



DEPARTMENT OF THE ARMY

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

REPLY TO
ATTENTION OF:

CERE-C

09 APR 2001

MEMORANDUM FOR

COMMANDER, SOUTH ATLANTIC DIVISION, ATTN: CESAD-ET-R

COMMANDER, MOBILE DISTRICT, ATTN: CESAM-RE

SUBJECT: Implementation of Section 516 of the Water Resources Development Act of 2000 (WRDA 2000) - "The Lake Sidney Lanier Home Preservation Act"

1. The purpose of this memorandum is to provide implementation guidance on Section 516 of WRDA 2000. A copy is enclosed for your reference.
2. For conveyances under this Section, a Report of Excess, should be completed, accompanied by an Environmental Baseline Study, Finding of Suitability to Transfer, and appropriate cultural resources documentation. Although these standard documents are required, they may be adapted as appropriate for these conveyances.
3. By 10 April 2001, the Mobile District must provide notice to the public by newspaper, and other appropriate means, of the program to convey to eligible property owners the right to maintain existing structures for human habitation on fee lands, or to release the easement prohibition for existing structures for human habitation from the flowage easements, if the floor elevation of the human habitation area is above 1085 feet mean sea level. Any conveyance or release also may include the right to maintain uninhabitable appurtenances, as defined in paragraph 5 below.
4. The term "eligible property owner" means a person that owns a structure for human habitation that was constructed prior to 1 January 2000, and is located upon fee lands or is within the Government's flowage easement.
5. To be considered habitable under this statute, the floor elevation of the dwelling's human habitation area must be above 1085 feet mean sea level. A "structure for human habitation" on fee lands above 1085 feet mean sea level is defined as the habitable dwelling and those improvements affixed to the dwelling, such as decks and patios. On fee lands below 1085 feet mean sea level and on all flowage easement lands, "structure for human habitation" is defined as the habitable dwelling only, with any affixed improvements, such as decks and patios, being considered uninhabitable appurtenances.

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Land where such uninhabitable appurtenances are situated can be considered for conveyance or release, provided any alteration, modification or enclosure of the improvement shall be expressly prohibited. Improvements not affixed to the habitable dwelling are not considered under this statute.

6. As of 10 April 2001, the Mobile District Commander shall implement regulations which:

(1) suspend all activities that require eligible property owners to remove structures for human habitation and any uninhabitable appurtenance encroaching on fee lands or flowage easements;

(2) provide that a person who owns a structure for human habitation and any uninhabitable appurtenance on land adjacent to the Lake shall have until December 12, 2001, one year after the date of enactment of this statute, to request, in writing (and post-marked as of December 12, 2001), the Mobile District or Lake Lanier Project Office (CESAM-OP-SL) to resurvey their property to determine if they are an eligible property owner under this Act;

(3) provide that whenever a determination is made, either through private survey or through a Government survey, that a structure for human habitation and any uninhabitable appurtenance are situated upon fee land or a flowage easement, the District shall notify the property owner by certified mail, and the property owner shall have a period of 90 days from receipt of the notice in which to establish that the structure was constructed prior to 1 January 2000; and

(4) provide that any private survey is subject to review and approval by the District to ensure that it conforms to the Government's boundary line established through the state plane coordinate system.

7. For eligible property owners on fee land, the District shall offer to convey by quitclaim deed the minimum land required to maintain the human habitation structure and any uninhabitable appurtenance, and necessary access thereto, with the right to flood to the elevation 1085 feet above mean sea level reserved, if applicable. In a flowage easement, the prohibition of structures for human habitation shall be released as it applies to the existing structure and any uninhabitable appurtenance by quitclaim deed. The eligible property owner has 90 days to agree to an offer made by the District or shall comply with the real property rights of the United States and remove the structure for human habitation and any other unauthorized real or personal property.

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8. By signing an offer, an eligible property owner agrees to pay for the value of the conveyance or release as established by the District and all administrative costs of the conveyance or release, including, but not limited to, the administrative requirements set forth in paragraph 2 above (i.e., environmental documentation, etc.), surveys, legal descriptions, title work, appraisals, deed preparation, and closing costs. Administrative fees shall be deposited into the Corps of Engineers project account in accordance with 10 U.S.C. 2695.

9. The following conditions shall be placed in each deed:

(a) The existing structure cannot be extended further onto fee land (or into the flowage easement) nor additional structures for human habitation placed on the fee land (or in the flowage easement); and

(b) The United States shall not be liable or responsible for damage to property or injury to persons caused by operation of the Lake and no claim to compensation shall accrue from the exercise of the flowage easement rights. Such waiver of any and all claims against the United States shall be a covenant running with the land and shall be binding upon heirs, successors, assigns and purchasers of the property subject to the waiver.

10. Nothing in this law shall preclude a property owner from purchasing flood insurance for which the property owner may be eligible.

11. This statute does not affect previously resolved encroachments, whether through sale, exchange, voluntary removal or alteration or removal through litigation.

12. This statute does not take away, diminish, or eliminate any other real property rights acquired by the United States for the Lake nor does it affect the ability of the United States to require the removal of any and all encroachments that are constructed or placed on the United States real property or flowage easements at the Lake after 31 December 1999.

13. Prior to implementation of regulations by 10 April 2001, the District, in coordination with the Division and Headquarters, shall determine how the release of the deed restriction or interest in land to be quitclaimed will be valued.

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14. Funding is not available at this Headquarters for implementing this provision. Real estate actions or land conveyances should be considered and identified as new initiatives. Normal budget procedures should be followed unless an exception is specifically approved by the Chief, Programs Management Division. (CECW-B)

15. Please call Roseann Bindner, 202-761-7503, if you have any questions concerning the history of this legislation or this implementation guidance; otherwise, call Tom Cooper, 202-761-7500, or John Downey, 202-761-7590 for general guidance.

FOR THE COMMANDER:

Elizabeth L. Fogot
for LINDA D. GARVIN
Director of Real Estate

Bindner, Roseann R HQ02

From: Parez, John J Mr ASA-CW [John.Parez@hqda.army.mil]
Sent: Saturday, April 07, 2001 6:50 AM
To: 'Bindner Roseann R HQ02 (E-mail)'
Cc: Smyth, James J Mr ASA-CW; Garman-Squier, Cynthia Ms ASA-CW
Subject: FW: Lake Lanier
Importance: Low

Roseann -- The implementation guidance memo is approved for signature and release to SAD and SAM. Please send me a copy of the signed and dated memo. Thanks.

-----Original Message-----

From: Tornblom, Claudia L Ms ASA-CW
Sent: Friday, April 06, 2001 4:30 PM
To: Parez, John J Mr ASA-CW
Subject: RE: Lake Lanier
Importance: Low

Yes, but please coordinate with Jim/Cynthia. They need to track WRDA guidance. Thanks.

-----Original Message-----

From: Parez, John J Mr ASA-CW
Sent: Friday, April 06, 2001 1:27 PM
To: Tornblom, Claudia L Ms ASA-CW
Cc: Garman-Squier, Cynthia Ms ASA-CW
Subject: FW: Lake Lanier

Claudia -- Recall from the Corps briefing on April 5, that they would like to provide public notice on April 10, of the program to convey to eligible property owners the right to maintain certain existing structures that are encroaching on Federal property at Lake Lanier. This meets the date called for in WRDA 2000. The attached implementation guidance memo is consistent with the agreement reached at the briefing. If you agree, I will provide clearance to the Corps, to release the memo to SAD and SAM. Please advise. Thanks.

-----Original Message-----

From: Bindner, Roseann R HQ02 [mailto:Roseann.R.Bindner@HQ02.USACE.ARMY.MIL]
Sent: Friday, April 06, 2001 10:12 AM
To: 'John Parez'
Subject: Lake Lanier

John,

I have made changes to the guidance memo - please see the last sentence in paragraph 3. The phrase "uninhabitable appurtenance" has been added to paragraphs 6 (1) -(3) and 7.

Thank you for picking up on this discrepancy.
<<Lake Lanier Guidance Letter.doc>>

Roseann

Roseann Bindner
Civil Division

Directorate of Real Estate

Attorney-Client Privileged Communication

Attorney Work Product

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