DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1070
NASHVILLE, TENNESSEE 37202-1070

IN REPLY REFER TO
CELRN-OP-R (1130)

1 - NOV 2001

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Plant Vandalism and Valuation - Standing Operating Procedure

1. This Standing Operating Procedure (SOP) supersedes memorandum, CEORN-OR-R, 11 September 1989, subject: Amenity Tree and Timber Trespass - Standing Operating Procedures

2. When vegetation is cut on public property without approval of the resource manager, the ranger will:

a. Inform the violator to stop all cutting operations. It is recommended that the ranger not issue a warning citation if further legal action is expected.

b. If the situation warrants, the ranger may issue a Title 36 citation for a violation of CFR 327.14, Public Property. However, if it appears that a Restitution Agreement with the violator may be possible, it is recommended that the ranger not issue a citation until restitution options have been explored. Factors to consider in issuing a citation are: Was the vandalism willful or malicious? Does the violator appear willing to cooperate in restitution? Once a citation has been issued, all restitution efforts and all communications must be coordinated through the U.S. Attorney's Office.

c. If, in the ranger's judgement, a significant loss to the public has occurred, inform the violator that an appraisal of the damages may be made and the violator will be notified accordingly.

d. Inventory the damages to include:

(1) Number (by species) of trees or shrubs cut or damaged.

(2) Species. Contact OP-R if help is needed with identification.

(3) Diameter, determined by one of the following methods:

(a) For 2-inch to 4-inch diameter trees, diameter (outside bark) at six inches above the ground.

(b) For 5-inch to 12-inch trees, diameter (outside bark) at 12 inches above the ground.

(c) For trees larger than 12 inches, diameter (outside bark) at 4 1/2 feet above the ground (diameter at breast height - DBH).

(4) Specify whether the tree or shrub has a single stem or multiple stems. Each stem of a multiple stem tree or shrub should be measured separately and labeled as one stem of a multiple stem plant.

(5) General condition of each tree or shrub damaged or cut to include notations on any signs of disease or insect damage.

e. If the trees have been removed and DBH cannot be measured, determine stump height and stump diameter (outside bark). This will be converted into DBH by OP-R.

f. Submit a memorandum to OP-R signed by the Resource Manager to include, but not be limited to, the following:

(1) The date of the vandalism discovery.

(2) Any pertinent adjacent property owner information.

(3) A narrative description of the nature and extent of the vandalism including evidence identifying the responsible party.

(4) Include detailed drawings of the damaged area with the location of the nearest boundary monuments or signs and the distance (length and width in feet) of the damaged public lands.

(5) Include photographs with documentation telling date, time, location, direction photo is depicting, and if present, the location of boundary lines. 35 mm photographs are preferred for evidentiary purposes.

(6) Include aerial photos of affected area if available (before and/or after).

(7) Include video of affected area if available (before and/or after).

(8) Estimate the relative age of the vandalism (stump sprouts, evidence of recent cutting, decayed stumps, vegetative regeneration, etc.).

(9) All general correspondence with violator.

(10) Inventory of damages.

(11) Extent of damages to trees, shrubs, soil, roads, boundary lines, etc., and the cost to restore these damages.

(12) Administrative cost (labor, vehicles, etc.) to investigate the vandalism.

(13) If, in the Resource Manager's judgment, part or all of the loss to the public can best be mitigated by the violator planting trees, etc., make those recommendations. Final decisions on restitution and payment of damages will be determined in coordination with OP-R, RE, and OC. No amount of settlement or required mitigation will be quoted to the violator, except as directed by the U.S. Attorney's Office or OC.

(14) Any other appropriate information, including a history of the violation and follow-up action. Indicate whether or not a citation has already been issued.

g. If a Title 36 citation is issued, be prepared to present the case before a U.S. Magistrate.

h. Coordinate with OP-R as required.

i. Make frequent field checks to ensure the vandalism has stopped.

j. Prepare a detailed memorandum for record of all conversations and activities and place in the file.

3. OP-R will:

a. Review the damage inventory.

b. Coordinate with OC and/or the US Attorney's Office, as appropriate, concerning a violation notice, and use of witnesses (land surveyors, appraisers, etc.). Use of expert testimony should be coordinated with OC with sufficient lead-time to obtain the Department of the Army approval required by AR 27-40.

c. Prepare a preliminary estimate based on the methodology presented in the International Society of Arboriculture's (ISA) *Guide for Plant Appraisal*. An individual trained in the proper use of this guide must prepare the estimate.

d. Assist RE in determining appraised value of damages in cases where a marketable timber appraisal or timber cruise is determined as the appropriate method for establishing the monetary value of the damages.

e. Send a violation notice to the violator. This letter will outline the violation, estimated damages, and request the violator contact the resource manager about resolution. If the violator does not agree with the appraised amount, another appraisal can be accomplished by a professional certified landscape appraiser or arborist at the violator's expense using the same methods described herein. The violator's appraisal must be accomplished within 30 days of receipt of the written notice of restitution amount. The violator's appraisal, if completed, will be taken into consideration when considering resolution alternatives. Letters of this type will not be sent to violators once a citation has been issued.

4. RE will serve as the central point of contact for all tree vandalism cases occurring on outgranted properties. If damages exist beyond plant vandalism on other Corps managed properties, RE will:

a. Determine the value of damaged real property by completing an appraisal if appropriate. In cases where use of the *ISA Guide For Plant Appraisal* is determined the appropriate method of determining value, RE will request an estimate be prepared by an individual trained in the use of this guide.

b. Calculate total damages based on plant value, other real property value, administrative costs, and restoration costs as appropriate.

c. Coordinate with OP-R and OC concerning a reasonable assessment for damages. Corrective action may include pursuit or settlement taking into account the acceptable repair or replacement in kind, ability to pay, certainty of responsibility, appropriateness of installation payments, and potential for excessive collection costs.

d. Provide supporting documentation of damage assessment as needed to support litigation, or in the event the violator contests the valuation amount or method; if necessary, have the appraiser testify concerning the assessment (see paragraph 3.b. for approval requirement).

e. Determine appropriate corrective action required to bring outgranted area into compliance with current guidelines. If necessary, prepare litigation documents in coordination with OC when legal action is necessary.

f. As necessary, assist with collection of damages from the violator.

5. OC will:

a. Provide support to all elements as needed.

b. In cases that will be pursued as Civil Actions, coordinate with the US Attorney's Office to prepare the case.

6. POC for this matter is Tim Dunn, Conservation Biologist, OP-R, at (615) 736-7827.

STEVEN W. GAY
LTC, EN
COMMANDING

DISTRIBUTION:
RE
OC
OP-R
Resource Managers
Operations Managers