

Ord.

2002-0531

INTRODUCED BY: LANCE MARINO, COUNCILMAN, DISTRICT VI  
ORDINANCE NO. 03-1-9

An ordinance to approve and authorize the execution of a Lease with the Secretary of the Army for the twenty-six acre Bonnet Carre' Spillway Recreation Site. (Lease No. DACW29-1-03-02)

WHEREAS, the Parish has operated the Bonnet Carre' Spillway Recreational Site since May of 1981; and,

WHEREAS, the current lease agreement expired on December 31, 2002, and it is the desire of the Parish and the Corps of Engineers to extend said lease for an additional ten year period.

**THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:**

**SECTION I.** That the Department of the Army Lease to non-state governmental agencies for public park and recreational purposes, Bonnet Carre' Spillway Recreation Lease, Bonnet Carre' Spillway, St. Charles Parish, Louisiana No. DACW29-1-03-02 is hereby approved.

**SECTION II.** That the Parish President is hereby authorized to execute said Lease on behalf of the St. Charles Parish Department of Parks and Recreation.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: RAMCHANDRAN, FAUCHEUX, HILAIRE, FABRE, ABADIE, AUTHEMENT, BLACK, MARINO, MINNICH  
NAYS: NONE  
ABSENT: NONE

And the ordinance was declared adopted this 21st day of January, 2003, to become effective five (5) days after publication in the Official Journal.

Lease - Bonnet Carre Spillway Rec Site

CHAIRMAN: Lance Marino  
SECRETARY: Richard J. Jones  
DLVD/PARISH PRESIDENT January 22, 2003  
APPROVED: [Signature] DISAPPROVED: \_\_\_\_\_

PARISH PRESIDENT Albert D. Lago  
RETD/SECRETARY January 22, 2003  
AT 3:00 PM RECD BY: [Signature]

**DEPARTMENT OF THE ARMY  
LEASE TO NON-STATE GOVERNMENTAL AGENCIES  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES  
BONNET CARRE SPILLWAY RECREATION LEASE  
BONNET CARRE SPILLWAY  
ST. CHARLES PARISH, LOUISIANA**

**THIS LEASE** is made on behalf of the United States and the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and **ST. CHARLES PARISH DEPARTMENT OF PARKS AND RECREATION**, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit "A", attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of ten (10) years, beginning January 1, 2003 and ending December 31, 2013

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee to **ST. CHARLES PARISH DEPARTMENT OF PARKS AND RECREATION**, P. O. Box 302, Hahnville, Louisiana 70057, and if to the United States, to the District Engineer, **ATTN: Chief, Real Estate Division**, P. O. Box 60267, New Orleans, Louisiana 70160-0267, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have

been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

#### **4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

#### **5. DEVELOPMENT PLANS**

The Lessee shall be guided by an annual Plan of Operation and Maintenance in furtherance of the Lessee's implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit "B", which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. No later than January 15, of each year the Lessee will submit the annual Plan to be mutually agreed on between the Lessee and the District Engineer. Such annual Plan shall include but is not limited to the following:

a. Plans for management, maintenance and development activities to be undertaken by the Lessee and any sublessees.

b. Report of the management, maintenance and development accomplishments of the Lessee for the preceding year.

c. Report on any significant modification of policies or procedures which are planned for the following year as well as those implemented in the preceding year.

d. Minor modifications to the Development Plan. Major modifications are to be accomplished by amendment to the Plan before proceeding to implement any changes in the development or management of the leased premises.

e. Budget of the Lessee for carrying out all activities for the upcoming year.

f. Personnel to be used in the management of the leased premises.

g. Annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the condition on NON-DISCRIMINATION, noting any deficiencies and providing a schedule for correction.

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

## **6. STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on RESTORATION. However, no structures may be erected or altered upon the premises unless and until the type of use, design, and proposed location or alteration thereof shall have been approved in writing by the District Engineer. The District Engineer may require the Lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

## **7. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the Condition on NON-DISCRIMINATION, noting any deficiencies and providing a schedule for correction.

## **8. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

## **9. FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on DEVELOPMENT PLANS either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

## **10. TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

## **11. FEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

## **12. ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall establish and maintain accurate records and accounts and provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-

lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants by the state, and furnish the District Engineer with the results of such an audit.

### **13. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefore by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

### **14. RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

### **15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

### **16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, or a minimum combined Single Limit of ONE MILLION DOLLARS (\$1,000,000), whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee, sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a

copy of the policy or policies or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. ~~The minimum amount of liability insurance coverage~~ is subject to revision by the District Engineer every three years or upon renewal or modification of this lease.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

d. The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sub-lessees and concessionaires do not have the required insurance coverage.

## **17. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefore, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

## **18. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42

U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all ~~requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7.~~ This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assigns.

## **19. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

## **20. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

## **21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sub-lessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES.

## **22. HEALTH AND SAFETY**



a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

### **23. PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

### **24. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises. Specifically prohibited are the use of gambling devices, such as slot machines, video gambling machines, or other casino type devices that would detract from the family atmosphere. District Engineers may allow the sale of state lottery tickets, in accordance with state and local laws and regulations, as long as the sale of tickets constitutes a collateral activity, rather than primary activity, of the Lessee. The Lessee shall not install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

### **25. NATURAL RESOURCES**

~~The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or~~ kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on DEVELOPMENT PLANS herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

## 26. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. § 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c.(2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

- (i) The claim is made in good faith;
  - (ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief;
  - (iii) and the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.
- (3) (i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

(A) A senior company' official in charge at the Lessee's location involved;

or

(B) An officer or general partner of the Lessee having overall responsibility of the conduct of the lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files as suit as provided in the Act.

f. At the time a claim by the lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal or action arising under the lease, and comply with any decision of the said officer.

## **27. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited.

Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, include swage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

## **28. ENVIRONMENTAL BASELINE STUDY**

An Environmental Baseline Study (EBS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit "C". Upon expiration, revocation or termination of this lease, another EBS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on RESTORATION.

## **29. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

## **30. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

## **31. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized the District Engineer.

### **32. COVENANT AGAINST CONTINGENT FEES**

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

### **33. OFFICIALS NOT TO BENEFIT**

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

### **34. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

### **35. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat.1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this 12<sup>th</sup> day of March, 2003.

*Herbert L. Coakley*  
Witness

*William C. Lewis, Jr.*  
WILLIAM C. LEWIS, JR.  
Real Estate Division  
U.S. Army Corps of Engineers  
New Orleans District

*Judy F. Richard*  
Witness

THIS LEASE is also executed by the Lessee this 22<sup>nd</sup> day of January, 2003.

*Barbara J. Faust*  
Witness

ST. CHARLES PARISH DEPARTMENT OF  
PARKS AND RECREATION

*Valerie Berthelot*  
Witness

BY: *Albert D. Logan*

TITLE Parish President

APPROVED AS TO LEGAL SUFFICIENCY:

*Marco Rosamano*  
MARCO ROSAMANO  
ATTORNEY ADVISOR  
U. S. Army Engineer District  
New Orleans

**ACKNOWLEDGMENT**

STATE OF Louisiana )  
 : ss  
PARISH OF St. Charles )

On this 23<sup>rd</sup> day of January, 192003, before me the undersigned Notary Public, personally appeared Mr. Albert D. Laque, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*George M. Lise*  
Notary Public



My Commission Expires:

*June 2004*

**CERTIFICATE OF AUTHORITY**

**STATE OF** Louisiana  
**COUNTY/PARISH**

I Barbara J. Jacob certify that I am the Secretary of  
The St. Charles Parish Council, that Mr. Albert D. Laque  
who signed the foregoing instrument on behalf of the grantee was  
then President of St. Charles Parish. I further certify that the  
said officer was acting within the scope of powers delegated to this officer by the  
governing body of the grantee in executing said instrument.

**WITNESSES:**

*Nilda Breaux*  
*Sandra D. Miguez*

*Barbara J. Jacob*

*Sandra M. Libe*  
**NOTARY**



**ACKNOWLEDGMENT**

BEFORE ME, the undersigned, this day personally came and appeared HERBERT L. COAKLEY to me personally known to be the identical person whose name is subscribed to the foregoing instrument as an attesting witness who, being first duly sworn, says that he subscribed his name to the foregoing instrument as a witness and that he knows **WILLIAM C. LEWIS, JR.**, to be the identical person who executed for the Chief of Real Estate Division the same and saw **WILLIAM C. LEWIS, JR.**, sign his name in his capacity as Chief, Real Estate Division, on behalf of the United States, as the voluntary act and deed of the United States, and for the purposes and considerations therein expressed, in his presence and in the presence of the other subscribing witness.

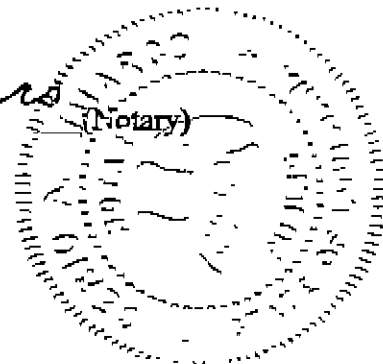
*Herbert L. Coakley*  
(Apparer)

SWORN TO AND SUBSCRIBED BEFORE ME

this *12* day of *March*, 200*2*

*Cecilia M. Morris*

(Notary)

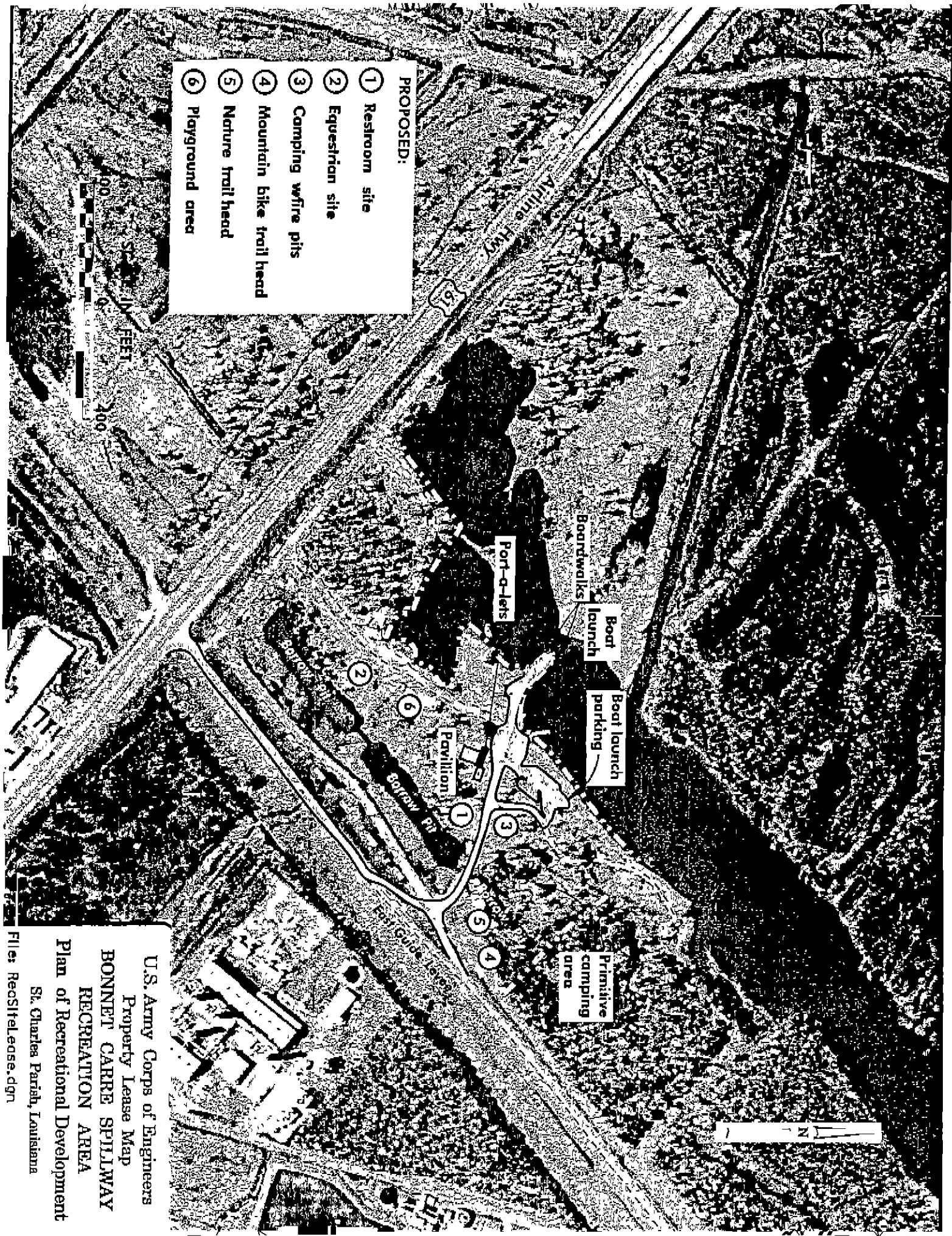


My Commission Expires:

*at death*

THIS INSTRUMENT PREPARED BY:

*Herbert L. Coakley*  
**HERBERT L. COAKLEY**, Realty Specialist  
U.S. Army Corps of Engineers  
CEMVN-RE-M  
P.O. Box 60267, New Orleans, Louisiana 70160-0267  
(504) 862-1176



- PROPOSED:**
- ① Restroom site
  - ② Equestrian site
  - ③ Camping w/fire pits
  - ④ Mountain bike trail head
  - ⑤ Nature trail head
  - ⑥ Playground area

0 100 200  
 FEET



U.S. Army Corps of Engineers  
 Property Lease Map  
**BONNET CARRÉ SPILLWAY**  
**RECREATION AREA**  
 Plan of Recreational Development  
 St. Charles Parish, Louisiana  
 File: RecStfLease.dgn



# ST. CHARLES PARISH

## DEPARTMENT OF PARKS AND RECREATION

13825 RIVER ROAD • P.O. BOX 9 • LULING, LOUISIANA 70070  
(504) 783-5090 • FAX (504) 783-5095

ALBERT D. LAQUE  
PARISH PRESIDENT

LARRY MATSON  
DIRECTOR

### PLAN OF RECREATION DEVELOPMENT

#### BONNET CARRE' SPILLWAY RECREATION AREA

**PREPARED FOR: CORPS OF ENGINEERS**

**PREPARED BY: ST. CHARLES PARISH RECREATION DEPT.**

**DATE: December 10, 2002**

The information contained within this plan should comply with the approved Corps Master Plan dated April 1998 and be in accordance with the Challenge Cost-Sharing Program authorized by Section 225 of the Water Resources Development Act of 1992.

Generally, the St. Charles Parish Recreation Department will continue to maintain the Spillway property with grass cutting, clean-up operations, preparing Camping Permits, maintenance of facilities, and making improvements with the permission of the Corps of Engineers.

Maintenance would include (but not be limited to):

1. Repairing and improving picnic shelters.
2. Repairing and improving boat docks
3. Repairing, replacing, and/or improving picnic areas including tables, benches and fire rings.
4. Improving garbage collection areas and clean-up . This would include adding garbage collection units (cans, etc.)
5. Improving camping sites and designating areas for horses, etc.
6. Working with the Corps to make future improvements on an "as needed" basis.
7. Improving the site with trees, nature trails, bike trails and other recreational items should those needs arise in the future.

Future Improvements: each item to be approved by Corps before implementing

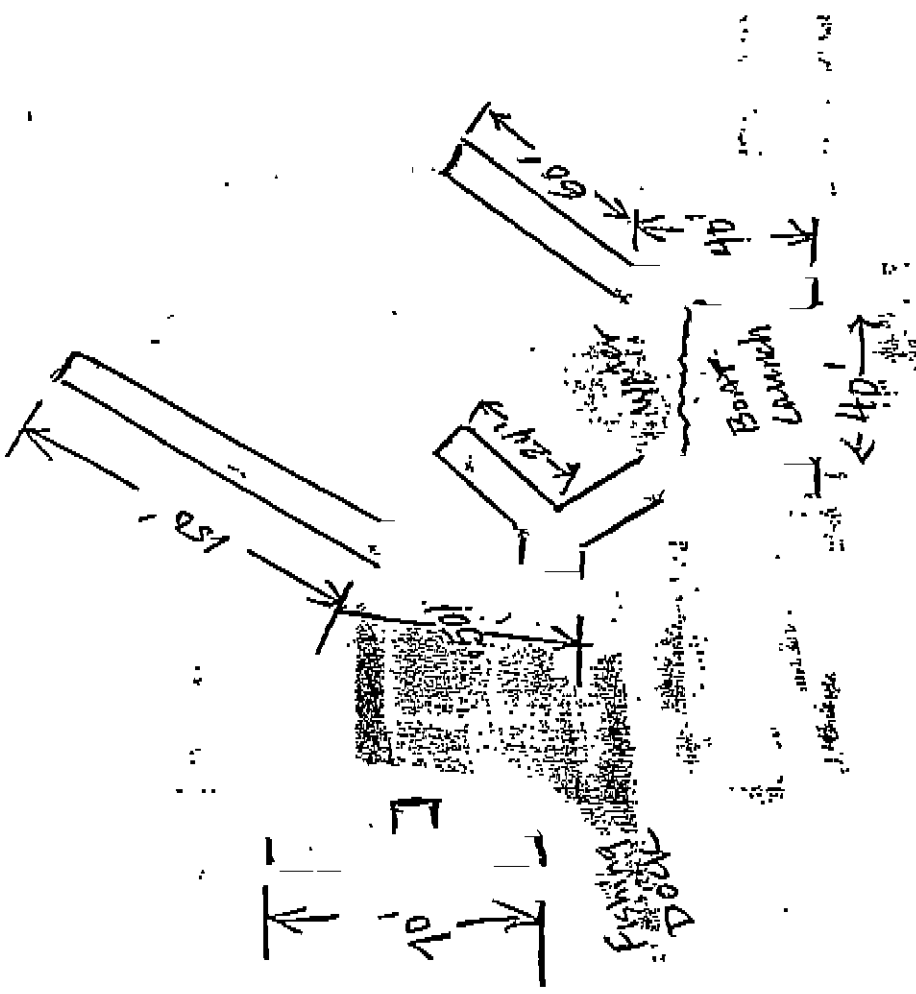
1. Restroom facility
2. Mountain bike trail
3. Nature trail
4. Playground area
5. Camping sites (fire pits)
6. Picnic tables

There are currently no plans to add a concession area. However, if the need arises through the development of any of the potential future improvements, the Corps would be notified for permission to proceed.

Financing for any of the future developments could come from several sources. The Parish Recreation Department has certain budget restraints and limitations. However, through a cooperative effort from the Corps, public, booster clubs, and grants funding might be found to support the projects as the need arises. **Ten thousand dollars (\$10,000)** has been placed in the 2003 budget in hopes of securing federal or state grants and/or funding for major projects such as rest rooms and playground equipment.

Currently, the Spillway has a gravel driveway from Airline Highway (Route 61) and a parking area at the boat launch to accommodate 35 vehicles. An additional 30 cars could be parked along the driveway adjacent to the pavilion if needed. A wooden dock is available for boaters and fishermen. The dock is forty feet wide so two boats may be launched at the same time. A drawing of the launch area is included with this report. A steel pavilion with concrete slab is available for picnics. Concrete tables and benches are also available. Electrical outlets are available and port-o-lets are on site. Fishing, boating, picnics, and camping are the main attractions on the north side of U.S. 61. Across the highway, an area designated for ATV (All Terrain Vehicle) activity is available. No ATV activity is allowed in the boat launch area (signage in place).

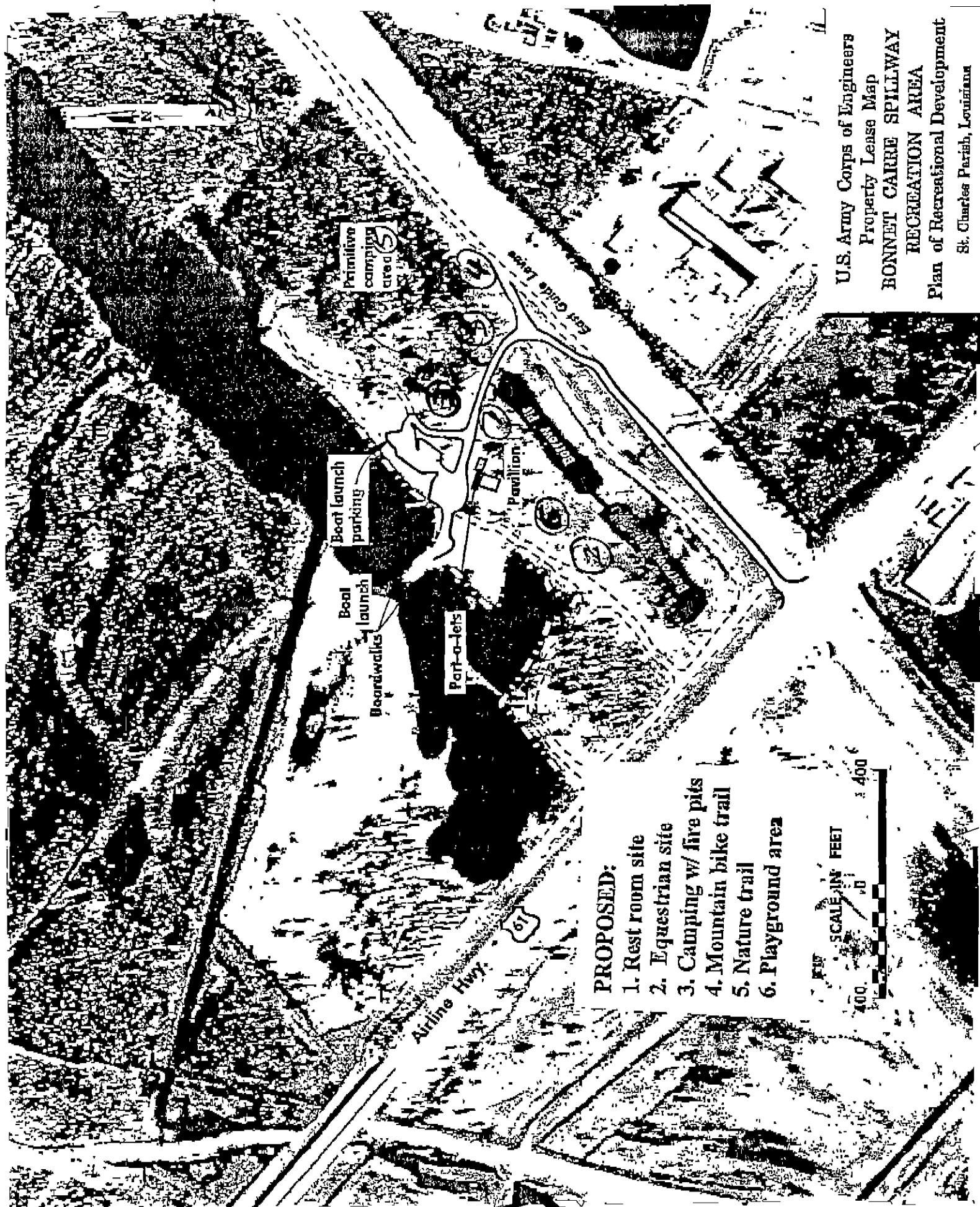
Firearms are not permitted in any of the areas. Camping permits must be obtained from the Recreation Department. A sample is attached. A fee of \$100 is collected with \$50 returned if the pavilion is used and no clean-up is required. Camping is free, but requires a permit. The area has regular patrols from the Sheriff's Department. Grass areas are available for frisbee tossing and other outdoor activities. Swimming is not permitted within 150 feet of boat launch (signage in place). There are **no fire rings** currently at the site; however, several have been requested by the recreation department.



PARKING AREA

Pavilion

SPILLWAY BOAT LAUNCH  
11-12-02

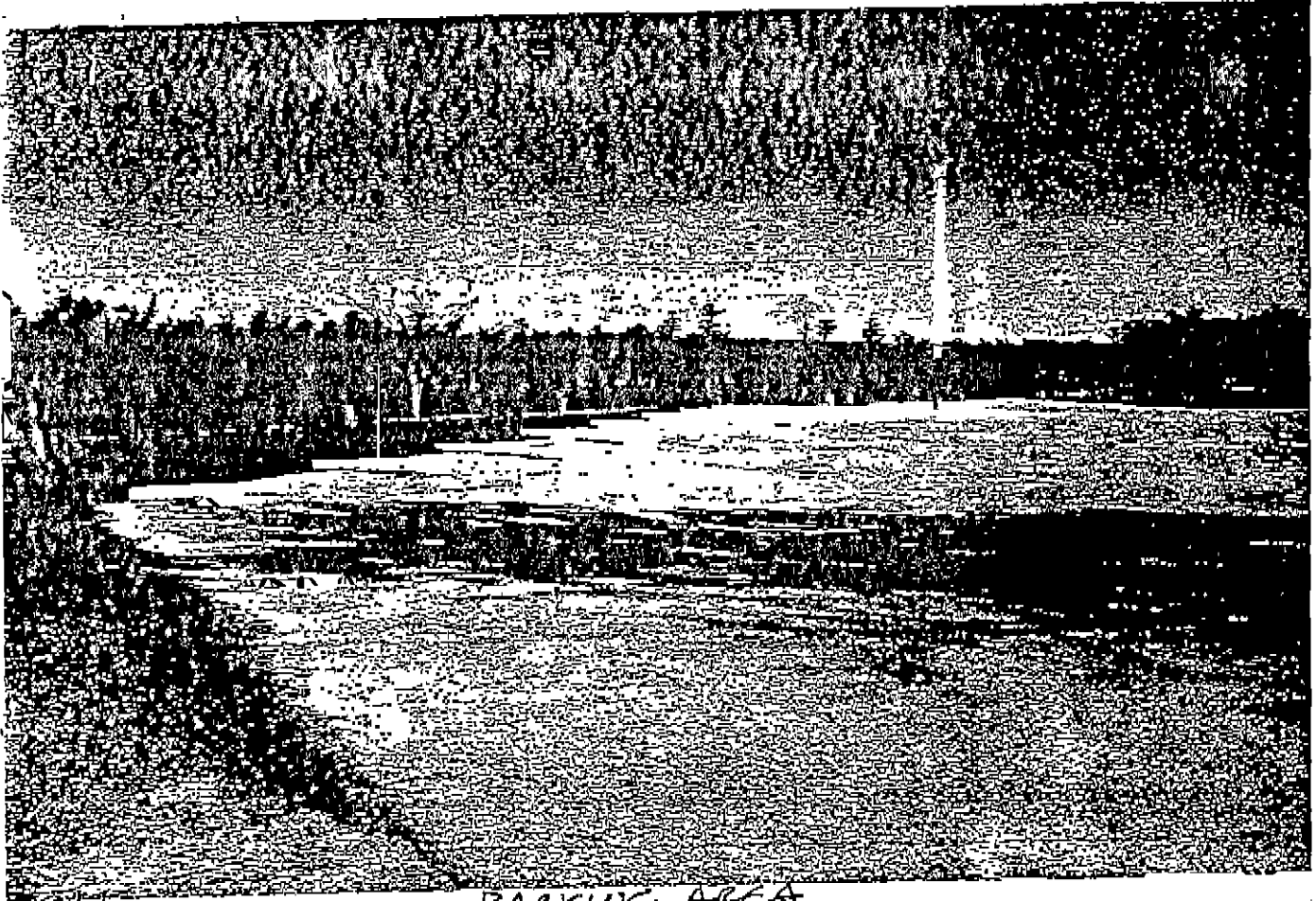


**PROPOSED:**

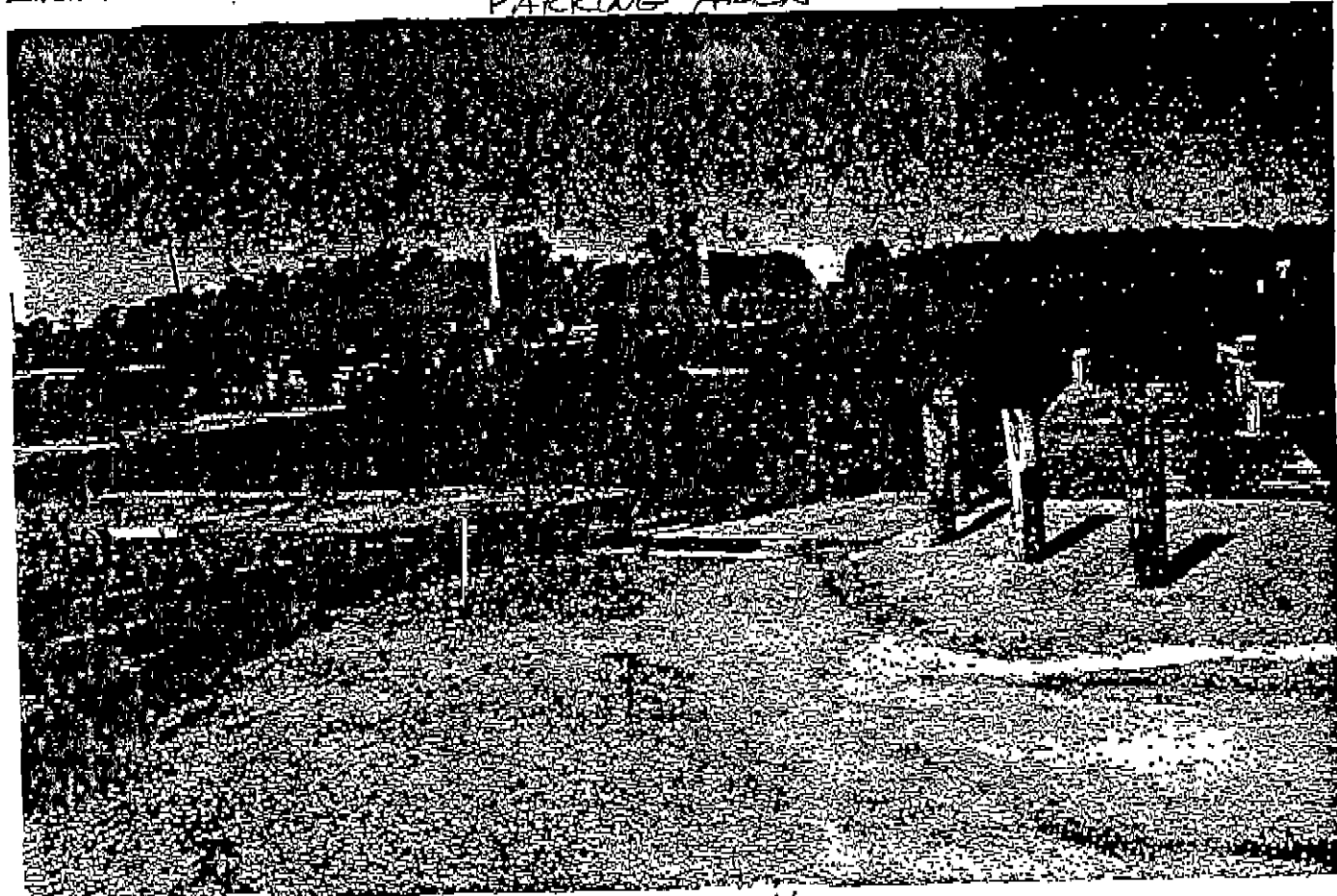
1. Rest room site
2. Equestrian site
3. Camping w/ five pits
4. Mountain bike trail
5. Nature trail
6. Playground area



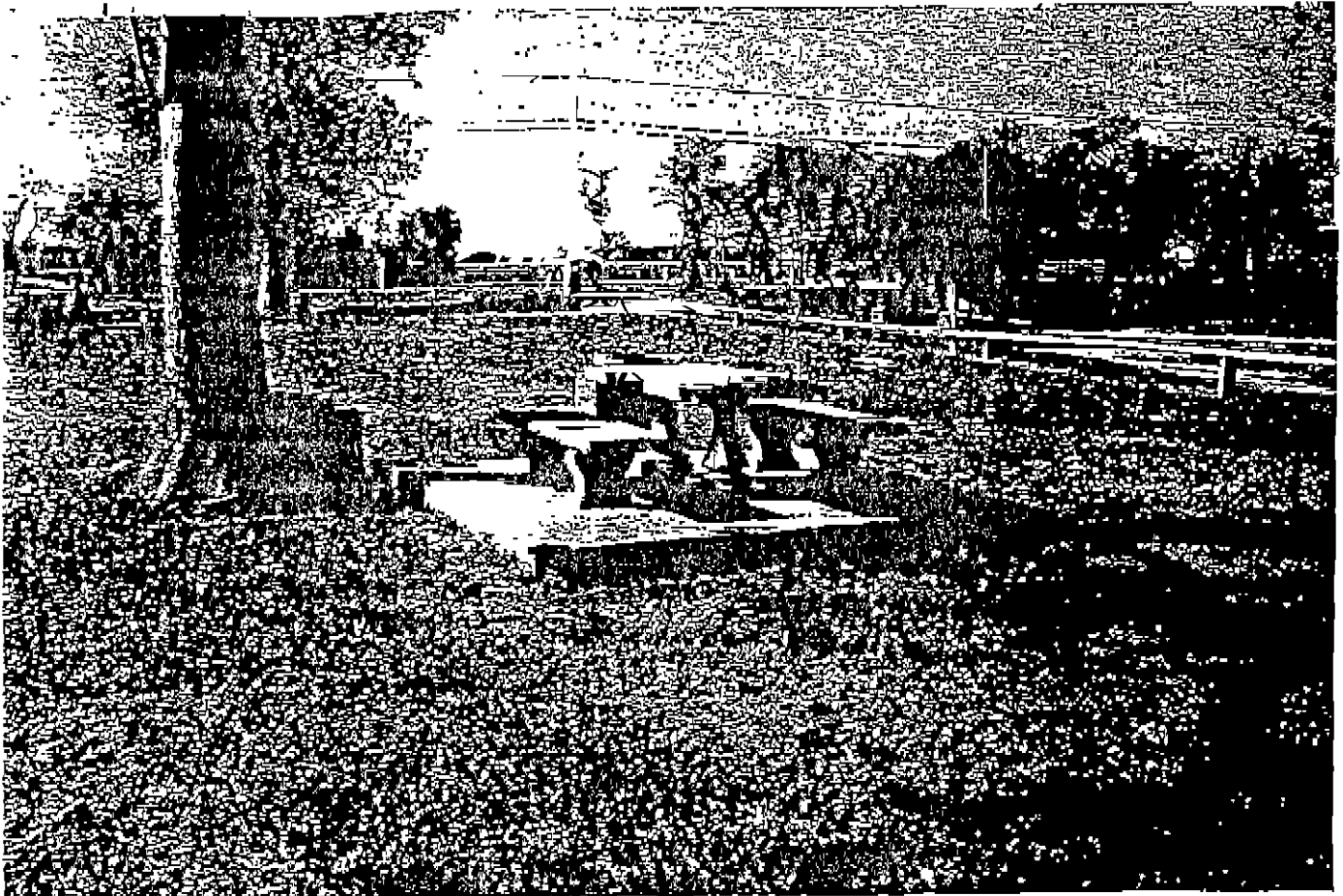
U.S. Army Corps of Engineers  
 Property Lease Map  
**BONNET CARRE SPILLWAY**  
**RECREATION AREA**  
 Plan of Recreational Development  
 St. Charles Parish, Louisiana



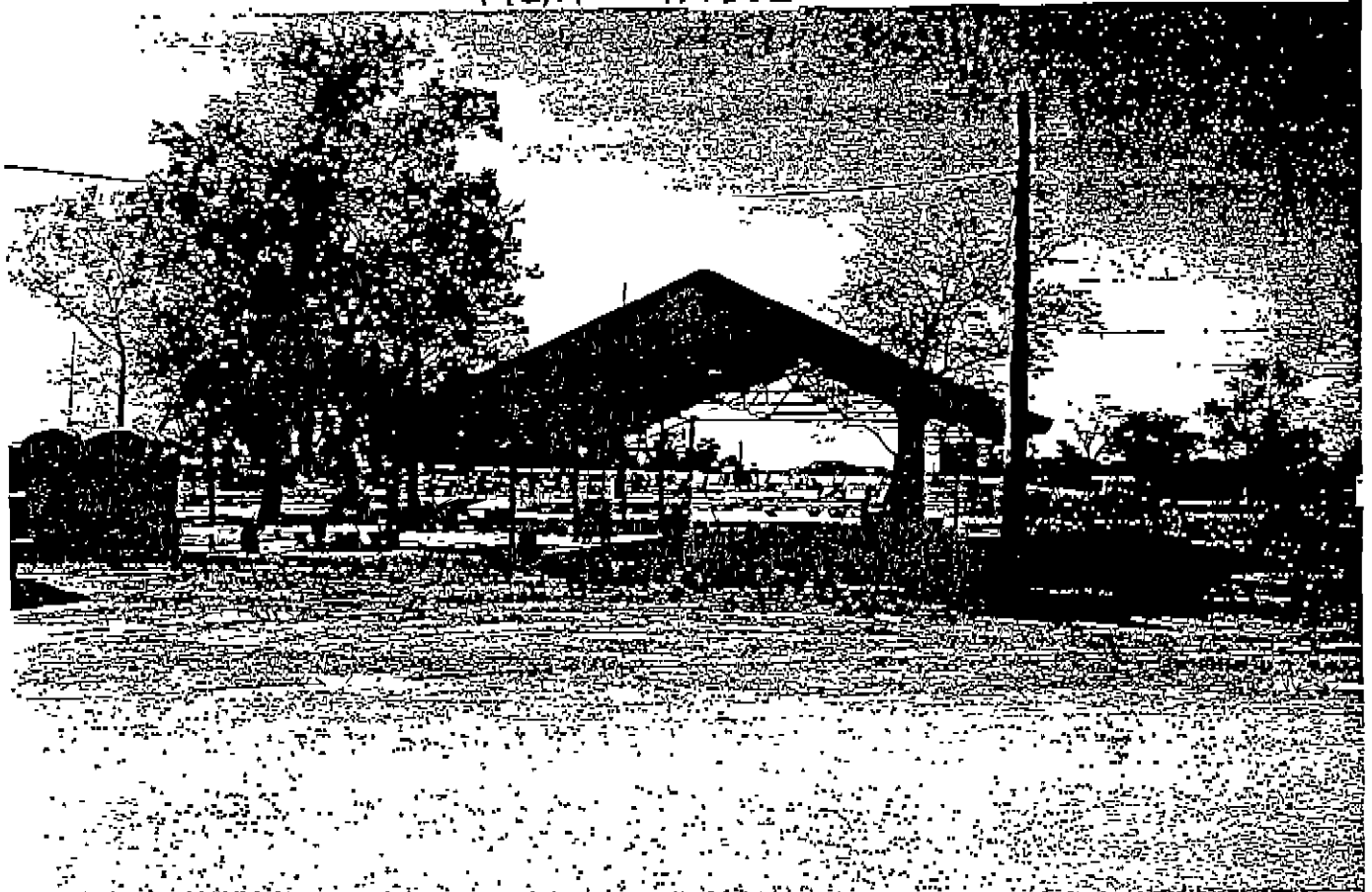
PARKING AREA



BOAT LAUNCH



PICNIC TABLE



PAVILION



Proposed Improvement	Priority	Time Frame (Year)	Est. Costs	Proposed Funding Source(s)*	Location (on, partially on, or off leased area)
Restroom Facility	1	2003*	\$40,000	Grant	Pavilion - Boat Launch
Mountain Bike Trail	2	2003		see below	Hwy 61 to Lake
Nature Trail	3	2003		see below	Hwy 61 to Lake
Equestrian Area	4	2003		see below	Hwy 61 to Lake
Playground	5	2004	\$25,000	Grant	Near Pavilion

\*Potential sources include: St. Charles Parish Recreation Budget, Federal Grants Programs, Corps Funds through the Challenge Cost-Share Program, Volunteer Efforts, Concession Revenues, Special Event Revenues, and Donated Funds

## **ENVIRONMENTAL BASELINE STUDY**

**Proposed Lease No. DACW29-1-03-02, to  
St. Charles Parish Department of Parks and Recreation,  
Within the Bonnet Carre Spillway Project,  
St. Charles Parish, Louisiana**

### **INTRODUCTION**

The U.S. Army Corps of Engineers has prepared this Environmental Baseline Study (EBS) to document existing environmental conditions on a portion of Corps fee-owned property within the Bonnet Carre Spillway, in St. Charles Parish, Louisiana, which requires a lease instrument. This EBS has been prepared prior to granting a ten-year lease to St. Charles Parish Department of Parks and Recreation for the installation, operation and maintenance of picnic shelters, restrooms, boat docks, and camping areas. The proposed activities are located in Sections 21 and 22, Township 12 South, Range 7 East.

### **PROJECT DESCRIPTION**

The Bonnet Carre Spillway, located approximately 30 miles above New Orleans, consists of two basic components: a control structure along the east bank of the Mississippi River and a floodway which conveys the diverted floodwaters to Lake Pontchartrain. The control structure is a manually-controlled concrete weir which stretches for over a mile parallel to the river. The floodway stretches nearly six miles to Lake Pontchartrain and is confined by guide levees to prevent flooding of neighboring developed areas. In addition to its important flood control function, the project's 7,623 acres are the site of diverse and extensive recreational activities.

The proposed action would allow the St. Charles Parish Recreation Department to continue to maintain property within the Bonnet Carre Spillway through grass cutting, clean-up operations, preparing camping permits, facility maintenance, and other improvements with the permission of the Corps of Engineers. Future maintenance would include repairing and improving picnic shelters, boat docks, tables, benches, and fire rings. Other potential activities include improved garbage collection, designation of horse trails, tree planting, bike and nature trails, and other recreational improvements.

### **ENVIRONMENTAL SETTING**

The property area is in Sections 21 and 22, Township 12 South, Range 7 East, within the Bonnet Carre Spillway, which is located on the left descending bank of the Mississippi River, in St. Charles Parish, La. The area was described in Environmental Assessment #287 and FONSI, dated 18 May 99, and the Bonnet Carre Spillway Master Plan, prepared April 1998. Wetlands

comprise nearly the entire spillway extending from near the 5-foot mean sea level line to Lake Pontchartrain, and are an important habitat for fish and wildlife resources. There are also several large water bodies in the spillway, including the Upper and Lower Borrow Canals, that are currently utilized for many recreational activities.

Plant communities in the Bonnet Carre Spillway include bottomland hardwood forests, including baldcypress-tupelogum swamps, aquatics in canals and ponds, and disturbed areas. The land slopes from near the Mississippi River with elevations of 10-12 feet NGVD to Lake Pontchartrain with elevations of 1-2 feet NGVD. These elevations dictate forest types in the undisturbed wooded zones. Dry bottomland hardwoods are located near the river and grade into baldcypress-tupelogum swamps. The forested areas were logged in the past and second-growth timber covers these arboreal areas. The spillway acts as a catchbasin during operations when floodwaters are released from the Mississippi River into Lake Pontchartrain.

## SOILS

Soils in the Bonnet Carre Spillway are derived from alluvial deposits and organic matter. Swamp soils consist of soft to very soft organic clays with layers of silt and peat, wood and roots, and high water content. Such soils usually support tree growth. Marsh soils, consisting of soft to very soft organic clays of high water content and layers of silt and peat, support grass and sedge growth. Natural levee soils derived from recent Mississippi River deposits consist of stiff to very stiff oxidized clays with layers of silts, silty sands, and sands of low water content. The Convent-Commerce soil series, widespread within the project area, consists of level to gently undulating, poorly drained soils that have a loamy surface and subsurface layer, or have a loamy or clayey surface layer and a clayey subsoil.

## LAND USE

### Existing General Conditions

The spillway has a variety of ecological zones including open grasslands, sand hauling areas, wetlands, forested areas, and ponded water. These public areas and waters provide resources for traditional recreational use such as picnicking, camping, crawfishing, crabbing, fishing, boating, water-skiing, and hunting. They also provide ample areas for more specialized activities that are precluded elsewhere in the region such as dirt bikes and ATV's, retriever dog trials, model airplane flying competitions, survival exercises, and outdoor music festivals.

The spillway has two boat launching sites that provide access into the interior borrow canals and into western Lake Pontchartrain where boating access is somewhat limited. One of these boat launches is located within the St. Charles Parish 26-acre leased recreation site. Boats launching from this site primarily use the upper and lower borrow canals, and the cross-cut canal. Also existing at this site are fishing docks, a picnic pavilion, scattered picnic tables, primitive camping, and two portable toilets.

The other boat launch in the spillway is located under the I-10 along the lower guide levee. Boats launching from this site use the I-10 construction access canal and a poorly marked channel to gain access into Lake Pontchartrain. Located at the lake end of the lower guide levee is a fishing jetty extending 300 feet into Lake Pontchartrain. This facility was developed by St. Charles Parish and is incorporated into the initial development phase of the master plan.

### Land Use History

Prehistoric human settlements in the vicinity of the Bonnet Carre Spillway are located near Lake Pontchartrain; the earliest sites date to the Tchefuncte culture (ca. 500 B.C.-A.D. 100). All such early sites have been deeply buried through subsidence and deposition and were discovered in the course of dredging and construction activities.

Historic settlement and agriculture was concentrated along the natural levees of the Mississippi River; by 1770, plantations were established along the east bank of the river in St. Charles Parish. Indigo, cotton, and sugar cane were the principal cash crops in the 18<sup>th</sup> and early 19<sup>th</sup> centuries, with sugar cane dominating during the late 19<sup>th</sup> and into the mid-20<sup>th</sup> century. Agricultural fields were located on the better-drained land near the river and rarely extended more than one-half mile away from the river. Forested swamps, including the site of the present-day recreation area, were left fallow except for timber extraction. The commercial timber industry flourished throughout St. Charles Parish from the 1890's to 1918, when cypress stands became severely depleted and the timber industry crashed.

Twentieth century industrial and residential development has supplanted agriculture in the areas flanking the spillway. Shortly after 1914, the New Orleans Refining Company (NORCO), an affiliate of Shell Oil, constructed a refinery and storage tank facility just downstream from the future site of the spillway. The residential community that grew up around the refinery took its name, Norco, from the company acronym. Shell Oil Company took over the Norco Facility in 1928 and opened a chemical plant nearby during the 1950s. Oil fields were discovered upstream and downstream from the spillway during the 1930s and 1940s.

Construction of the Bonnet Carre Spillway was authorized by the Flood Control Act of 1928, in response to the disastrous floods of 1927. Construction of the spillway structure began in 1929 and was completed in 1931. The upper and lower guide levees were completed in 1932, and highway and railroad crossings were fully operational by 1936.

## CULTURAL RESOURCES

### Existing Conditions

The cultural resource inventory of project lands at Bonnet Carre was completed between 1986 and 1991. No cultural resources have been identified within the St. Charles Parish recreation area and the likelihood of undiscovered cultural resources within this backswamp area is minimal.

Two properties within the larger spillway area are listed on the National Register of Historic Places. One of these properties is the Kenner and Kugler Cemeteries Archeological District, comprising two early nineteenth through early twentieth century, African-American burial plots. Buffer zones have been established around the two cemeteries to protect them from sand hauling and borrow activity. The second National Register property is the spillway itself, which is significant as an engineering landmark and for its historical association with flood control on the Lower Mississippi River. Both of the National Register properties are more than one mile away from the St. Charles Parish recreation area.

#### Impacts

No adverse impacts to cultural resources are expected from the proposed activities.

### **HAZARDOUS, TOXIC, AND RADIOACTIVE WASTE**

#### Existing Conditions

The proposed project area is an active recreational area. There are numerous pipelines which transverse the spillway, but all are well marked and maintained. Several pipelines are located within the proposed recreational facility area. Field inspections of the proposed recreational use area were conducted on 1 October 2002 and on 4 December 2002. No obvious signs of HTRW contamination were observed. All facilities and structures within the area were maintained and used for recreational activities. There were no oily sheens on the land or water, chemical odors, impacted vegetation, fish, birds, or animals observed. Sand hauling activities in adjacent areas have not created any HTRW problems.

#### Impacts

Based on the field inspections, it appears that the easement would not result in HTRW contamination. A search of the Right To Know database did not identify the Bonnet Carre Spillway as the source of any incidents of spills or contamination in Louisiana. The operation of pipelines has the potential to release hazardous substances into the surrounding environment if a break occurs during daily operations or extreme events such as tropical storms or hurricanes.

### **POTENTIAL ENVIRONMENTAL CONCERNS**

#### Existing Conditions

The easement area appears to have no obvious evidence of contamination. There was no evidence of oil leaks or other soil contamination in the project vicinity.

## Impacts

Effects from the project activities would be temporary. Based on the unobtrusive site inspections of the area within the proposed easement, it is unlikely that the proposed action will result in the release of toxic substances. No present environmental impact damage was noted in accessible records.

## COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS

In the case of a real property transaction where a categorical exclusion as defined by Appendix A of AR 200-2 applies, the vehicle for the environmental compliance is the preparation of a Record of Environmental Consideration (REC). The REC provides NEPA compliance and is supported by the preparation of a Report of Availability (ROA) addressing other environmental laws, and preparation of an EBS documenting compliance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Land use history of the project area was investigated in support of this EBS, and records at New Orleans District were searched for any information regarding HTRW concerns. There are no Superfund sites within two miles of the proposed work area. The risk of encountering HTRW on this project is low. No adverse impacts to cultural resources are expected.

## SUMMARY OF FINDINGS

A review of existing environmental information for the proposed activity sites and adjacent areas in St. Charles Parish, Louisiana, indicates that no adverse environmental impacts would occur as a result of this easement. Therefore, minimal cumulative environmental effects would result.

## DOCUMENT PREPARATION

This environmental baseline study was prepared by Michael Saucier (Biologist) and Kathy A. McGillis (Archeologist).