

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, D.C. 203 14-1000

ER 1130-2-406
Change 2

CECW-ON

Regulation
No. 1130-2-406

28 May 1999

Project Operation
SHORELINE MANAGEMENT AT CIVIL WORKS PROJECTS


1. This change 2 to ER 1130-2-406, 3 1 October 1990, and change 1, 14 September 1992, revises the guidelines for special conditions on permits, Guideline 2.c.(9) of Appendix A and corrects dock and mooring buoy flotation standards, Condition 14 of Appendix C.

2. Substitute pages indicated below:

Appendix	Remove pages	Insert pages
A	A-3, A-4 and A-5	A-3 and A-4
C	C-3 and C-4	C-3 and C-4

3. File this change sheet in front of the publication for reference purposes.

FOR THE COMMANDER:


RUSSELL L. FUHRMAN
Major General, USA
Chief of Staff

CECW-ON

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, D. C. 20324-1000

ER 1130-2-406
Change 1

Regulation
No. 1130-2-406

14 September 1992

Project Operation
SHORELINE MANAGEMENT AT CIVIL WORKS PROJECTS


1. This change 1 to ER 1130-2-406, 31 October 1990, corrects dock and mooring buoy floatation standards, Condition 14 of Appendix C.

2. Substitute pages indicated below:

Appendix	Remove pages	Insert pages
C	C-3 and C-4	C-3 and C-4

3. File this change sheet in front of the publication for reference purposes.

FOR THE COMMANDER:


MILTON HUNTER
Colonel, Corps of Engineers
Chief of Staff

Regulation
No. 1130-2-406

31 October 1990

Project Operation
SHORELINE MANAGEMENT AT CIVIL WORKS PROJECTS

1. 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.

2. Applicability. This regulation is applicable to HQUSACE/OCE elements, major subordinate commands, districts, laboratories, and all field operating activities (FOA) with Civil Works responsibilities except when such application would result in an impingement upon existing Indian rights.

3. References.

a. Section 4, 1944 Flood Control Act, as amended (16 USC 460d).

b. The Rivers and Harbors Act of 1894, as amended and supplemented (33 USC 1).

c. Section 10, River and Harbor Act of 1899 (33 USC 403).

d. National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915) as amended (16 U.S.C. 470 et seq.).

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

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

g. The Water Resources Development Act of 1986 (P.L. 99-662).

h. 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."

i. Executive Order 12088 (13 Oct 78).

j. 33 CFR 320-330, "Regulatory Programs of the Corps of Engineers."

k. ER 1130-2-400, "Management of Natural Resources and Outdoor Recreation at Civil Works Water Resource Projects."

This Regulation Supersedes ER 1130-2-406 dated 13 Dec 74

1. EM 385-1-1, "Safety and Health Requirements Manual."

4. Policy.

a. 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.

b. 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 paragraph 8.

c. A Shoreline Management Plan, as described in paragraph 5, 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 affects 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 paragraph 5f. Except to honor written commitments made prior to 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.

d. 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.

e. 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.

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

5. Shoreline Management Plan.

a. General. The policies outlined in paragraph 4 will be implemented through preparation of Shoreline Management Plans, where private shoreline use is allowed.

b. 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.

c. 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.

d. Scope and Format. The Shoreline Management Plan will consist of a map showing the shoreline allocated to the uses listed in paragraph 5.e., 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.

e. Shoreline Allocation. The entire shoreline will be allocated within the classifications below and delineated on a map. Any action, within the context of this regulation, 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 compliment, 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.

(1) Limited Development Areas. Limited Development Areas are those areas in which private facilities and/or activities may be allowed consistent with paragraph 8 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.

(2) 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.

(3) 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 affect on water quality will also be considered.

(4) 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.

f. 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.

g. 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.

6. Instruments for Shoreline Use. Instruments used to authorize private shoreline use facilities, activities or development are as follows:

a. Shoreline Use Permits.

(1) Shoreline Use Permits are issued and enforced in accordance with provisions of 36 CFR Part 327.19.

(2) 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.

(3) 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.

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

(5) 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.

(6) 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.

b. 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.

c. 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.

7. 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.

8. 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.

a. Section 6 of Public Law 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.

b. In accordance with Section 1134(d) of Public Law 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:

(1) such property is maintained in a usable and safe condition;

(2) such property does not occasion a threat to life or property;

(3) and, the holder of the permit is in substantial compliance with the existing permit.

c. 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.

9. 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.

10. Density of Development. The density of private floating 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 per cent 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 facilities 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.

11. Permit Fees. Fees associated with the Shoreline Use Permits shall be paid prior to issuing the permit in accordance with the provisions of Section 4 of the 1944 Flood Control Act. The fee schedule will be published separately.

FOR THE COMMANDER:

- 4 APPENDICES
- APP A - Guidelines for Granting
Shoreline Use Permits
- APP B - Application for Shoreline
Use Permit
- APP C - Shoreline Use Permit
Conditions
- APP D - Permit (Sample)



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