

### **301 KAR 1:016. Use of lands and waters on lakes owned or controlled by the department.**

RELATES TO: KRS 150.090, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation governs all private structures on property owned or controlled by the department, the private use of public lake water, and permitted and prohibited activities on department-owned or controlled land surrounding department-owned waters.

Section 1. Definitions. (1) "Adjacent property owner" means the owner of real property that shares a common boundary with department property.

(2) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(3) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers, and is permanently affixed to an approved boat dock so that it is visible from the lake.

(4) "Department property" means lands or waters controlled by the department through ownership, lease, license, easement, or cooperative agreement at the department-owned lakes listed in Section 2 of this administrative regulation.

(5) "Existing structure" means a grandfathered access or nonaccess structure built on department property prior to the effective date of this administrative regulation.

(6) "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(7) "Permanent dwelling" means a private residence on an adjacent landowner's land that is both fixed in location and of durable permanent construction, but does not include tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(8) "Rebuild" means to totally reconstruct.

(9) "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

Section 2. Boat Docks, Boat Dock Applications, and Boat Dock Construction Approval. (1) A boat dock may be constructed on department property by an adjacent landowner if the adjacent property:

(a) Shares at least a fifty (50) foot boundary with the department property if the adjacent boundary lines were extended to the water's edge; and

(b) Is located at one (1) of the following lakes:

1. Beaver Lake;
2. Boltz Lake;
3. Bullock Pen Lake;
4. Carpenter Lake;
5. Corinth Lake;
6. Elmer Davis Lake;
7. Guist Creek Lake;
8. Kincaid Lake;
9. Kingfisher Lakes; or
10. Lake Malone.

(2) Prior to constructing a boat dock, an adjacent landowner shall submit a completed Boat Dock Application to the department, accompanied by the permit fee for the dock as established in 301 KAR 3:022, except that the fee shall be prorated for every year remaining in the ten (10) year permit period.

(3) Boat dock construction shall not begin until:

- (a) An on-site inspection by an authorized department employee has been completed; and
- (b) The applicant has obtained written approval from the department to begin construction.

(4) Boat dock construction approval shall be valid for one (1) year from the date of issuance.

(5) A boat dock applicant shall:

- (a) Report to the department when construction of a new boat dock is complete, an existing boat dock has been rebuilt, or an existing dock has been brought into compliance; and
- (b) Allow inspection of the boat dock by an authorized department employee.

(6) An adjacent landowner with an existing boat dock on Bullock Pen Lake shall be required to obtain a Boat Dock Permit, but shall not be required to pay the permit fee until 2018.

Section 3. Boat Dock Permits. (1) The department shall issue a Boat Dock Permit and Boat Dock Tag to an adjacent landowner:

(a) Who has satisfied the boat dock application requirements in Section 2 of this administrative regulation;

(b) Who has a boat dock that has passed a final inspection by an authorized department employee;

(c) Whose permit has not been revoked pursuant to Section 8 of this administrative regulation; and

(d) Who remains compliant with all the provisions of this administrative regulation.

(2) The Boat Dock Tag issued with the boat dock permit shall be affixed to the front edge of the dock facing the lake.

(3) A Boat Dock Permit shall:

(a) Be valid for a ten (10) year period, with the current permit period expiring December 31, 2017 and the next permit period beginning January 1, 2018;

(b) Be renewed within ninety (90) days of the termination date by:

1. Paying the fee as established in 301 KAR 3:022; and

2. Submitting an affidavit that no unauthorized addition or modification has been made to the boat dock;

(c) Be transferable at no additional cost, if ownership changes, for the remainder of the ten (10) year period; and

(d) Not be renewed by the department if the boat dock is out of compliance, except as established in Section 4 or Section 7 of this administrative regulation;

(e) Prohibit the permittee from renting, leasing, or licensing the dock to another person for any purpose.

(4) An adjacent landowner who owns multiple contiguous properties adjacent to department property shall:

(a) Not be issued more Boat Dock Permits than the number of completed permanent dwellings on those properties; or

(b) Qualify for one (1) Boat Dock Permit if there is no completed permanent dwelling on any of the contiguous properties.

(5) An adjacent landowner shall only be eligible for one (1) Boat Dock Permit per adjacent property.

Section 4. Boat Dock Specifications and Requirements. (1) A boat dock constructed or rebuilt

after the effective date of this administrative regulation shall not exceed:

(a) Eight (8) by sixteen (16) feet in dimension; and

(b) A surface area of more than 128 square feet.

(2) The longest dimension of the boat dock shall be positioned perpendicular to the shore.

(3) A boat dock shall not have more than one (1) walkway connecting the boat dock to the shore that shall:

(a) Be positioned perpendicular to the shore;

(b) Be anchored to department property by:

1. A concrete pad no larger than ten (10) square feet; or

2. Two (2) metal posts on each side of the walkway.

(c) Not be wider than four (4) feet;

(d) Be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or

2. Twenty (20) feet in length.

(e) Not be used for boat mooring.

(4) The flotation for a boat dock shall be made from materials manufactured for marine use.

(5) All wooden material on a boat dock shall be kiln-dried lumber that has been commercially pressure-treated with a wood preservative and shall not be painted.

(6) A boat dock shall moor no more than:

(a) Two (2) boats; or

(b) One (1) boat and up to two (2) personal watercraft on Lake Malone and Guist Creek Lake only.

(7) A personal watercraft mooring system that is attached to an approved boat dock at Lake Malone and Guist Creek Lake shall:

(a) Be a commercially manufactured floating system;

(b) Not exceed:

1. Six (6) feet in width and fifteen (15) feet in length if mooring a single personal watercraft; or

2. Twelve (12) feet in width and fifteen (15) feet in length if mooring two (2) personal watercraft;

and

(c) Be attached to one (1) side of the boat dock, but not the front.

(8) An additional johnboat, canoe, or personal watercraft may be stored on top of a boat dock, except a personal watercraft shall only be stored on top if a commercially manufactured self-loading ramp is used.

(9) The following items shall be prohibited on boat docks:

(a) An enclosed structure;

(b) An unenclosed structure; and

(c) Any other items, structures, or deviations not identified in a previously obtained waiver, pursuant to Section 7 of this administrative regulation.

(10) A boat dock that was constructed prior to the effective date of this administrative regulation shall be exempt from the requirements established in subsections 1 through 6 of this section for the life of the boat dock.

(11) A boat dock owner who rebuilds an existing dock, including those exempted by subsection 10 of this section, shall reapply and meet all the requirements established in this section, except as established in Section 7 of this administrative regulation.

(12) A boat dock permit holder who applies to rebuild an existing, legally permitted boat dock during the ten (10) year permit period shall be exempt from paying the permit fee until permit renewal.

(13) A private community boat dock or a private multi-slip boat facility shall not be allowed except as approved by the Finance and Administration Cabinet prior to January 1, 2010.

Section 5. Access Structures and Shoreline Use Permits. (1) A shoreline use permit shall only be issued for the following lakes:

- (a) Beaver Lake;
- (b) Carpenter Lake;
- (c) Corinth Lake;
- (d) Elmer Davis Lake;
- (e) Guist Creek Lake;
- (f) Kincaid Lake; and
- (g) Lake Malone.

(2) Shoreline Use Permits shall be valid for a fifteen (15) year period beginning January 1, 2010.

(3) An adjacent landowner with an existing structure shall apply for a Shoreline Use Permit within ninety (90) days following the effective date of this administrative regulation.

(4) Prior to constructing a new access structure, rebuilding an existing access structure, or permitting an existing structure, an adjacent landowner shall submit to the department:

(a) A completed Shoreline Use Permit Application; and

(b) The appropriate permit fee if applicable, as established in 301 KAR 3:022, except that the fee shall be prorated to the nearest five (5) year interval that remains in the fifteen (15) year permit period.

(5) An adjacent landowner shall not begin construction of a new access structure or begin rebuilding an existing access structure until:

(a) An authorized department employee conducts an on-site visit and determines the type of access structure necessary for safe passage to the lake; and

(b) The adjacent landowner receives written approval from the department.

(6) Access structure construction approval shall be valid for one (1) year from the date of approval.

(7) A Shoreline Use Permit shall not be issued unless all shoreline structures have passed final inspection by an authorized department employee.

(8) A new access structure shall only include the following:

(a) A ground level pathway that shall:

1. Only have pretreated lumber or railroad ties as edging;

2. Not consist of asphalt, concrete, or any other permanent surface;

3. Only consist of crushed stone, wood chips, or other removable material as fill between the edging, except that local natural stones or rocks may be used as steps;

4. Not exceed five (5) feet in width including the edging; and

5. Follow the natural contour of the land if possible.

(b) A raised ground level pathway that shall:

1. Not exceed eight (8) inches in height.

2. Not exceed forty (40) steps, with each step not exceeding five (5) feet in width and eight (8) feet in length;

3. Only consist of pretreated, unpainted lumber; and

4. Follow the natural contour of the land if possible.

(c) A raised staircase that shall:

1. Not exceed four (4) feet in width;

2. Not have more than one (1) landing that does not exceed four (4) feet in width and four (4) feet in length;

3. Not have more than twenty (20) steps if a landing is not used;

4. Not have more than thirty (30) steps if a landing is used;

5. Only consist of pretreated, unpainted lumber; and  
6. Conform to prevailing building code standards for stairs for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established by 815 KAR 7:120; or

(d) A foot bridge that shall:

1. Not exceed four (4) feet in width and twelve (12) feet in length;
2. Not use a tree as an anchoring device; and
3. Only consist of pretreated, unpainted lumber.

(9) An adjacent landowner who has an existing access structure that was constructed prior to the effective date of this administrative regulation, shall be exempt from the requirements of subsection (8) of this section for the life of the structure, if the landowner applies for and maintains a valid Shoreline Use Permit.

(10) An adjacent landowner who rebuilds an existing access structure, including those grandfathered in subsection (9) of this section, shall be exempt from the requirements established in subsection 8 of this section provided the landowner maintains a valid Shoreline Use Permit.

(11) An existing access structure:

- (a) May be adequately maintained to extend the life of the structure;
- (b) May be rebuilt with less than or equal to the same number of steps in the original structure;
- (c) May be rebuilt with necessary landings not to exceed 4 ft. x 8 ft. in dimension; and
- (d) Shall conform to prevailing building code standards for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(12) A Shoreline Use Permit shall:

- (a) Be renewed every fifteen (15) years within ninety (90) days of the termination date by:
  1. Paying the fee established in 301 KAR 3:022; and
  2. Submitting an affidavit that an unauthorized addition or modification has not been made to a permitted structure.
- (b) Be transferable at no additional cost, if ownership changes, for the remainder of the fifteen (15) year period; and
- (c) Not be renewed if the access structure is out of compliance, except if the access structure was built prior to the effective date of this administrative regulation.

(d) Be extended, by written request to the department, for an additional twelve (12) months if the property is transferred or the landowner dies during year fifteen (15) of the permit period.

(13) An existing noncompliant access structure, pursuant to Section 8 of this administrative regulation, shall be removed at the owner's expense.

(14) Nonaccess structures, such as gazebos or storage buildings, excluding existing permanent dwellings, shall be:

- (a) Itemized in the adjacent landowner's Shoreline Use Permit; and
- (b) Allowed to be kept and maintained by an adjacent landowner for the life of the structure provided the landowner maintains a valid Shoreline Use Permit.

(15) The Shoreline Use Permit fee, as established in 301 KAR 3:022, shall be based on the types of access structures established in subsection (8) of this section, and consist of the following three (3) tiers:

- (a) A Tier I permitted structure shall include:
  1. All compliant access structures pursuant to subsection (8) of this section;
  2. An existing access structure with fifteen (15) or less steps that is not compliant, pursuant to subsection (8) of this section;
  3. An existing footbridge; or
  4. A new footbridge that is compliant, pursuant to subsection 8 of this section.

(b) A Tier II permitted structure shall include:

1. An existing access structure having thirty (30) or less concrete steps; or
2. An existing access structure that does not comply with the requirements established in subsection (8) of this section, and having sixteen (16) to thirty (30) steps.

(c) A Tier III permitted structure shall include:

1. An existing access structure, including a concrete access structure, that does not comply with the requirements established in subsection 8 of this section, and having more than thirty (30) steps;
2. A new access structure that does not comply with the requirements established in subsection (8) of this section, and requires a waiver pursuant to the requirements of Section 7 of this administrative regulation.
3. An existing staircase that has one (1) or more landings that exceed a four (4) feet in width or four (4) feet in length; or
4. An existing nonaccess structure, such as a storage shed or gazebo.

(16) If an adjacent landowner applies for a Shoreline Use Permit for multiple structures that cover more than one (1) tier, then a single permit will be issued at the highest tier level for which the applicant qualifies.

(17) A concrete access structure shall not be rebuilt.

Section 6. Other Activities on Department Property. (1) A person shall not be permitted to take water from the lakes listed in Section 2 of this administrative regulation, except for:

- (a) Residential use by adjacent landowners;
  - (b) Temporary use in a time of emergency drought; or
  - (c) An adjacent landowner who has been given the right to do so by deed.
- (2) A person, without first obtaining written permission from the department, shall not:
- (a) Place or build any unpermitted object or structure;
  - (b) Plant any vegetation;
  - (c) Place or use any mechanical equipment;
  - (d) Take water from any lake listed in Section 2 of this administrative regulation;
  - (e) Cut, clear, burn, damage, or kill trees or shrubs greater than two (2) inches in diameter measured at ground level; or
  - (f) Moor a boat to the shoreline for more than forty-eight (48) hours.

Section 7. Waivers. (1) An adjacent landowner shall first obtain a waiver from the department for any deviation to the specifications established in this administrative regulation by:

- (a) Submitting a written request to the department; and
  - (b) Providing a detailed plan to the department of any planned deviation.
- (2) A person shall not begin construction on a project that includes a planned deviation until the department has approved a waiver.
- (3) The department, in deciding whether to grant a waiver for a new access structure, shall consider if:
- (a) The deviation is in substantial compliance with the requirements established in this administrative regulation;
  - (b) The deviation poses a potential safety hazard;
  - (c) Topographical or other physical features of the land necessitate a deviation;
  - (d) The waiver request exceeds the staircase landing dimension or step limit by more than twenty (20) percent; and
  - (e) A new staircase will conform to prevailing building code standards for the county of record or, if those standards do not exist, complies with Section 1009 of the Kentucky Building Code

Standards for stairs, as established in 815 KAR 7:120.

(4) The department, in deciding whether to grant a waiver for a boat dock, shall consider if:

(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;

(b) The deviation poses a potential safety hazard; and

(c) Topographical or other physical features of the land necessitate a deviation.

(5) An adjacent landowner, either individually or as a director or high managerial agent of a business organization, who violates any provision of this administrative regulation shall be denied a waiver for a new or rebuilt structure for a period of two (2) years from the date of the citation, with the waiver denial applying to:

(a) The individual; and

(b) Any business for which the person is a director or high managerial agent.

Section 8. Noncompliance, Permit Revocation, and Appeals. (1) The department shall revoke each Boat Dock Permit and Shoreline Use Permit issued to a person if that permit holder:

(a) Without department approval rebuilds an existing:

1. Boat dock;

2. Access structure; or

3. Nonaccess structure.

(b) Constructs or places a new nonaccess structure on department property;

(c) Fails to:

1. Maintain the boat dock, boat dock walkway, access structure, or nonaccess structure in a structurally sound condition; or

2. Renew the Boat Dock or Shoreline Use Permit within ninety (90) days of expiration.

(2) An adjacent landowner who has a noncompliant boat dock, boat dock walkway, access structure, or nonaccess structure shall be notified in writing by the department that the landowner has sixty (60) days to come into compliance, to remove the boat dock, walkway, or structure, or to make an appeal as established in subsection 6 of this section.

(3) If the requirements of subsection (2) of this section are not met within sixty (60) days, the department shall have the authority to remove the noncompliant structure at the owner's expense and the structure shall become the property of the department.

(4) If an adjacent landowner, either individually or as a director or high managerial agent of a business organization, violates any provision of this administrative regulation for a second time, then the department shall revoke for a period of three (3) years from the date of the second citation all Boat Dock Permits and Shoreline Use Permits issued to:

(a) The adjacent landowner;

(b) Any business organization for whom the individual adjacent landowner is a director or high managerial agent; and

(c) Any director or high managerial agent of the adjacent landowner who is a business organization.

(5) The following shall apply for any adjacent landowner whose permit is revoked pursuant to subsection (4) of this section:

(a) All structures shall be removed at the owner's expense within thirty (30) days of revocation if an appeal is not filed.

(b) If the structures are not removed by the owner within thirty (30) days and no appeal is filed, then the department shall have the authority to remove the structure at the owner's expense; and

(c) All structures removed pursuant to paragraph (b) of this subsection shall become the property of the department.

(6) An adjacent landowner whose waiver request is denied or whose permit is denied or re-

voked may appeal the decision in accordance with the provisions of KRS Chapter 13B.

(a) The department shall appoint a hearing officer and conduct the hearing in accordance with the provisions of KRS Chapter 13B;

(b) The hearing officer shall make a recommendation to the Department of Fish and Wildlife Resources' Commission;

(c) The commission shall make a decision by majority vote; and

(d) An appeal of the Commission's decision shall be in accordance with the provisions of KRS Chapter 13B; and

(e) At the conclusion of all appeals or at the expiration of any appeal period for which an appeal has not been made:

1. The owner shall remove any unauthorized structure within ten (10) days, at the owner's expense;

2. An unauthorized structure that has not been removed by the owner within ten (10) days shall be removed by the department at the owner's expense; and

3. Each structure removed pursuant to subparagraph (2) of this paragraph shall become the property of the department.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Boat Dock Permit Application, 2010"; and

(b) "Shoreline Use Permit Application, 3/2010".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Fisheries Division, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (KFWR-F-150; 1 Ky.R. 345; eff. 2-5-1975; Am. 10 Ky.R. 963; eff. 3-2-1984; 11 Ky.R. 1126; eff. 3-12-1985; 22 Ky.R. 1488; 1995; eff. 5-16-1996; 23 Ky.R. 2197; 2713; eff. 1-10-1997; 34 Ky.R. 845; 1392; eff. 12-12-2007; 36 Ky.R. 1099; 1501; 2050; eff. 4-2-2010.)