



# DEPARTMENT OF THE ARMY

SOUTH ATLANTIC DIVISION, CORPS OF ENGINEERS

510 TITLE BUILDING, 30 PRYOR STREET, S.W.

ATLANTA, GEORGIA 30335-6801

REPLY TO  
ATTENTION OF:

SADRE-M

12 March 1987

SUBJECT: Request For Clarification on P.L. 99-662 Section 1134

CDR, USACE (DAEN-REM-I)  
20 MASS AVE, N. W.,  
WASH DC 20314-1000

1. Subsections (a) and (b) of the referenced Section 1134 apply to leases issued (1) for cottage site purposes and (2) under authority contained in 16 USC 460d. Although lessees under private club and commercial concession leases may construct cottages upon approval, it is our opinion that Congress did not intend to include either of these leases under subsections (a) and (b) of this section. To hold that such leases are included would mean that under subsection (e), a commercial concession lessee at Clarks Hill Lake could insist that the Government sell him land in the event his existing lease should be revoked because he "substantially violated" a provision thereof. We interpret subsection (c) to limit applicability of subsections (a) and (b) to leases of individual cottage sites.

2. We interpret the word "cottage" to include trailers or mobile homes when such have been approved. We also believe the wording in subsections (a) and (b) indicate an intent to require "continuation" of leases beyond the expiration dates of existing terms, thus giving lessees the option to renew.

3. Under subsection (d) we construe the words "sleeping facilities at a marina" to include only facilities placed on floating structures with the District Engineer approval, either formally or tacitly. We specifically would not include land-based cabins within a marina concession lease area. Under this subsection we construe the words "appurtenant structures" to include only items intended to support use of the protected structure. Items not directly associated with such use are not included. Subject to the noted exceptions in subsection (d), we understand that protected structures cannot be removed so long as the owner maintains them "in useable and safe condition", they "do not occasion a threat to life or property" and the grantee "is in substantial compliance" with the conditions of the granting instrument. Major alterations or expansions of existing structures, prior to approval, would be a violation of the granting instrument and would constitute grounds for revocation of the instrument.

SADRE-M

SUBJECT: Request for Clarification on P.L. 99-662 Section 1134

However, considering the intent of this subsection is to prohibit removal of protected structures, what constitutes "maintenance" should be given a liberal construction.

4. We understand the intent of subsection (e) is to authorize the Secretary of the Army to make available and sell substitute sites to certain private club lessees at Clarks Hill Lake. We do not intend to renew existing leases to these lessees because the present lease sites are required for the expansion of adjoining, corps-operated recreation areas. We believe this subsection is defective in two respects. First, it applies to leases to be "terminated under this section". Subsection (b) sets forth conditions under which leases can be terminated under this section and we take the position that subsections (a) and (b) do not apply to private club leases. Therefore, the leases involved are not to be "terminated under this section" and, as a result, do not qualify for substitute sites. Second, notwithstanding the obvious congressional intent, the subsection does not specifically authorize the Secretary to negotiate sale of substitute sites. To construe the words "shall offer for sale at the fair market value" as adequate authority to execute deeds would be reaching.

5. We recommend your concurrence with the position stated above. If you concur, we recommend an effort be made to have the statute amended to clearly authorize the Secretary of the Army to negotiated sales of substitute sites to specified lessees at Clarks Hill Lake.

FOR THE COMMANDER:

A. C. POSNER  
Chief, Real Estate Division

CF:  
SAMRE-M  
SASRE-M  
SAJRE-A

*This Guidance has Presented* | *Is not going to be approved.*  
*Problems w/ ASA - Do Not use until final guidance is provided.*  
**DRAFT**

revised 5/1/87

SUBJECT: Implementation of Section 1134(d), P.L. 99-662

SEE DISTRIBUTION

1. The purpose of this letter is to provide guidance with respect to docks or floating facilities pertinent to project lakeshore management. This letter only amends DAEN-CWR-R letter of 11 Feb 1982 - (attached for your convenient reference) on this same issue.

2. Section 6 of P.L. 97-140 provided that:

"Notwithstanding any other provision of law, no houseboat, floating cabin, marina (including any with sleeping facilities), or lawfully installed dock or cabin and appurtenant structures shall be required to be removed before 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 the date of enactment of this Act, if such property is maintained in usable condition, and, in the judgment of the Chief of Engineers, does not occasion a threat to life or property."

3. In essence, Section 6 of P.L. 97-140 provided that if a dock or floating facility existed on the date of enactment of P.L. 97-140, the facility could not be required to be removed prior to 31 December 1989.

4. This section has now been amended by Section 1134(d) of P.L. 99-662, the Water Resources Development Act of 1986. Section 1134(d) provides that:

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

5. Section 1134(d) of PL 99-662 applies to any houseboat, boathouse, floating cabin, sleeping facilities at marinas, or lawfully installed dock or appurtenant structures in place under a valid lakeshore use permit at the time of enactment of this law. Therefore, any such facilities that existed as of 17 November 1986 can not be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after 31 December 1989 if it meets the three conditions set forth in the law:

**DRAFT**

# DRAFT

- (a) such a property is maintained in a usable and safe condition,
- (b) such property does not occasion a threat to life or property, and
- (c) the holder of the lease, permit, or license is in substantial compliance with the existing lease or license.

6. When a structure is grandfathered in a Protected, Prohibited or Public Recreation area as established in the project lakeshore management plan, and the lakeshore use permit expires due to the death of the permittee, sale or transfer of the permittee's property, noncompliance with the terms of the permit or other reason, the structure is no longer under a valid permit, condition (c) above cannot be met and the structure can be required to be removed after 31 December 1989.

7. This guidance will be incorporated into the next revision of the Lakeshore Management Regulation, ER 1130-2-406. Until such time, the policy set forth above will be followed.

FOR THE COMMANDER:

Enclosure

H. J. HATCH  
Major General, USA  
Director of Civil Works

DISTRIBUTION:

Commander, LMVD  
MRD  
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# DRAFT

**ROUTING AND TRANSMITTAL SLIP**

Date

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. <del>CE SAS OF P. [unclear]</del>		JUL 22 1987
2. <del>[unclear]</del>		
3.		
4.		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

**REMARKS**

Do you still have the  
 P.L. 99-662 info. I gave  
 you on ext. of P.L. 99-140?  
 If so, please return to me ASAP.  
 & lets discuss.

*[Signature]*

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
	Phone No.

5041-102

U.S. GPO: 1986-181-246/40013

OPTIONAL FORM 41 (Rev. 7-76)  
 Prescribed by GSA  
 FPMR (41 CFR) 101-11.206

Theriot said they had essentially lost  
the (PL 97-140) - ~~PL 97-140~~ PL - 99-662 issue  
on extension he is trying to get the  
following sentence out as guidance  
and wanted my suggestions

All such structures will be formally recognized  
in appropriate Lakeshore Management Plans and  
created as grandfathered structures

- I told him we liked the grandfathering  
aspect and suggested floating structures and  
the structures to make sure this isn't  
expanded to land based modifications.

Q

- Clarify w/ Gerald -

CECW-ON  
SUBJECT:

DISTRIBUTION:

Commander, Lower Mississippi Valley Division  
Commander, Missouri River Division  
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Commander, Wilmington District

BEAD 130  
SUGAR SSW  
Bivallet J

File: 1130 - ~~3206~~ - 2-3206  
Policy/guidance 50

- Note: COPIES have<sup>ALSO</sup> been Filed IN

1130-2-<sup>3206</sup>305a - 25 (P.L. 97-140)

1130-2-3206-37d. (LAKESHORE guidance)

1130-2-3206-78 (WRPA (HR-6))



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

28 AUG 1987

CECW-ON

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Implementation of Section 1134(d), P.L. 99-662

1. The purpose of this memorandum is to provide guidance with respect to docks or floating facilities pertinent to project lakeshore management. This memorandum only amends DAEN-CWR-R's letter of 11 Feb 1982 (enclosed for your convenient reference) on this same issue.

2. Section 6 of P.L. 97-140 provided that:

"Notwithstanding any other provision of law, no houseboat, floating cabin, marina (including any with sleeping facilities), or lawfully installed dock or cabin and appurtenant structures shall be required to be removed before 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 the date of enactment of this Act, if such property is maintained in usable condition, and, in the judgement of the Chief of Engineers, does not occasion a threat to life or property."

3. In essence, Section 6 of P.L. 97-140 provided that if, for example, a dock or floating facility existed on the date of enactment of P.L. 97-140, the facility could not be required to be removed prior to 31 December 1989.

4. This section has now been amended by Section 1134(d) of P.L. 99-662, the Water Resources Development Act of 1986. Section 1134(d) provides that:

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

5. Section 1134(d) of PL 99-662 applies to any houseboat, boathouse, floating cabin, sleeping facilities at marinas, or lawfully installed dock or appurtenant structures in place under a valid lakeshore use permit, lease, or



CECW-ON

SUBJECT: Implementation of Section 1134(d), P.L. 99-662

other appropriate real estate instrument at the time of enactment of this law. (Cabin site leases are addressed in Section 1134a.) Therefore, any such facilities that existed as of 17 November 1986 can not be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after 31 December 1989 if it meets the three conditions below set forth in the law except where necessary for immediate use for public purposes or higher public use or for a navigation or flood control project:

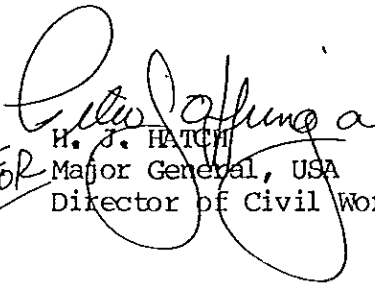
- a. such property is maintained in a usable and safe condition,
- b. such property does not occasion a threat to life or property, and
- c. the holder of the lease, permit, or license is in substantial compliance with the existing lease or license.

6. All such floating structures and appurtenances will be formally recognized in an appropriate Lakeshore Management Plan. Permits for these structures will be reissued to new owners. If the holder of the lease, permit, or license fails to substantially comply with the terms of the document it may be revoked and the holder required to remove the structure, in accordance with the terms of the document as to notice, time, and appeal.

7. This guidance will be incorporated into the next revision of the Lakeshore Management Regulation, ER 1130-2-406. Until such time, the policy set forth above will be followed.

FOR THE COMMANDER:

Encl

  
H. J. HATCH  
FOR Major General, USA  
Director of Civil Works

DISTRIBUTION:

(see pg 3)



DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314

REPLY TO  
ATTENTION OF:

DAEN-CWR-R

11 FEB 1982

SUBJECT: Implementation of Section 6, P.L. 97-140

SEE DISTRIBUTION

1. The purpose of this letter is to provide guidance respecting observance and implementation of Section 6 of H.R. 779 which was signed into law by the President 29 December 1981 (P.L. 97-140) and reads as follows:

"Sec 6. Notwithstanding any other provision of law, no houseboat, floating cabin, marina (including any with sleeping facilities), or lawfully installed dock or cabin and appurtenant structures shall be required to be removed before 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 the date of enactment of this Act, if such property is maintained in usable condition, and, in the judgment of the Chief of Engineers, does not occasion a threat to life or property."

2. This establishes a moratorium until 31 December 1989 on enforced removal of certain existing private exclusive use type structures, including houseboats, which have been authorized or permitted on project areas under the jurisdiction of the Corps of Engineers prior to enactment of Public Law 97-140. It should be noted that Section 6 does not extend protection to illegal structures or encroachments. However, based on recent Office Chief Counsel opinion, the following points are emphasized:

a. Section 6 applies to land based facilities as well as water based facilities.

b. The term "cabin" includes cabins, cottages, mobile homes, non-transient trailers and other similar structures used for human habitation.

c. The Corps of Engineers is precluded from requiring transfer of individual ownership of such lawfully installed structures for club or organizational use. Such a requirement is considered to constitute removal under Section 6 of Public Law 97-140.

3. Implementation of Section 6 will restrain, until 31 December 1989, certain previously planned actions prior to that date for removal of private exclusive uses under your respective approved regional plans. The only exceptions for earlier enforced removal of a structure covered by Section 6 would be in the case of a structure not maintained in usable condition or presenting a threat to life or property. Any such case must be clearly

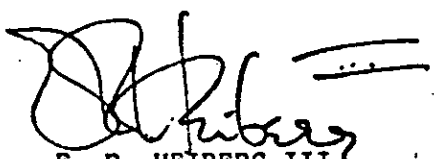
11 FEB 1982

DAEN-CWR-R  
SUBJECT: Implementation of Section 6, P.L. 97-140

demonstrated and supported. Established policy and procedures for addressing private exclusive use at Corps projects are not otherwise affected by Section 6. Accordingly, you are encouraged to pursue your efforts toward curing encroachment problems, and to continue addressing private exclusive uses in your respective commands as provided in your regional plans. Modifications to your approved regional plans should be made to comport with Section 6 and be submitted by 1 May 1982 to DAEN-CWO for approval.

4. For your information, I have inclosed copies of the related pages of the Congressional Record, Senate and House, 16 December 1981, which demonstrate Congressional intent in enactment of H.R. 779. Also inclosed is a Statement by the President which establishes that Section 6 of the law stemming from that Act is the provision which shall govern Corps management actions--not the somewhat similar provision in Section 8 of S. 1493 passed by Congress on the same date, 16 December 1981, and also signed into law by the President on 29 December 1981 (P.L. 97-128).

FOR THE COMMANDER:

  
E. R. HEIBERG III  
Major General, USA  
Director of Civil Works

3 Incl  
as

DISTRIBUTION:

- CDR USACED, Lower Mississippi River
- CDR USACED, Missouri River
- CDR USACED, New England
- CDR USACED, North Atlantic
- CDR USACED, North Central
- CDR USACED, North Pacific
- CDR USACED, Ohio River
- CDR USACED, Pacific Ocean
- CDR USACED, South Atlantic
- CDR USACED, South Pacific
- CDR USACED, Southwestern

~~Reverts Copy~~

~~Could will meet w/ Homer.~~

J  
RE-M

CERE-MC (405-80a)

SUBJECT: Implementation of Section 1134 (a) - (c), P.L. 99-662  
Cabin Site and Residential Leases

5. Your Regional Plan pertaining to private exclusive use should be modified to reflect these changes, if necessary, and resubmitted through normal channels. You should develop criteria for determining unreasonable expansion, taking into account differing local conditions, and submit your suggested criteria to CERE-MC by 1 Jan 88 for approval.

6. Reference b. only applies to leases in effect on 31 Dec 89 and is not an authorization to make additional sites available. Only cottage site leases entered into by the Secretary of the Army under 16 USC 460d are continued. Therefore, this protection does not apply to human habitation structures within other lease areas, such as commercial concession leases, or covered incidentally by some other type of lease.

7. Reference d. provides guidance on docks or floating facilities pertinent to project lakeshore management.

8. Reference b. is a strong Congressional statement on the retention of lease sites by the leaseholders. Any termination for immediate use for public park purposes or other higher public use or for a navigation or flood control project will be submitted to CERE-MC for approval.

What if the  
leased office?  
Does it still  
Require OCE  
Approval?

FOR THE COMMANDER:

DAVID L. COHEN  
Chief, Management and Disposal Division  
Directorate of Real Estate

2 Encl

DISTRIBUTION:

COMMANDER:

- Lower Mississippi Valley Division, ATTN: CELMV-RE
- Missouri River Division, ATTN: CEMRD-RE
- North Atlantic Division, ATTN: CENAD-RE
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- South Pacific Division, ATTN: CESP-RE
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DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CERE-MC (405-80a)

1 DEC 1987

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Implementation of Section 1134 (a) - (c), P.L. 99-662  
Cabin Site and Residential Leases

1. Reference

- a. PL 97-140, An Act Providing for Use of Storage Water in Benbrook Dam, TX and other purposes
- b. PL 99-662, Water Resources Development Act of 1986, Section 1134, (a) - (c).
- c. DAEN-CWR-R letter dtd 11 Feb 82, Subject: Implementation of Section 6, P.L. 97-140
- d. CECW-ON Memorandum dtd 28 Aug 87, Subject: Implementation of Section 1134(d), P.L. 99-662

*OK* 2. Reference a. extended cabin site leases until 31 Dec 89. Guidance contained in reference c. as to the term "cabin", transfers of individual ownership, and illegal structures or encroachments remains in effect. Under reference b. existing leases or assignments shall be continued indefinitely (a) until such time as the leaseholder, or any successor or assign, terminates the lease or (b) the Secretary terminates the lease because the property is needed for immediate use for public park purposes or other higher public use or for a navigation or flood control project; or if the leaseholder substantially violates a provision of the lease. *OK*

3. Any continuation beyond 31 Dec 89 must be at fair market rental and on such other reasonable terms and conditions not inconsistent with reference b. No continuation shall be made unless the leaseholder agrees to hold the United States harmless from any claim for damages or injury to persons or property arising from occupancy of or through the use of the property subject to such lease and not to unreasonably expand existing improvements. A proposed lease form reflecting these changes is enclosed. All leaseholders desiring to continue their lease will execute the new lease form to evidence their agreement, as required. *Policy on*

4. The cottage site leases stated that the leased premises were to be used by the lessees, their families, and guests for recreational purposes. No change has been made in the lease form to provide for year-round residential use since reference b. does not address this issue. Although the lease form will not be revised in this respect, the Acting Assistant Secretary of the Army (Civil Works) has determined that we will not terminate existing cottage site leases if the only lease provision violation is the use of the sites as a full-time residence. However, if other violations of the lease conditions also occur, we will consider termination.

ministration, and other appropriate Federal and non-Federal entities, shall carry out a review of the environmental, economic, and social impacts of navigation in the United States portion of the Great Lakes. In carrying out such review, the Secretary and the Administrator shall use existing research, studies, and investigations relating to such impacts to the maximum extent possible. Special emphasis shall be made in such review of the impacts of navigation on the shoreline and on fish and wildlife habitat, including, but not limited to, impacts associated with resuspension of bottom sediment. The Secretary and the Administrator shall submit to Congress an interim report of such review not later than September 30, 1988, and a final report of such review along with recommendations not later than September 30, 1990.

**SEC. 1133. GREAT MIAMI RIVER BASIN.**

The prohibitions and provisions for review and approval of activities in waters of the United States as set forth in sections 9, 10, and 13 of the Act of March 3, 1899 (30 Stat. 1151) and the first section of the Act of June 13, 1902 (32 Stat. 371) shall not apply to any works or improvements constructed or maintained now or in the future in the Great Miami River Basin, the Great Miami River, and the tributaries of the Great Miami River above river mile 7.5, by any political subdivision established pursuant to chapter 6101, Ohio Revised Code, as in effect on July 1, 1983.

**SEC. 1134. CABIN SITE LEASES.**

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

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

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

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

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

(c) Subsections (a) and (b) of this section apply to (1) any cottage site lease of property, which lease was entered into by the Secretary of the Army pursuant to section 4 of the Act entitled "An Act authorizing the construction of certain public works on rivers and har-

bers for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 889; 16 U.S.C. 460d), and is in effect on December 31, 1989, and (2) any assignment of such a lease.

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

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

#### SEC. 1135. PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT.

(a) The Secretary is authorized to review the operation of water resources projects constructed by the Secretary before the date of enactment of this Act to determine the need for modifications in the structures and operations of such projects for the purpose of improving the quality of the environment in the public interest.

(b) The Secretary is authorized to carry out a demonstration program in the two-year period beginning on the date of enactment of this Act for the purpose of making such modifications in the structures and operations of water resources projects constructed by the Secretary before the date of enactment of this Act which the Secretary determines (1) are feasible and consistent with the authorized project purposes, and (2) will improve the quality of the environment in the public interest. The non-Federal share of the cost of any modifications carried out under this section shall be 25 percent.

(c) The Secretary shall coordinate any actions taken pursuant to this section with appropriate Federal, State, and local agencies.

(d) Not later than two years after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the review conducted under subsection (a) and on the demonstration program conducted under subsection (b). Such report shall contain any recommendations of the Secretary concerning modification and extension of such program.

(e) There is authorized to be \$25,000,000 to carry out this section.

#### SEC. 1136. WHITEWATER RIVER, CALIFORNIA

(a) The Secretary is hereby authorized to install a flood warning system for the White River in Riverside Counties, California, at a cost of \$1,000,000.

(b) Prior to installation, local interests shall maintain the system authorized to be installed, and implement emergency measures to maintain and improve the system.

#### SEC. 1137. REND LAKE.

The Secretary shall amend the contract between the State of Illinois and the United States for use of Rend Lake on the Big Muddy River in the State of Illinois of the requirements that portion of the maintenance and future water supply storage as is contained in the Act of 1958 (Public Law 85-500). The provisions of this Act or until the storage space is available and shall apply in such proportion as to the water supply purposes.

#### SEC. 1138. POE LOCK STUDY.

The Secretary shall expedite completion of a study parallel to the existing Poe Lock study of additional locks on the Potomac River and submit to the Congress a report on the study not later than March 31, 1987.

#### SEC. 1139. PORT OF BUFFALO.

The Secretary of Commerce, acting through the Federal Maritime Administration, shall make a study of the Port of Buffalo, New York, for the purpose of improvement of facilities, including additional storage facilities, additional paved berths, and a total length of 1,000 feet sufficient to accommodate a vessel or a 730-foot class VII vessel with implementation of the masthead lights. The non-Federal share of the cost of such study shall be 50 percent. There is authorized to be \$3,500,000 to carry out this section.

#### SEC. 1140. BEAVER RIVER, PENNSYLVANIA

The Secretary is authorized to carry out a study and design for a project to construct a channel 9 feet deep and 100 feet wide in the Beaver River at Bridgewater, Pennsylvania, for a distance of three miles upriver, to the dam at Bridgewater, to the dam at \$175,000.

#### SEC. 1141. GROUNDWATER RECHARGE

The Secretary, in consultation with the State and local agencies, is authorized to carry out a study and design for a project for the purpose of recharging groundwater in the area of the Beaver River at Bridgewater, Pennsylvania, for a distance of three miles upriver, to the dam at Bridgewater, to the dam at \$175,000.

DEPARTMENT OF THE ARMY

LEASE FOR COTTAGE SITE PURPOSES

IN \_\_\_\_\_ PROJECT AREA

NO.

THIS LEASE, made between the Secretary of the Army, of the first part,  
and

, of the second part;

WITNESETH:

That the Secretary of the Army, or his duly authorized representative, by virtue of the authority conferred by Section 4 of the Act of Congress approved 2 December 1944, as amended (76 Stat. 1195; 16 U.S.C 460d) and by Section 1134 of the Act of Congress approved 17 November 1986 (P. L. 99-662) and in consideration of the annual fair market rental, reviewed and adjusted every 5 years for compliance with fair market value, of the initial sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), payable annually in advance, hereby leases to the party of the second part, hereinafter designated as the lessee, until such time as the lease is terminated by the lessee, or by the Secretary of the Army, or his duly authorized representative, as set out in condition 14, the following described premises or property, hereinafter referred to as the premises, for recreational purposes and purposes incidental thereto:

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Said premises as shown on Exhibit \_\_\_\_\_ and more particularly described in Exhibit \_\_\_\_\_, which are attached hereto and made a part hereof.

That this lease grants no vested property rights but affords only a limited right to occupy the land pending termination as set out in condition 14.



THIS LEASE is granted subject to the following conditions:

1. The lessee shall pay the annual rental in advance as above reserved, and also shall pay to the United States on demand any sum which may have to be expended after the termination or revocation of this lease in restoring the premises to a condition satisfactory to the

Engineer, U.S. Army Engineer

having immediate jurisdiction over the premises, hereinafter designated as "the officer," damages beyond the control of the lessee excepted. Any such compensation shall be made payable to the order of the Finance and Accounting Officer,

and delivered at

The United States will impose a charge, the amount to be determined by law or regulation, on late payments due under this agreement for each 30-day period, or part thereof, that the payment is overdue.

2. The use and occupancy of the premises shall be subject to the general supervision and approval of the officer, and to such rules and regulations as may be prescribed by the officer from time to time.

3. The lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease without prior permission in writing from the officer. The provisions and conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the lessee's heirs, representatives, successors, and assigns.

4. This lease is subject to all existing easements, and easements subsequently granted, for roadways and utilities located or to be located on the premises.

5. The right is hereby reserved to the United States, its officers, agents, and employees, to enter upon the premises at any time and for any purpose necessary or convenient in connection with project purposes, and to remove therefrom timber or other material required or necessary for such work, and to flood the premises whenever necessary, and the lessee shall have no claim for damages of any character on account thereof against the United States or any officer, agent, or employee thereof.

6. The lessee agrees to hold the United States harmless from any claim for damages or injury to persons or property arising from occupancy of or through the use of the property subject to said lease. Any claim includes, but is not limited to, Federal financial assistance of any kind, disaster assistance grants and loans, and flood insurance issued under any Federal Government program arising from or incident to (1) the flooding of the premises by the Government, or (2) flooding from any other cause, or (3) arising from or incident to any other Governmental activities.

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This property is located within the 100-year floodplain and/or is subject to periodic flooding. This lease is subject to floodplain management requirements.

7. The lessee shall be responsible for any damage that may be caused to Government property by the activities of the lessee under this lease, and shall exercise due diligence in the protection of all improvements, timber and other property of the United States which may be located on the premises, against fire or damage from any and all other causes.

8. The lessee shall cut no timber, conduct no mining operations, remove no sand, gravel or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises; but the lessee may salvage such fallen or dead timber as may be required for use as firewood.

9. (a) The lessee shall not unlawfully pollute the air, ground, or water or create a public nuisance. The lessee shall at no cost to the United States promptly comply with present and future Federal, State, and local laws, ordinances, regulations, or instructions controlling the quality of the environment. This does not affect the lessee's right to contest their validity or enjoin their applicability.

(b) This lease does not exclude lessee from being required to obtain a Department of the Army permit under 33 U.S.C 403 (1982) or under the Federal Water Pollution Control Act Amendment of 1972, P.L. 92500, Section 404, 86 Stat. 816,884.

(c) The lessee shall obtain prior approval for the application of herbicides or pesticides on the premises from the officer.

10. The lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the premises, the lessee shall immediately notify the officer and protect the site and the material from further disturbance until a professional examination can be made of them or until the officer gives a clearance to proceed.

11. The leased premises may be used by the lessee, his family, servants, and guests, for recreational purposes and purposes incidental thereto and for no other different object or purpose. The lessee may maintain an existing private recreational dwelling, and may maintain existing accessory improvements, but agrees not to unreasonably expand these existing improvements. These existing improvements erected by the lessee or his predecessor under the previous lease shall remain his property, subject, however, to the provisions of Condition No. 15 hereof, and shall be maintained by the lessee in a usable and safe condition. Failure to maintain may be grounds for termination under Condition No. 14.

12. The lessee shall not permit gambling on the premises, or install or operate, or permit to be installed or operated thereon, any device which, in the opinion of the officer, is contrary to good morals or is otherwise objectionable; or sell or permit to be sold on the premises beer or other intoxicating liquors; or use the premises or permit them to be used for any illegal or immoral business or purpose; there shall not be carried on or permitted upon the premises any activity which would constitute a nuisance; the lessee will use the premises in a quiet and inoffensive manner.

13. The lessee shall comply with all Federal laws and regulations and with all applicable laws, ordinances, and regulations of the State, county, and the municipality wherein the leased premises are located.

14. This lease may be terminated by the lessee, any successors or assigns of the lessee, at any time by giving ten days' notice in writing to the Secretary of the Army, through the officer. Provided that, in case of such termination, no remission by the United States of any rental theretofore paid shall be made, and provided further that, in the event the notice is not given at least ten days prior to the rental due date, the lessee shall be required to pay the rental for the period shown in condition no. 1. Vacation of the property for one year or nonpayment of the rent for 90-days past the due date will be considered notice of termination of the lease by the lessee.

The Secretary of the Army, through the officer, may terminate this lease only if the property covered by the lease is needed for immediate use for public park purposes or other higher public use or for a navigation or flood control project; or if the lessee substantially violates a provision of this lease.

In the event of termination by the lessee or the Secretary of the Army, the Secretary of the Army may, through the officer, or a representative designated by him, reenter the premises and hold and enjoy the same thenceforth as if this lease had not been made, without prejudice to any rights of action or remedy which might otherwise be used in respect of any antecedent breach of any of the covenants in this lease.

15. On or before the termination of this lease, the lessee shall vacate the premises, remove its property therefrom, and restore the premises to a condition satisfactory to the officer, damages beyond the control of the lessee and due to fair wear and tear excepted. If, however, this lease is terminated by the Secretary of the Army, through the officer, the lessee shall vacate the premises, remove its property therefrom, and restore the premises to the condition aforesaid within such time as the officer may designate. In either event, if the lessee shall fail or neglect to remove its property and so restore the premises, then, at the option of the Secretary of the Army, or his duly authorized representative, the property shall either become the property of the United States without compensation or be removed and the premises restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

16. (a) Except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the lessee. The decision of the officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the lessee mails or otherwise furnishes to the officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the lessee shall proceed diligently with the performance of the contract and in accordance with the officer's decision.

(b) This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, that

nothing in the Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

17. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

18. If more than one lessee is named in this lease the obligations of said lessees herein contained shall be joint and several obligations.

19. All notices to be given pursuant to this lease shall be addressed, if to the lessee, to

if to the Secretary of the Army, to the

or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office or branch post office regularly maintained by the United States Postal Service.

20. The lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

IN WITNESS WHEREOF I have hereunto set my hand by direction of the Assistant Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

THIS LEASE is also executed by the lessee this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Signed and sealed in the presence of:

(SEAL)

(1) \_\_\_\_\_

(Address)

(2) \_\_\_\_\_

(Address)



DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314

REPLY TO  
ATTENTION OF:

DAEN-CWR-R

SUBJECT: Implementation of Section 6, P.L. 97-140

SEE DISTRIBUTION

11 FEB 1982

P: P  
Mississippi  
File. Cottage Sites

1. The purpose of this letter is to provide guidance respecting observance and implementation of Section 6 of H.R. 779 which was signed into law by the President 29 December 1981 (P.L. 97-140) and reads as follows:

"Sec 6. Notwithstanding any other provision of law, no houseboat, floating cabin, marina (including any with sleeping facilities), or lawfully installed dock or cabin and appurtenant structures shall be required to be removed before 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 the date of enactment of this Act, if such property is maintained in usable condition, and, in the judgment of the Chief of Engineers, does not occasion a threat to life or property."

2. This establishes a moratorium until 31 December 1989 on enforced removal of certain existing private exclusive use type structures, including houseboats, which have been authorized or permitted on project areas under the jurisdiction of the Corps of Engineers prior to enactment of Public Law 97-140. It should be noted that Section 6 does not extend protection to illegal structures or encroachments. However, based on recent Office Chief Counsel opinion, the following points are emphasized:

a. Section 6 applies to land based facilities as well as water based facilities.

b. The term "cabin" includes cabins, cottages, mobile homes, non-transient trailers and other similar structures used for human habitation.

c. The Corps of Engineers is precluded from requiring transfer of individual ownership of such lawfully installed structures for club or organizational use. Such a requirement is considered to constitute removal under Section 6 of Public Law 97-140.

3. Implementation of Section 6 will restrain, until 31 December 1989, certain previously planned actions prior to that date for removal of private exclusive uses under your respective approved regional plans. The only exceptions for earlier enforced removal of a structure covered by Section 6 would be in the case of a structure not maintained in usable condition or presenting a threat to life or property. Any such case must be clearly

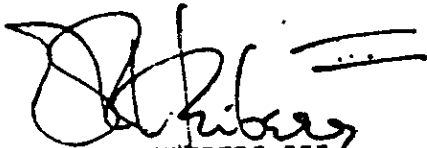
11 FEB 1982.

DAEN-CWR-R  
SUBJECT: Implementation of Section 6, P.L. 97-140

demonstrated and supported. Established policy and procedures for addressing private exclusive use at Corps projects are not otherwise affected by Section 6. Accordingly, you are encouraged to pursue your efforts toward curing encroachment problems, and to continue addressing private exclusive uses in your respective commands as provided in your regional plans. Modifications to your approved regional plans should be made to comport with Section 6 and be submitted by 1 May 1982 to DAEN-CWO for approval.

4. For your information, I have inclosed copies of the related pages of the Congressional Record, Senate and House, 16 December 1981, which demonstrate Congressional intent in enactment of H.R. 779. Also inclosed is a Statement by the President which establishes that Section 6 of the law stemming from that Act is the provision which shall govern Corps management actions--not the somewhat similar provision in Section 8 of S. 1493 passed by Congress on the same date, 16 December 1981, and also signed into law by the President on 29 December 1981 (P.L. 97-128).

FOR THE COMMANDER:

  
E. R. HEIBERG III  
Major General, USA  
Director of Civil Works

3 Incl  
as

DISTRIBUTION:

- CDR USACED, Lower Mississippi River
- CDR USACED, Missouri River
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