

MEMORANDUM FOR RECORD

SUBJECT: Berlin Lake Shoreline Management Plan Update - Summary of Open House Comments and Comment Letters Received

1. Three public open houses at which comments related to the Berlin Lake Shoreline Management Plan (SMP) update were accepted were held on 19, 22 and 25 August 2007. The location of the open houses was the Resource Manager's Office. The open houses were set up as informal sessions where the public could come and go as they please and provide any comments they wished to regarding the plan. Corps personnel in attendance included: Richard Lockwood, Greg Bellich, Rene' Berberich, Gary Cameron, Diane Goodman, Mike Cummings and Bob John. This summary will be organized into three sections: A. general issues of concern expressed by open house visitors and through letters received, B. specific comments related to a certain section of the document, and C. comments not specifically related to shoreline management but which represent a concern on the part of the public.
2. An additional period from 19 August to 17 September 2007 was established as a public comment period for members of the public to send comments to the Corps either through letters or e-mails concerning the proposed Shoreline Plan.

A. General issues of concern expressed by open house visitors and through letters received.

1. Non-transferability of dock permits to children or to new owners in the event that the house and property associated with the dock permit are sold. The draft update clarifies the long-standing Corps policy which states that shoreline use permits, including dock permits, are non-transferable and terminate upon the death of a surviving spouse or the sale of the property with which the permit is associated. The inability to pass the dock permit on to children or as part of a house sale was a concern that was frequently mentioned. Some members of the public mentioned their belief that that dock permits are being included as caveats written into sales agreements.

Another issue of concern regarding the succession or transferability of dock permits to children of current permittees is the issue of property held in a trust agreement. Permits are intended to be issued to individuals, but property held in trust clouds this issue. There is a perception on the part of some members of the public that attempting to dismiss trust agreements is another way for the Corps to eliminate a number of current permit holders.

Response: Children and/or new owners of the property can apply for a new permit, but the application will be evaluated under the criteria in place at that time and there is no guarantee that a permit will be given to the new owner. The Corps reiterates that dock permits are not something that can be conveyed by any entity other than the Corps - the physical dock itself is private property and could be included as part of a sales agreement, but the permit allowing that dock to be placed on the shoreline cannot be transferred. The overall guidance for this policy is found in ER1130-2-406, Section 7.

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In the case of family trusts, the Corps will determine if the trustee of the trust is eligible under the criteria outlined in the Shoreline Management Plan. Any permits, licenses or outgrants will be issued to the trustee as an individual and not to the trust itself. The fact that the property with which the permit is associated is included in a trust doesn't imply an indefinite renewal of the permit and the criteria for eligibility and terminations of these instruments are the same as for all individual permittees.

2. Property values. The non-transferability of dock permits is directly related to another frequently mentioned concern – local property values. A widely held belief on the part of the public is that properties which have a dock permit sell for more than similar properties without a dock permit. This, in turn, has an effect on the property tax that the property owners must pay. The fact that Corps personnel cannot provide a guarantee that a new owner would receive a new dock permit where one currently exists is a source of frustration for the public. There is also a perception that, in the past, the transfer of a dock permit to the new owner was considered automatic; if that is not the case now, there is a concern that no one will want to buy a property unless it comes with a dock permit.

Specific Comment: If the prior commitments are abolished when the property changes ownership, I feel that the USACE should compensate the property owner the amount the property will decrease in value when sold. Most current estimates, by leading real estate companies, are between \$50,000 and \$110,000, depending on location. Why change a policy that has existed for over 60 years?"

Response: The Corps wishes to stress that they understand the problem but cannot legally guarantee a person that they will get a dock permit when the property changes hands. The Corps will evaluate the particular situation based on the criteria for obtaining a dock permit (adjacent property owner, location of the property in a limited development area (LDA), current density of docks in that LDA, lack of encroachments on federal land from that property, location of property on what is considered a buildable lot according to local zoning ordinances, etc.) and let the person know whether or not they would be eligible to apply for a permit; they cannot guarantee that one would be issued. The Corps has no control over real estate practices that have developed over the years based on a misinterpretation of Corps policy.

3. Treatment of properties not directly adjacent to federal property under the new plan. A number of comments have expressed concerns about “back-lot” owners and whether or not they would be eligible for a dock permit under the revised plan. There is a perception that the revised plan is intended to eliminate all back-lot owners. There is also a widely held belief that has been expressed that some of the local deeds for “backlot” properties include verbiage guaranteeing access to federal property. The assumption is that this would suffice

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as a means of providing legal right of access to federal property for the purpose of applying for a dock permit.

Response: One of the criteria outlined in the draft plan requires that anyone applying for an individual dock permit must have property that is directly adjacent to federal property, so the eligibility of new back-lot owners would change under the draft plan. The ability to utilize public and private roads to gain access to federal property does not provide sufficient proof of legal access under the plan. However, the following points are stressed: 1). No one having a current dock permit will lose that permit under the draft plan, provided that all requirements of the permit continue to be met. This includes back-lot owners, who will be “grandfathered”. When a property changes hands, the Shoreline Management Plan in place at that time will govern eligibility for a dock permit. 2) Backlot owners with current permits may be given alternatives of either joining an existing community dock or participating in an effort to develop a new community dock. Criteria for community docks are outlined in the Shoreline Management Plan. The revised plan is an attempt to address overcrowding in some areas and promote good environmental stewardship while accommodating as many people as possible and is not an effort to target a specific group for elimination.

Deeds that grant some form of access to federal lands generally only give access across private property up to the boundary line between private and federal lands. Such deeds generally do not grant the individual any permit privileges and would have to be reviewed on a case by case basis for clarification.

4. A number of comments and concerns were about the Corps’ process for renewing dock permits. Questions and concerns include the following:

a. Do personnel from Berlin Lake have to come out and look over the dock before renewing the permit? And, if problems are noted, what is the time limit for making the necessary corrections?

Response: Conducting an on-site assessment of the dock (including photos) is part of a new and hopefully more efficient process. The assessment is followed up with a letter to the permit holder. It was stressed that this is not a safety inspection, per se, but does include review of safety-related items, the flotation system and a determination as to the presence of encroachments associated with the permit holder’s property. Permit holders receive a letter outlining problems and are generally given a 30-day period to correct them. If more than 30 days are needed, the permit holder should coordinate with the Berlin staff to set up a mutually agreeable timetable. It was also mentioned that the Berlin staff should be made aware if the actions of others are resulting in violations that could delay the renewal of your permit.

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b. To make it easier on the permit holders, can the shoreline use permit and any associated license for support features be combined?

Response: The current process right now for issuance of shoreline use instruments is that the project staff at Berlin issues permits for docks and mowing, while the licenses for support features like light poles and steps are issued by the Real Estate Branch in the District Office. It also pointed out that the shoreline use permit fees are mandated by Congress and are consistent across the country. There is more flexibility in the pricing structure associated with Real Estate licenses. The Pittsburgh District is not set up to combine the two permissions into one document at this time. Also, the terms of the two items are different – shoreline use permits are issued for five years while Real Estate licenses are generally now issued for 25 years. The District is working towards streamlining this process by allowing both shoreline use permits and minor licenses for support facilities to be issued by the project, but is not there yet. One thing that Berlin does plan to do is at least combine mowing permits and dock permits under one permit number rather than keeping them separate.

c. The overall permit renewal process is a problem for the public. The complaints centered on two primary themes: 1) Letters are no longer being sent to remind permittees that their permits are due for renewal. Since permits are issued for five years, it is easy to forget where they are in that five year cycle. At the very least, there should be a grace period allowed for people who simply forget to renew their permit if reminder letters are not sent out or at the very least, it should not be too difficult to send out an electronic notification to those permittees having access to email. 2) When they do try to renew, they are asked to wait until the project catches up on the renewals.

The question was also asked whether it would be acceptable for the Berlin Lake Association to arrange to reimburse the Corps for the cost of mailing.

Response: Corps personnel are aware of these concerns and apologize for the frustration. Reductions in staffing and multiple priorities at the project make it difficult to send out reminders and have had an impact on the timeliness of renewals. The Corps recognizes that this business process needs to be revised, and is not penalizing permit holders for late renewals. But, it is also noted that permit holders should share some of the responsibility for knowing when their permit is due to expire. The issue of reimbursement for mailing costs is not something that is under consideration at this time. Part of the process that is being implemented at this time involves on site inspections and mailing letters and applications to permittees when their permits are due to be renewed. Tracking systems are currently being implemented to help ensure this is done in a timely manner.

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On a related note, the public concern on the Corps' guidance regarding receiving and posting of the tags containing the permit numbers may be confusing. The Corps will also take these concerns into consideration, noting that the intent is to have two tags per dock – one visible from land and the other visible from the water.

5. Since public lands are available for use by anyone, does that mean that anyone can use your dock? Is the use of “no trespassing signs” permissible?

Response: A dock is private property and permit holders may take steps to protect their private property. However, the land around the dock remains public land and is open to the public and signage is prohibited on public land. Local sheriffs can enforce trespass violations. The Corps sees no problem with “No Trespassing” signs on dock itself.

6. What is the process regarding maintenance on permitted or licensed items? If we were to purchase new docks that were approved by the Army Corps, do we need to take out a new permit even if the existing permit still has several years left? Or do we just need an inspection?

Response: Small scale, routine actions such as painting docks, replacing boards on a dock or steps, etc. can be undertaken under the terms of the permit or license. If a permittee is modifying the dock structure design that is on file in the project office, the permittee should submit a diagram of the proposed modification for approval to the project office. A review and inspection would then take place. The current permit dates would not be altered.

7. All existing lights, steps, and walkways that provide needed access to the moorage facilities should be retained.

Response: Shoreline licenses and outgrants are issued to individuals that have a valid dock permit since they are for dock support structures. The eligibility for these is evaluated in the same way as dock and mowing permits. Upon the sale or transfer of a property used as part of the eligibility criteria, the license or outgrant is terminated and the new owner may apply for a license or outgrant based on the same eligibility criteria used for dock structures.

8. Nowhere in the document is there a fee schedule for the various permits required by USACE.

Response: Fees associated with these instruments are subject to periodic change. Current fees for various types of permits and outgrants is available in the Berlin Project Office.

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9. No mention is made of the need for insurance for private dock facilities, yet community docks will require liability insurance coverage which may be impossible to obtain due to the hazards inherent to the area”.

Response: Private docks should be covered under the individual permit holder’s homeowner’s policy. Since Community Dock Permits are issued to an organization, not an individual, it is necessary for the community association to arrange for insurance coverage as part of obtaining a non-profit status. These policies should be available from a number of insurance carriers.

10. I attended the BLA meeting in July and was told that your dock use permit goes to the person and not the property. Now I understand that the permit goes to the property. Will this be spelled out in the new proposal? If I sell my property (which is considered back lot) and move down the street, but in the same neighborhood, will I lose my permit?

Response: It was stressed at the public meetings and at the open houses that dock permits are issued to the individual based on eligibility and not to the property. If you move and sell your property, the permit in your name that was associated with that property becomes null and void. You would need to contact the project to determine if your new property is located such that you could submit an application for a new permit.

11. Are there any federal grant programs that would provide funding for installation of erosion protection?

Response: The Corps is not aware of any such programs. However, as noted previously, technical design assistance may be available from local soil conservation district offices.

12. Are you required to moor a vessel at your dock? What if you want the dock for another reason, such as swimming or sunbathing?

Response: The SMP was written under the assumption that anyone having a dock would utilize that dock for the mooring of a boat (or boats). The Corps does require that a registered vessel be associated the dock. This is consistent with all Corps lakes with shoreline management plans in the Pittsburgh District, as outlined in Standard Permit Condition 11.

13. Is it accurate to say that “front-lot” owners could potentially preclude “back-lot” owners that have formed an association from getting a dock permit by denying them legal right of access across their property?

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Response: Technically, yes. But it is hoped that the model already being followed by some associations facing this situation would prevail.

14. May docks still be kept on Corps property in the off-season under the new plan?

Response: Yes, you will still be allowed to secure the docks on the shoreline for the winter under the new plan as long as the dock is secured with stakes or spud poles and not to trees. Removal of the docks to private property in the off-season is also an option.

15. What is the Corps policy on seaplane landings at Berlin Lake?

Response: Studies undertaken years ago for all Corps lakes across the country resulted in the development of a list of projects where seaplane landings can be allowed. Berlin Lake is not on that list and seaplanes are not permitted to land there.

16. Are steps to docks permissible?

Response: Yes, steps are addressed in Section VIII-2(b) of the Plan. Steps are an example of a dock support feature that requires a separate license from Real Estate Branch. They can be constructed of a variety of materials and do not have to be removed every year. A license is required regardless of the number of steps.

17. What happens to their dock when someone moves? Are the rumors that someone else just takes over their dock accurate? Is it true that if a dock permit is taken away from a private individual, it is given to a private concessionaire?

Response: If a dock is simply abandoned, a number of letters are sent to the permit holder; if there is no response, the dock is impounded and removed from the lake. The Corps has better access to information regarding property owners and can use tax records to clarify ownership. It is hoped that this will reduce the instances of someone without a valid permit taking over a dock left by previous owners. The rumor of giving a permit to a concessionaire has no basis in fact.

18. Is there a waiting list for dock permits in any of the LDA's?

Response: Berlin Lake does not maintain a waiting list for those interested in docks in a specific LDA. There has been a moratorium on new dock permits pending the completion of this SMP update, after which it will be lifted. If an existing LDA has already achieved or exceeded the 50% density criteria, there may still be an opportunity to get a dock permit there in the event that a current permit holder gives up their permit.

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19. The Hawthorn and Hickory Grove areas of the lake were specifically mentioned a number of times. There are particular concerns about congestion, overcrowding of docks and how backlot owners will be handled in the future in these areas.

The North Benton Shores area was also discussed by a number of visitors. Crowding is also a concern there, particularly in light of the 50% density / 50' between docks criteria, downed trees in the water that preclude placement of docks near them, and the shallowness of the water.

Response: Consolidation of individual docks into group dock situations would help address a number of these concerns. There are a number of specific issues that will need to be researched and addressed in the areas with individuals and clubs, including the perception that there may be people using docks without a valid permit. Embracing the concept of community docks may require some compromise between front-lot and back-lot owners. Dredging of coves may help ease the problem, but must be done in accordance with Corps requirements. Many of these issues will require follow-up meetings between project staff and permit holders in that area.

20. Concerns about the moratorium were expressed. One gentleman stated that he was not eligible to even apply for a dock permit.

Response: There is currently a moratorium on new docks until this plan is finalized. After the new plan is in effect, the moratorium will be lifted and every effort will be made to apply the plan consistently and base all new dock permits and renewals on eligibility criteria.

21. Concerns were raised about consistently applying whatever plan is finally published.

Response: The Corps acknowledged that there are issues with record keeping at the project but they are taking action to improve their business processes. They also stressed that the SMP is a document that must strike a balance between environmental stewardship and recreation interests. Every effort will be made to apply the plan consistently and base all new dock permits and renewals on eligibility criteria.

22. Are the requirements outlined in the draft Berlin SMP based on national guidelines? If so, why does it seem that there are such differences between Berlin and Table Rock.

Response: A certain amount of the SMP is based on national guidance that should be consistent across the country. But, the program is designed to allow individual projects and Districts the latitude to address project-specific issues and unique characteristics at each site (such as the project's congressionally authorized purposes, use patterns that have developed over the years, etc.).

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23. *What is the timeline for completing the SMP update and what steps remain?*

Response: Public comments on the draft SMP update were due by 17 September. These comments, combined with comments received at three public input sessions, will be analyzed and addressed and the SMP revised if appropriate. Formal responses to the comments will be prepared and included as part of the final document that is signed by the District Engineer in Pittsburgh. Responses will be grouped by topic and referenced to the appropriate section of the plan if applicable. Responses to comments will be posted on the internet. There is no intention to post a final draft on the website – only the responses to comments will be posted. Once the document is signed it will be forwarded to the Great Lakes and Ohio River Division Office in Cincinnati for final concurrence, in accordance with Corps policy. Upon final concurrence from LRD the finalized plan will be posted on the internet. The new SMP will be implemented in 2008.

B. *Specific comments / questions related to a certain section of the draft.*

24. *The presence of hazardous trees along the shoreline and the related issue of protecting existing shoreline trees and the removal of these hazardous trees overhanging docks was a topic mentioned several times. Specific questions are: What are the criteria for determining that a hazardous situation exists? We need a time limit in regard to the Corps response time for these situations. Several members of the public indicated that the current tree policy is working. (Section VII-4)*

Response: If individuals are aware of specific trees that they consider hazardous, the Corps asks to be notified so that a site visit can be done prior to a member of the public taking any action. If it is determined that the tree should be removed, the Resource Manager will provide a letter authorizing removal. The Corps generally does not cut trees down themselves, although this is possible under certain circumstances after discussions with Office of Counsel. Already downed dead trees should not necessarily be removed – in some cases they should remain in place because of their habitat value. There is generally no prohibition on cutting back tree limbs to an individual's property line in cases where trees are very close to the line. Common sense has to prevail with regards to trees that have fallen on docks, across roads, etc. – whatever steps need to be taken to protect private or public property should be taken immediately, along with notification of the problem to the Resource Manager as soon as practical. The property owner should document the situation with photographs before proceeding with removal.

As to what constitutes a hazardous situation, it was discussed that each situation is unique and has to be evaluated on a case by case basis. Timeframes of response are based on the details provided to staff and staff availability.

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25. *What is a Limited Development Area (Section IV)? What is the significance of the yellow highlighted areas on the shoreline allocation map? Questions regarding why certain individuals appear to own property the whole way to the lake while others do not also came up a number of times.*

Response: The Shoreline Management Plan is primarily an environmental stewardship document. Part of the plan is what amounts to a zoning map where the entire shoreline is categorized as to what types of activities and development are allowed to take place in certain areas. One of the classifications is Limited Development Area (LDA). LDA's are the only parts of the federally-owned shoreline where boat docks, mowing, and similar permitted activities are allowed. There are instances where these activities exist in an area now considered Protected Shoreline, but those facilities are "grandfathered".

The yellow areas are Future Recreation Areas. This designation relates to the project's Master Plan and represents areas that have been set aside for possible future development as recreation areas. Since these areas are being held in reserve for that possible use, they are treated the same as protected areas for the purposes of shoreline management.

This "zoning" is often due to the land acquisition policies in place when the project was being built. If the Corps only purchased a flowage easement interest in the property rather than purchasing the property in fee, then the property owner might indeed own the property the whole way to the lake. A type of activity or development that can take place on easement property is governed by the terms of the flowage easement. Permanent structures in the area that can be inundated are prohibited, but other restrictions are less than what would be found on property that the Corps owns in fee. Certain actions that a property owner with flowage easements might be able to take without seeking permission would require a Real Estate instrument if undertaken on Corps property owned in fee.

26. *Does the draft plan change the extent of any of the current shoreline allocation types? (Section IV)*

Response: No, the shoreline allocations are the same as in previous plans. The four categories remain Prohibited Access Areas, Public Recreation Areas, Protected Shoreline Areas, and Limited Development Areas. While there are a few "grandfathered" shoreline use permits in the first three areas listed, those areas should be off-limits to private shoreline uses and new permits will only be considered in LDA's. A decision to revise the shoreline allocations would trigger an additional set of requirements (such as more detailed environmental analysis) and would significantly increase the cost and length of time required to compile the update.

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27. What is the rationale for the density and dock location requirements outlined in the plan (50% maximum density in a given LDA, 50' separation between docks and docks not to extend more than 1/3 the width of a cove)? (Section VI-4 (a, b, and c) There is a perception that the 50% density criteria and 50' distance between docks criteria outlined in the plan are an effort to eliminate docks in many areas around the lake. The plan should specify where these requirements come from and the rationale behind them (Public Law, Corps policy, or whatever)

Response: The 50% maximum density of development in an LDA and the requirement to allow a maximum dock projection of only 1/3 of the width of a cove are both taken from the Engineer Regulation governing shoreline management at Corps projects (ER 1130-2-406). This regulation is contained in the reference section of the plan.

The 50' between docks requirement is based on experience and a review of SMP's from other projects and is intended to ensure safe boat operation around docks. The 50' requirement may be altered where special environmental features may preclude this requirement, but will not be altered for individual convenience. Any alteration of the 50' requirement will not be in conflict with the 50% requirement.

The revised plan is an attempt to address overcrowding in some areas and promote good environmental stewardship while accommodating as many people as possible and is not an effort to target a specific group for elimination.

28. How is the extent of an LDA determined and how does the dock anchorage system tie in with the 50' distance requirement? (Section VI-4)

Response: LDA's are established between Corps boundary monument pins and follows the linear distance of shoreline between those two pins, whether the shoreline is relatively straight or in a cove. As for the 50' separation between docks the distance is between the two closest points on the dock structures. The 50% density is measured between lateral features such as anchoring pins on shore.

29. What if a person buys an existing property that does not meet the current requirements of a "buildable lot"? (Section VI-4)

Response: The Corps recognizes that zoning requirements have changed over the years and that many existing homes are on lots that would not meet the current standards. This will not be held against individuals in those situations. The intent of the "buildable lot" clause in the plan is to prevent situations where individuals buy a narrow strip of property just to gain access to the federal property line for the purpose of securing a dock permit.

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30. Why does the plan only allow for 2 registered vessels per dock? (Section VI-4, page 8) Will we need to provide boat registration numbers to the Corps under the new plan?

Response: The intent of this requirement is to ensure that docks are not being rented for profit and that the permit holder is using the dock for his/her own boat(s). There will still be a limitation of two vessels registered per dock and a listing of permitted vessels will still be requested.

31. Regarding the requirement that permitted docks be placed in the water each recreation season, what constitutes the timeframe of the “season”? (Section VI-3 and Shoreline Use Permit Condition #28)

Response: The plan states that docks are for the moorage of boats. The key word is that it is a “use” permit. The Corps is trying to address those that have a permit but go for years without putting in a dock. The wording of Condition #28 implies a 12-month window for placing the dock in the water before taking any action to revoke the permit, which the Corps considers reasonable. It is understood that there may be situations, such as an extended illness, that can be considered a mitigating factor; the Corps will be receptive to those situations but they need to be made aware of the reason why the dock isn’t in. Based on public input, wording in the plan will reflect a 24 month period to accommodate extenuating circumstances. Also, to be consistent with other plans, this SMP will include only the 27 nationwide standard conditions and the verbiage in what was formerly identified as #28 in the draft will be inserted in the plan in Section VI-4.

32. Regarding adjacent property requirements, what frontage does a person need to be eligible for consideration for a dock permit? How is it determined if one owns adjacent property and how much frontage is needed? (Section VI-4)

Response: The private property and public property must share a common boundary at the proposed site of the dock structure and the private property must be eligible for local residential building permits. Eligibility for consideration for a new dock permit is based more on the classification of the adjacent property as a “buildable” lot according to local zoning authorities than it is strictly on frontage. This is part of an attempt to address overcrowding in certain areas. The Corps is trying to be consistent with local ordinances. However, it is recognized that local classifications have changed over the years and existing lots with houses on them will not be penalized. The point is to eliminate situations where a person buys a narrow strip of land just to gain access to federal property for the sole purpose of trying to obtain a dock permit. The extent of frontage is tied in more directly to the eventual location of a dock than to eligibility – when possible, the dock is sited in the middle of the projected extent of the private property boundaries.

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33. *The draft plan states that if a dock is painted, it must be an earth-tone color, such as green, brown or tan. What’s wrong with white? (Section VI-4 (d), page 9)*

Response: This was an effort to have docks blend in better with the shoreline and decrease visual impacts. We will add white to the list.

34. *Special Events. Is this new and what type of activity is this meant to control? (Section VII.4.h) Special permits are required for a project when more than 20 persons or vessels are involved. We often have more than 20 family and close friends over to swim, fish and water play. Why can’t this rule be changed to 40 and include multiple vessels? As the rule stands, we would have to get permission 5-7 times a summer.”*

Response: Generally speaking it is not the intent of this program to deny use of the project. It is, however, necessary to insure that environmental issues are addressed; regulatory guidance is reviewed; public safety is considered; space is available; the rights of others are not affected; and the activity can in fact be authorized. Examples of special events permits are sailing regattas, fishing tournaments, company or corporate outings, water ski demonstrations, weddings, graduations, etc. The wording in the Shoreline Plan in the section Special events will have this clarification in it and will change the number to 25.

35. *What happens if someone doesn’t put their dock in the water? Also, what difference does it make if they do or don’t if there is no limit on the number of dock permits and no waiting list? Why should a dock permit be considered for revocation? (Section VI-3 and Shoreline Use Permit Condition #28)*

Response: The plan states that docks are for the moorage of boats. The verbiage found previously in Special Condition #28 will be inserted into the plan and changed to a 24 month window for placing docks in the water before taking any action to revoke the permit, which the Corps considers reasonable. It is understood that there may be situations, such as extended illness, that can be considered a mitigating factor; the Corps will be receptive to those situations but they need to be made aware of the reason why the dock isn’t in. As for rationale for requiring this in the absence of a waiting list, it was pointed out that the number and location of docks does affect the 50% density determination, and not putting a dock in can lead to problems and confusion with regards to spacing once the permittee does exercise this option.

36. *Is the requirement for higher quality flotation for docks tied in with permit renewals? Why do we still see some docks supported by barrels? What is the deadline for converting to a better system? (Section VI-4 (d))*

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Response: The two items are not directly tied together. The nationwide guidance allow for barrels to continue to be used until they are no longer serviceable, after which they need to be replaced by upgraded materials as outlined in the plan. The specifics of the current flotation criteria can be found in Special Use Permit Condition #14 in Appendix 4.

There is no specific deadline – the requirement is related to the condition of the current floatation. The current standards must be followed for new dock permit applications, renewals and whenever a modification is made to existing dock facilities.

37. What is unauthorized mowing? (Section VII-2 (c))

Response: This does not necessarily refer to mowing your neighbor's lot as a favor to them without asking their permission each time. What this refers to is mowing on federal property done either in an area where there is no Corps-issued mowing permit or outside the limits of the Corps-issued mowing permit.

38. Are the maximum 4' wide meandering paths authorized by the Resource Manager considered mowing for permitting purposes? (Section VII-2 and 4)

Response: This plan continues to allow for 4' wide meandering paths leading to a dock. The Corps had looked at considering this activity as a fee item. Based on public comment and evaluating the types and locations of the existing 4' paths it was determined that a 4' path did not fall into the same category as mowing for fee areas. It must be stressed that any form of vegetative alteration such as mowing and 4' paths are for the purpose of access to the shoreline and not for the enhancement or extension of private property.

39. How does one obtain permission to dredge an area? (Section IX-1)

Response: Dredging requires a permit from the Corps' Regulatory Branch office in Pittsburgh. There is no charge for the permit, but the applicant must follow the stipulations contained in the permit regarding removal of the dredged material off Corps property in one action.

40. We believe that there should be a change in the mowing path requirements. Restricting the paths to a 4' width could possibly be a life or death issue. We have already had one case where the ER squad could not get to a person who was injured on a dock because their vehicle could not go down the 4-foot path. Two more feet in width could save a life.

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Response: While this concern is understood, these paths are not intended for vehicular use. They are strictly for pedestrian use and access and are supposed to be meandering paths that complement the natural environment.

41. Can permission be granted to remove poison ivy that is located on the paths leading to people's docks? (Section VII-4 (d))

Response: Physically removing poison ivy is acceptable, but the use of herbicides is prohibited.

42. Additional detail regarding regeneration of open areas is needed. Specifically regarding permits for established grassy areas along the shoreline, when a property is sold, how does the Berlin Lake staff know if the grassy area was naturally occurring or the result of excessive under brushing and mowing? Will the new owner be able to get a mowing permit? Doing away with "prior commitments"? The proposal was made in one comment that "prior commitment" areas be considered to be authorized by an existing shoreline use permit in perpetuity until or unless the permit is revoked for cause. Finally, under this item, the phrase "or a change in property ownership occurs" needs to be deleted. (Section I-9, page 4)

Response: This change to the existing mowing policy is being recommended as a method to achieve a more natural looking shoreline and potentially enhance erosion control efforts. The Corps does not intend to revoke any current privileges (prior commitments) associated with a valid permit as the result of implementing this plan. However, it is stated in Corps regulations that permits are null and void upon sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse. As such any permit issued is not issued in perpetuity. Therefore, when the permit expires or properties change hands, the opportunity to re-evaluate the situation in terms of our environmental stewardship and recreation mission is presented. In some instances, it may be determined that it is more advantageous for the environment to allow less mowing or vegetative alteration than what is occurring presently. The Corps sometimes has access to free tree seedlings and there may be opportunities to use these to enhance environmental needs that are compatible with recreational uses.

43. Regarding Community Dock Associations and Boat Clubs, the statement is made that "The Resource Manager may reduce or deny expansion of the dock, if it is determined to be in the best interest of the public." What are the criteria for determining when this option would be exercised? Would the number of slips at Association docks be reduced to benefit others? Can this wording be clarified in the final document? (Section VI-5 (a) and (c))

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Response: The emphasis on group docks is an attempt to address chronic overcrowding of individual docks in certain areas. It is further stressed that the Corps does not intend to force the removal of the docks of anyone with a valid permit. The following sentence has been added to the referenced section to help clarify what the “best interest of the public” means. “The Resource Manager may reduce or deny expansion of the dock, if it is determined that environmental, public safety or current policy and regulations requirements warrant the action. These include, but are not all inclusive, of issues such as dock density, shoreline erosion, or reservoir purposes”

44. Associations are limited in the number of slips that they are authorized to maintain. Who determines the distribution of the slips? Does the Corps control how individual slips at group docks are assigned? (Section VI-5)

Response: It is the responsibility of the Association or Boat Club to determine how it allocates its slips in their bylaws. The Corps does not get involved in that process. If a club or association wants to add slips, it must coordinate with the Corps before doing so.

45. Under the draft plan, if you own two eligible lots, are you allowed two dock permits? (Section VI-4, page 8)

Response: No. Individual dock permits are tied to individual land ownership as part of determining eligibility. If a number of separate lots are all in one person’s name, then there is only one permit that could potentially be assigned to that individual. If one lot is sold to another individual, that person may be eligible for a permit if all of the eligibility criteria are met.

46. Erosion control was a frequently raised topic. Specific comments and suggestions include the following:

a. Will installation of shoreline erosion control be a requirement of every new dock permit? The draft makes it sound like this is the case. (Sec. VI-4, page 8 & IX-1 (b))

Response: It appears that the first sentence of the last paragraph on Page 17 is causing some confusion. This section states that shoreline erosion control is encouraged. The third paragraph in Sec.VI-4, page 8 implied that shoreline erosion control may be a requirement for a new permit. What the revised draft states based on this confusion and public feedback is shoreline erosion may preclude the placement or permitting of a new dock at a specific location. Shoreline erosion control may be required prior to the granting of a permit to reduce the negative environmental impact the installation of dock facility may have.

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b. There is erosion on federal property that is threatening to eventually impact our property. Is it OK to dump stone over the embankment to protect it?

Response: No. To be effective, erosion control usually requires that more thought be put into the design and installation of the remedy. A regulatory or real estate permit should be obtained before placing anything on the banks.

c. The Corps should provide more up-front guidance and information to reduce the amount of potentially wasted effort on the part of the individual requesting permission to install shoreline protection. The guidance in the draft plan is too vague and the plan would be better if it included examples of what is considered an acceptable description and drawing. For instance, is there an acceptable slope related to shoreline protection?

Response: Shoreline protection proposals are evaluated on a case-by-case basis in the District Office in Pittsburgh. Such requests must be reviewed in our Regulatory Branch (to determine the type of regulatory permit needed) and in Real Estate Branch (to determine the appropriate license type of agreement). The first step is submitting a letter and drawing outlining your intentions to the local Corps office at Berlin Lake. They, in turn, forward it to the appropriate offices in the Pittsburgh District Office.

There are a number of options for protecting the shoreline, including rip-rap, biomechanical techniques, special plantings, terraces and seawalls. The project is working with the Portage County Soil and Water Conservation District on developing a brochure outlining various erosion control techniques. The Portage County group is also a source for technical information that can be used in developing a proposal for shoreline protection for submission to the Corps.

d. Why do we need permission to plant (in your words, the “biotech” method of planting)? You say it is helpful to help erosion but I still have to get a permit to plant a few plants in detrimental areas. You even gave us several ideas of vegetation that would be helpful. A permit to plant native erosion control vegetation like crown vetch is absurd.

Response: The Army Corps of Engineers, as well as the Ohio Department of Natural Resources, are the stewards of the lands and waters at Berlin Lake. This Natural Resources Management Mission is to manage and conserve those natural resources, consistent with eco-system management principles, while providing quality public outdoor recreation experiences to serve the needs of present and future generations. As such there is a need to monitor and approve any type of activity which has a potential impact on the natural resource base. One of the primary methods of accomplishing this is

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through the Shoreline Management Program and the permitting process. This enables the Corps to ensure that the methods used are environmentally sound and are of a type that is appropriate to the area.

e. Also regarding erosion protection, what is the policy regarding maintenance?

Response: Items such as erosion protection and light poles must be maintained under the terms of the Real Estate license authorizing their initial installation.

f. Can I use 2' long concrete cylinders to control erosion and protect the shoreline around trees? Is there an acceptable slope related to shoreline protection? (Section IX-1 (b))

Response: Please refer to the response for item # 46-c.

g. Nationwide permit conditions and any State of Ohio requirements should be included in the plan.

Response: The Nationwide Permits for the State of Ohio are found on the Pittsburgh District internet site under the Regulatory and Permits link. Hard copies of the Nationwide Permits regulation will be available in the project office. Any State of Ohio requirements may be obtained by checking with local authorities.

h. Unfamiliar terms such as “R-4 riprap” should be defined. Approved lists of suppliers would also be helpful.

Response: This is a stone material that is of a size and density that is commonly used for erosion control and water diversion. Most contractors should be familiar with the term. Contractors who do erosion control type work may be available on the internet. The local Corps office may share names of contractors who have done this type of work at Berlin, but cannot recommend one over another.

47. What type of “special events” is the Corps referring to on page 15? Would twenty people swimming in the same area be considered a violation? (Section VII-4 (h))

Response: This requirement is more typically applied to events such as fishing tournaments. However the Corps also recognizes that certain areas of the shoreline are becoming de-facto swimming areas, even though there are no designated beaches at Berlin Lake. Additionally, the types of activities planned at large gatherings or events should be consistent with Title 36, which governs the use of Corps lands. The best advice is to let the Berlin Lake office know if you are planning something like a family reunion, where a large number of people would

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be involved in a specific activity. That way, the Corps will know about it and be able to better address any complaints received.

48. What defines a “severe case” of destruction of public property that could result in termination of a permit and a 5-year moratorium on any new permit associated with that private property? (Section V-2)

Response: This is intended to apply to extreme cases and particularly for willful acts. Actions such as clearing of brush and trees that are outside the permitted areas and alteration of land formations are two possible cases of a “severe case” of destruction. When asked if the sins of a former owner would be held against a new owner, the Corps responded no, so long as the new owner was truly a new owner not affiliated with the previous owner. However, the new owner would need to address any existing trespasses that they inherited from the previous owner before consideration could be given to accepting a permit application from them.

49. Is there no higher authority / third party to which an appeal can be made? A better definition of the appeals process is needed. There is a perception of this being a “stacked deck” situation since all appeals are internal to the Corps. An appeals process should include someone from outside the Corps. (Section XIV)

Response: This is consistent with other SMP’s across the country. The Corps acts as the steward of public property and shoreline use permits are a privilege, not a right. This does not preclude anyone exercising their other legal rights as an American citizen or seeking some type of remedy through the courts or through their elected officials.

50. A matter of concern expressed was about runoff from farm fields silting in a cove near The Anchor Boat Club and what would it take to obtain permission to dredge. How does one obtain permission to dredge an area? (Section IX-1 (a))

Response: The plan also addresses dredging. Dredging is allowed in LDA’s, but the dredging and removal of dredged material off-site must be accomplished as one action. Again, a Regulatory Branch permit is required to do this. Applications can be accessed on the internet, but only the blank form can be printed – the completed form must be mailed in.

51. Whose responsibility is it to know the property boundary – the Corps or the private land owner? (Section VII-3)

Response: The Corps boundary surveys are between 40 and 60 years old. It is in the best interest of the adjacent land owner that they have their own survey conducted to reinforce the Corps records before doing anything in the vicinity of the property line.

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52. Do lifts (boat hoists) have to be located on the dock? (Section VI-4 (f))

Response: Boat hoists located on the lake bottom are not permitted - they must be either floating or suspended from the dock. Also, the areal extent of the hoist is included in the 500 square foot maximum allowed for a private dock.

53. Also regarding the Anchor Boat Club, there is a concern that the requirement that docks not exceed 1/3 the width of a cove will be impossible to achieve and will result in people losing their dock permits. The docks are not blocking anyone and they have been in this location for a long time. (Section VI-4 (c))

Response: It is not the intent of this plan that current permit holders lose their privileges. Crowded areas will need to be reviewed individually and alternatives such as converting to community docks investigated in some areas.

54. Is there any more guidance that the Corps can offer for dock roofing materials or designs? (Section VI-4(d))

Response: Due to the wide variety of designs and types of dock roofing systems available on the market, the Corps will evaluate each application on a case by case basis. A minimum requirement will be that dock roof will be of a commercially available design or material.

55. Are ladders attached to docks allowed? (Section VI-4)

Response: Ladders attached to the dock structure are allowed and this section has had language added to reflect this.

56. The 14 day requirement after ownership change is too short of a time to apply for a permit. (Special Permit Conditions # 26)

Response: This is a condition that is outlined in the National Shoreline Regulation (ER1130-2-406) and is not a stipulation we can change locally.

C. Comments not specifically related to shoreline management in general but which represent a concern on the part of the public.

57. A number of visitors voiced concerns about the water quality in the lake and a perception that water quality has decreased this summer.

Response: Corps personnel responded that water quality specialists in our Water Management Branch monitor water quality issues both in the lake and downstream, and that

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additional investigations are planned for September. It was suggested that specific concerns be shared with the State of Ohio and that instances of point-source pollution (such as sewage entering the lake below a dwelling or from a boat) be relayed to both the state and the Corps' Resource Manager. The Corps also stated that water conditions change from year to year and that the summer of 2007 was very warm and generally dry up until early August.

58. *There was a discussion regarding the launching of personal watercraft from anywhere along the shoreline.*

Response: This is not acceptable due to the cumulative environmental impacts of such actions. Use of public launches and marinas to launch PWC's is appropriate.

59. *Questions were raised as to why Lake Milton maintains a consistent summer pool while Berlin Lake is drawn down. The perception is that Lake Milton benefits from this arrangement while those recreating at Berlin Lake lose.*

Response: The answers can be found in the Congressional authorization for Berlin Lake (flood control and water quality being the primary factors determining the release schedule) and the arrangement that the Corps has with the state of Ohio regarding Lake Milton.

60. *One visitor questioned the future speed limit regulations affecting the south end of the lake.*

Response: This is actually an issue to be raised with the Ohio Department of Natural Resources, Division of Watercraft. The Corps may have input into this issue, but the Division of Watercraft will set these limitations.

61. *There is a need for more public boat launches in Areas C, D, and E. Why can't existing community docks be expanded?*

Response: There are currently plans for ODNR to install a boat launch in the location of the closed German Church Campground and ODNR has plans to improve and enlarge the parking area at the Price Street launch. The number of slips that community or group dock has is defined in the permit that is issued, the area that it is in, 50% density and any other environmental; issues specific to the location.

62. *Why can't boats be moored along the shoreline adjacent to private campgrounds?*

Response: Title 36 CFR, Section 327.h states that all vessels not in actual use shall be removed from project lands or waters unless securely moored or stored at designated areas approved by the District Engineer.

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63. *There was a discussion regarding All-Terrain Vehicles and other off-road vehicles damaging the shoreline and the need for enforcement action.*

Response: The Corps can cite operators if they catch them, since ATV's are prohibited under Title 36, but have to rely to a great extent on local law enforcement entities and Ohio Department of Natural Resources. They also need help from the public in reporting incidences and being willing to testify at a hearing against the ATV operator if it comes to that.

64. *Is there anything in the plan that would restrict fishing from boats around private docks? This is an ongoing source of conflict at the lake, as some of the fishermen are felt to be interfering with the permit holder's use of his/her dock.*

Response: The Corps responded that the plan does not address this issue since these are public lands and waters available to all to use. The problem is recognized, but the Corps lacks an enforcement mechanism. This may be an issue better discussed with the ODNR.

65. *How does a person purchase lakefront property at Berlin Lake?*

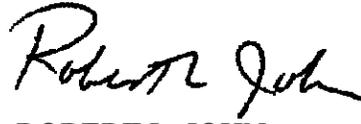
Response: Lakefront property in the traditional sense is not for sale. When the federal government determined a need for the construction of Berlin Lake, private property was purchased to accommodate the various project purposes, such as flood damage reduction and retention of water in the lake to address downstream water quality issues. This generally involved purchasing in fee title all land up to a certain elevation. This land is needed for project operations and is not for sale. Generally, the only "lakefront" property for sale is private property adjacent to federal property. There are areas of the lake where the Corps purchased only a flowage easement over a piece of property rather than buying it outright. In those cases, individuals do own property down to the lake, but any development on that property is controlled by the terms of the flowage easement agreement.

66. *Will there ever be a limit to the number of boats that are allowed on the lake on weekends?*

Response: This question appears to be about a perception of overcrowding on weekends. The Corps has no plans to impose a specific number of boats that are allowed on the lake. The overall use is controlled to some extent by the number of private and group docks, as well as the number of trailer spaces available at public boat launches. The Corps does seek to attain an appropriate balance between recreation interests and environmental stewardship.

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3. This memorandum has been coordinated with Corps personnel from Berlin Lake, the Northern Area Office and the Pittsburgh District Office and represents our understanding of the issues and concerns raised at the open houses and through the public comment process.

A handwritten signature in black ink that reads "Robert L. John". The signature is written in a cursive style with a large initial "R".

ROBERT L. JOHN
Outdoor Recreation Planner