are available to provide planning and technical assistance". The USACE's paraphrase, shown on page 40 (Tab 2, item 2) under the "Cedar Tree" paragraph reads "MDC staff suggested that cedar trees that are not in riparian zones or on slopes could be removed to permit the growth of native warm season grasses; however, for these grasses to perform well, they cannot be mowed to yard like conditions."

Tab 8: "Removing cedar..." in the 4/29/15 letter is the only reference to cedar trees in MDC correspondence available through the FIOA. Offering "planning and technical assistance" indicates the MDC views removing cedar trees as supporting their goals. The letter from MDC does not place ANY restrictions on the removal of cedar trees unless the trees are in a riparian zone. The USACE's paraphrase is accurate in stating "cedar trees...could be removed...", but INACCURATE in implying the MDC requested or implied any size restrictions.

Despite MDC recommendations and the USACE's understanding of those recommendations as shown in the TRL SMP, throughout this process, the USACE's position has never wavered. Cedar trees are vital and may never be removed regardless of their location or their size unless they are no more than 2 or 3" in diameter at some height above ground level.

As a committee, the TRLOC is charged with making recommendations. By providing potential solutions, the TRLOC is functioning in its Advisory Role as outlined in FACA regulations. In that spirit and within this submission, the TRLOC is making specific recommendations for the USACE to consider that assure compliance with T36, C3, S327 of the CFR.

Specific USACE Table Rock actions:

- 1) Accept the recommendation of the TRLOC and implement their recommendations.
  - 2) Allow a shoreline use permit holder to develop a vegetation modification plan which allows for the removal of any cedar tree not in a riparian zone and the planting of native warm season grasses or forbs to reduce the potential for soil erosion into TRL. This plan must be developed by a landscape architect practicing under a Missouri license.
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#### Comments

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Issue: Assure the USACE remains within the statutory guidelines of Title 36 of the CFR concerning penalties for permittees who violate permit conditions.

Abbreviations used: T36 = Title 36 of the Code of Federal Regulations, C3 = Chapter III of Title 36, P327 = Part 327 of Chapter III of Title 36 of the Code of Federal Regulations, TRL = Table Rock Lake, SMP = Shoreline Master Plan, EX = Exhibit, Appendix = AP, Shoreline Use Permit = SUP

Reference material: T36, C3, P327 paragraph 30 Item F sub items 1(i), 1(ii), 1(iii) and 1(iv), T36, C3, P327 paragraph 19 Permits, T36, C3, P327 paragraph 25 Violations of rules and regulations, TRL draft SMP section titled Shoreline Use Permits, subsection General Requirements page 12, TRL draft SMP section titled Vegetation Modification permits page 28, TRL draft SMP section titled Unauthorized Activities and Violations paragraph 1 page 33, TRL draft SMP section titled Unauthorized Activities and Violations, subsection Special Enforcement Standards, beginning on page 34 and ending on page 35, EX B, revised 6/27/2018 titled Shoreline use permit conditions, Appendix A to T36, C3, P327 dated July 1, 2001 as revised Jan 6, 2003, USACE TRL website/Shoreline Management Guidelines/Shoreline use permits

Purpose: Assure the USACE operates within the Federal Law as stated in Title 36, Chapter III, Part 327, Appendix A and Exhibit B of the Code of Federal Regulations.

COMMITTEE ACTION: Recommend the USACE Table Rock 1) Amend the draft SMP to assure compliance with T36, C3, P327.25 and AP A item 3 Permit Revocations, 2) Develop plan for community Dock Members who are not Permittees and therefore not subject to USACE jurisdiction for permittee violations, and 3) Assure language contained within the final TRL Master Plan and SMP concerning violations by permit holders has been reviewed and approved by the USACE Regulatory and Legal Divisions and assure the proof of those reviews and approvals are contained in the final documents as exhibits.

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Governing legal documents:

It is necessary to walk through the USACE's legal documents to understand which ones are referenced, what they say and, according to T36, how the USACE is legally allowed to penalize permittees.

Tab 2: T36, C3, P327.30 paragraph f, is titled Instruments for Shoreline use and goes on to outline what specific activities are required to be permitted. Item 1 is titled Shoreline use permits and the first sub item (i) states "Shoreline use permits are issued and enforced in accordance with provisions of 36 CFR 327.19."

Tab 3: T36, C3, P327.19 is titled Permits. Item (a) states "It shall be a violation of this part to refuse or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this P327." Item (e) states "Shoreline Use Permits to authorize private shoreline use facilities, activities or development (issued under the authority of P327.30) may be issued in accordance with the Shoreline Management Plan. Failure to comply with the permit conditions issued under P327.30 is prohibited."

Tab 4: T36, C3, P327.25 is titled Violations of rules and regulations. Item (a) states the penalties that may be imposed on permittees who violate the terms and conditions of the permit(s) they hold. This section states "Any person who violates the provisions of the regulations in this part, other than for a failure to pay authorized recreation fees as separately provided for in P327.23, may be punished by a fine of not more than \$ 5,000 or imprisonment for not more than 6 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."

Tab 5: Appendix A, revised Jan. 6, 2003, in item 3 titled Permit Revocation, states "Permits made 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 SMP or of this regulation."

In the draft TRL SMP under the section titled Major Changes from the Previous Plan, there is no reference to the USACE's attempt to change or modify the penalties for violations by permittees.

Tab 6: In the draft TRL SMP EX B, Item 9 outlines "The permittee shall be responsible for any damage that may be caused to the property of the United States by activities of the permittee under this Shoreline Use Permit/License and shall exercise due diligence in the protection of all property located on

the premises against fire or damage from any and all other causes". It goes on to state the permittee shall repair or replace at their expense to the satisfaction of an officer and property the officer deems to have been damaged.

Tab 7: In the draft TRL SMP EX B, item 23 states "The permittee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations". It goes on to say "Failure to abide by these applicable laws and regulations may be cause for revocation of the permit/license".

Tab 7: In the draft TL SMP EX B, Item 24, (c) states "The permittee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the permittee's activities, the permittee shall be liable to restore the damaged resources".

Tab 7: In the draft TL SMP EX B, item 28 outlines the procedure for notifying a permittee of a permit revocation as well as an appeal process for the permittee to follow should the permittee wish to appeal the decision.

Tab 8: The USACE TRL public website under Shoreline Management also makes references to T36, C3, P327 in general and the T36, C3, P327.19 for how SUPs are issued and enforced.

Tab 5: The argument put forth by the USACE centers around Appendix A titled Guidelines for granting SUPs, to T36, C3, S327 item nine, revised May 28, 1999, which states "The District Commander or his/her representative may place special conditions on the permit when deemed necessary". Item nine then goes on to give an example of a "special condition" due to health issues of a permittee and describes a process to request a waiver. This Appendix remains silent on additional penalties for violations by permittees.

Issues related to violations:

There are two specific and different issues the USACE is attempting to address. The first is for violators of permits issued by the USACE. The second, is for Members of Community Docks, who are not permit holders, who violate laws of the United States, damage United States property, violate laws of the State of Missouri or damage property of the State of Missouri.

Taking the community dock Member first. T36, C3, S327 is silent on activities of Members of a Community dock who violate any portion of T36, C3, S327. This is an unfortunate oversight that hopefully will be addressed in the USACE's ongoing update and revisions to T36, C3, S327. Until then, the USACE cannot impose penalties on Community dock Members since those persons remain outside the USACE jurisdiction for two reasons:

- 1) Since what occurs "on the water" is the jurisdiction of the State of Missouri and enforced by the Missouri Highway Patrol Water Safety Division, violations by community dock members "on the water" should be enforced using Missouri laws and

- 2) Since a Community dock Member cannot access a Community dock without crossing land owned by the United States of American and managed by the USACE, laws of the USA, enforced by various Federal Agencies including the USACE, should be followed.



Unless the USACE re-write of T36, C3, S327 includes language to make the Permittee cause a Member of a Community dock to be subject to the same permit conditions and to the same penalties for violations as the Permittee, the legal grounds for the USACE to punish Members of Community docks remains absent.

Violations of permit conditions by permittees.

Tab 9: The draft of the TRL SMP adds a NEW SECTION titled Special Enforcement Standards, outlining penalties for violations of permit conditions not referenced in T36, C3, P327 or any of the attached appendix or exhibits. These documents as referenced above, are the only Federal laws which apply.

We all know we have a problem on TRL with SUP holders abusing the very vegetation they are required by permit to protect and nurture. It appears however, the District Commander is attempting to put in place a new set of penalties if it is determined a violation of permit conditions has occurred.

Unfortunately, there are only four things the District Commander has statutory authority to do. These are 1) issue up to a \$ 5,000 fine, 2) issue a citation and bring the permit holder before the local Federal Magistrate to press for jail time not to exceed 6 months, 3) both 1 and 2 or 4) revoke the permit.

Tabs 6 & 7: In the governing SUP document, EX B to T36, C3, S327, dated June 27, 2018, there are also conditions placed on permittees which require certain things or the permittee risks losing their SUP. Within this document, item 5 refers to T36, C3, S327 of the CFR as the governing document as well as all Federal, state and local laws and regulations. Conditions placed on SUP holders are found in items 9, 13, 21, 23 and 24.c. Items 28 and 30 in this document also established an appeal process for permittees to challenge the District Commander's decisions.

Tab 10: Page 12 of the draft TRL SMP under the chapter Shoreline Use Permits, the last paragraph on the page reaffirms the law as stated in T36, C3, S327 of the CFR. Page 28 of the Draft TRL SMP under the chapter Vegetation Modification permits states in the first paragraph, "The approval for a vegetation modification request is granted through a SUP". Both are very clear and concise references to the existing law.

Tab 9: In the Draft TRL SMP, the USACE has inserted a new section titled Unauthorized Activities and Violations. This section begins on page 33 and continues through portions of page 35. The first paragraph again cites T36, C3, S327 of the CFR as the basis for penalties associated with permittee violations. The second sentence even begins to address the issue raised in the "member of a community dock violations" section of this letter.

It is the fourth sentence where the USACE overstates their legal authority as defined in T36, C3, S327 of the CFR. The sentence reads as follows: "Violations can result in an enforcement actions such as but not limited to removal, restitution, restoration, permit revocation, boat dock/slip access restriction, issuance of a citation requiring the payment of a fine and/or the appearance before a Federal Magistrate and/or recovery of damager through civil litigation, etc."

Within T36, C3, S327 of the CFR, there is no reference to the ability of the USACE to restrict access to a boat dock or slip. Also missing from this summary list of potential penalties, is the USACE ability to seek jail time of up to 6 months for violations.

A more accurate sentence reflecting the clear statutory limitations of T36, C3, S327 should read as follows: "Violations can result in an enforcement action, such as but not limited to, 1) removal of a facility permitted, 2) restitution for damage to property of the USA, 3) restoration, at the permittee's expense, of property mentioned in item 2, 4) permit revocation, 5) the issuance of a citation requiring the payment of a fine not to exceed \$ 5,000, 6) the appearance before a Federal Magistrate with the potential of jail time not to exceed six months and 7) the potential for civil litigation to cover damages and expenses incurred by the USACE."

As a committee, the TRLOC is charged with making recommendations, not simply pointing out potential legal problems. By providing potential solutions, the TRLOC is functioning in its Advisory Role as outlined in FACA regulations. In that spirit and within this submission, the TRLOC is making specific recommendations for the USACE to consider that assure compliance with T36, C3, S327 of the CFR. These suggestions are found under the "Specific USACE Table Rock actions" at the end of this document.

The TRLOC makes no judgement on how the USACE describes potential violations as shown on page 34 and 35 of the Draft TRL SMP. The TRLOC feels the response to a violation should be consistent and in compliance with T36, C3, S327 of the CFR.

Specific USACE Table Rock actions:

- 1) Accept the recommendations of the TRLOC and implement their recommendations.
- 2) Establish and coordinate an enforcement program with other Federal Agencies as well as the Missouri highway Patrol Water Safety Division to assure members of community docks can be held accountable for violations of TRL rules and regulations as outlined in the TRL SMP.
- 3) Remove from the TRL SMP language on penalties for permit violations which exceed the USACE's statutory authority granted in T36, C3, S327 of the CFR.
- 4) Correct the language in the Draft TRL SMP on page 33 under Unauthorized Activities and Violations to read as follows: "Violations can result in an enforcement action, such as but not limited to, 1) removal of a facility permitted, 2) restitution for damage to property of the USA, 3) restoration, at the permittee's expense, of property mentioned in item 2, 4) permit revocation, 5) the issuance of a citation requiring the payment of a fine not to exceed \$ 5,000, 6) the appearance before a Federal Magistrate with the potential of jail time not to exceed six months and 7) the potential for civil litigation to cover damages and expenses incurred by the USACE."
- 5) Add the following language to the TRL SMP outlining the specific order the USACE will follow in notifying permittees of violations and remedies available to the USACE.
  - a. 1st Offense: Letter of warning against future violations and the potential to include the following:
    - i. a fine of up to \$ 5,000 based on the severity of the offense
    - ii. a citation and potential hearing before the local Federal Magistrate discussing jail time
    - iii. the potential loss of all permits held by the permittee
    - iv. the removal of any private floating facilities associated with the permit.
  - b. 2nd Offense: Letter of warning against future violations, a fine not to exceed \$ 5,000, a citation and a hearing before a Federal Magistrate to discuss jail time and the potential to include the following:
    - i. the potential loss of all permits held by the permittee
    - ii. the removal of any private floating facilities associated with the permit.
  - c. 3rd Offense: A letter:
    - i. revoking all permits held by the permittee,
    - ii. requiring the removal of any private floating facility associated with the permittee
    - iii. notifying the permittee of a fine of \$ 5,000
    - iv. including a citation and a hearing before a Federal Magistrate to determine the length of jail time not to exceed six months

6) Have the USACE Legal and Regulatory divisions review and sign off on the enforcement language within the TRL SMP concerning enforcement of permit violations and place within the TRL SMP an appendix evidencing the USACE Legal and Regulatory division's review and approval of the enforcement actions listed above.

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HTTP\_ORIGIN: Blockedhttps://www.swl.usace.army.mil  
HTTP\_TRUE\_CLIENT\_IP: 73.155.164.53