

## **Queens Creek Land Management Plan**

### **FERC Project No. 2694**

#### **Purpose and Objectives**

This land management plan provides general policy addressing development within and access to the Queens Creek Reservoir managed and owned by Duke Power, a Division of Duke Energy Corporation, Nantahala Area (referred to herein as “Duke”, “Duke Power” or “DPNA”). It is intended to provide a basis for all company decisions and activities requiring the development of facilities or the use of land lying within the Project Boundary of the Queens Creek Reservoir for the purpose of public access, private access, or other activities. The Project Boundary is defined in paragraph B (1) of the license as all land, to the extent of the Licensee’s interests shown by Exhibit G filed May 16, 2000. The full pool elevation is defined in Article 401 of the license as the normal full operating pool level of 2895.0 feet Mean Sea Level (MSL). The buffer zone is defined in Article 405 of the license as extending to 10 feet vertical above the full operating pool of 2895.0 MSL. Specific objectives of this land management plan are:

1. Comply with the Exhibit E.8.1 report on land management and visual resources filed September 27, 1999 in the application for license and Article 405 of the Queens Creek License issued March 28, 2002.
2. Identify and comply with the standard land use article (Article 408), the joint use article (Form L-12 Article 10) and the Recreation Plan in the FERC license.
3. Provide clear guidance on activities that will and will not be allowed within the Project Boundary of the Queens Creek Reservoir (see Exhibit G (filed on May 16, 2000) of the FERC license that identifies the Project Boundary).
4. Identify the applicable permitting process documents and responsibilities.

#### **Background Information**

The following issues are discussed to provide the background necessary to fully understand the reasoning for the land management plan:

1. Definitions of the four basic types of access:

**Private Access** - Lake access that is restricted to selected individuals according to where they live, where they work, membership in a specific club, etc. Examples include but are not limited to Individual Private Facilities, Common Use Facilities, slips in Commercial/Residential Facilities, slips in marinas developed for private clubs, recreation areas for employees of a specific company, slips for non-transient campgrounds (*i.e. rent for more than 14 consecutive days*), heat exchange coil zones for heat pumps, and private roadways.

**Public Recreational Access** - Lake access that provides for the operation and management of recreational opportunities for the general public that directly support the requirements of Duke's FERC licenses and are not restricted to selected individuals. Examples include but are not limited to Duke-owned public access areas, federal, state, and local parks and recreation areas and True Public Marinas.

**Public Infrastructure Access** - Non-recreational lake access that directly supports regional public infrastructure needs. Examples include but are not limited to county, municipal or utility water intakes and discharges, public roadway and utility line rights-of-way, railroad crossings, boat mooring/launching facilities for emergency response activities and for state and local law enforcement support.

**Business/Industrial Access** - Lake access that directly supports a privately-owned industrial or commercial business, but which has little to no effect on boating. Examples include but are not limited to water intakes and discharges for factories, sand mining operations, certain utility connections, plant/business access roads, and commercial business staging areas.

2. For FERC-licensed reservoirs, access to project lands and waters to meet justified, hydro project-related public recreational needs is a condition of the licensing process. The licensee is responsible for ensuring these needs are met as directed by the FERC. The licensee may choose from a number of options or combinations of options to ensure that the required public recreational facilities are provided including (a) developing and managing the public recreation facilities itself, (b) authorizing others to build and manage the facilities or (c) partnering with resource agencies, state and local governments, non-governmental organizations or commercial operators to build and manage the facilities.

3. The Queens Creek Reservoir was built for the purpose of power production and power production remains its primary purpose.
4. Private access and many types of business/industrial access are not required to meet any current FERC licensing conditions, although FERC licenses do allow for controlled private and business/industrial access if the licensee so chooses. Nearly all FERC licenses include a standard land use article that provides guidance and limited approval authority to the licensee for dealing with all types of lake use requests. This standard land use article requires that positive measures (e.g. permitting programs) exist to control lake access to protect the scenic, environmental and public recreational values of the project. The standard land use article also allows the licensee to require payment of fees to recover the licensee's costs related to the permitting programs.
5. Many FERC licenses also include a joint use article. This article requires licensees to allow for certain public infrastructure and business/industrial uses of the project that support regional development of the waterway. As noted in the joint use article, the licensee is entitled to compensation for at least the impacts that any such joint uses have on the licensee's business.
6. As the numbers of encroachments increase, the potential for conflicts between power production uses and private and business/industrial uses increase as well as lake management and lake maintenance costs.
7. The Queens Creek Reservoir has relatively little water storage ability and a small boating surface area. Therefore, lake use requests that will consume water or place additional boats on the reservoir must be very closely scrutinized.
8. There are some lake uses that are implicit parts of Duke Power's lake access philosophy and therefore do not require any specific written permission from Duke Power. These implicit uses include:
  - Ingress and egress by adjoining property owners to view the lake or to access Duke Power-approved lake use facilities either for their use or for *facility maintenance* or *facility emergency repair*.
  - Pursuit of any lawful public recreation activity by anyone within the FERC project boundary that does not violate Duke's Public Safety Plan or any other Duke Power directives; create a public nuisance as declared by law enforcement officials; create a public health/safety hazard or otherwise endanger people or trespass on or

damage property. Exceptions are any public recreation activity specifically identified as not being allowed or that requires Duke Power's written approval.

▪ Placement and maintenance of signage and other minor devices that are not part of Duke's Public Safety Plan (e.g. navigation channel markers, buoys marking submerged natural hazards, water quality monitoring buoys, etc.) and any other lawful activity necessary for the execution of routine duties by any federal, state or local agency or group directly involved in emergency response, law enforcement, environmental management, public recreation management, public health management, lake user education or other lake management support functions.

## **DEVELOPMENT POLICY:**

### **A. General**

No land disturbing activities, vegetation cutting or alteration, or construction shall take place within the Project Boundary, including the buffer zone, unless specifically provided for through consultation with the wildlife resource agencies as part of any non-project use request based upon the standard land use article (Article 408) of the Queens Creek License.

### **B. Private Access**

Except as noted herein, Duke Power will not authorize any additional (i.e. new) private access to the Queens Creek Project. Any other private access that is listed as an exception below must be authorized in writing by Duke's Lake Management Office prior to beginning any activity within or crossing the FERC Project boundary or on property owned by Duke Power. Duke Power does not have a Shoreline Management Plan in place for the Queens Creek Project, although a shoreline management program including permitting guidelines will be developed during the process of applying for new licenses for the other small Nantahala Area projects and implemented July 1, 2003. Duke Power will not authorize any land disturbing activities within the Project boundary that support new private access. Existing private access must not conflict with any current, FERC-approved recreation plan. (Note – For the Queens Creek Project, the Recreation Plan was filed with the FERC on November 5, 2002 as required by the new license order, but FERC approval is still pending).

**Exceptions:**

- a. DPNA has the flexibility to comply with any previous NP&L agreements.  
*Note: DPNA is not aware of any previous written agreements providing access to or across the Queens Creek Project Boundary. However, should a written agreement exist between an entity and DPNA or its predecessor NP&L, then DPNA may be obligated to the terms and conditions of such an agreement.*
- b. Pre-existing encroachments within the FERC Project boundary or on any Duke-owned peripheral strips may be allowed to remain or even be rebuilt at the discretion of DPNA. In any case, land disturbances within the FERC Project boundary will be limited to only those absolutely necessary to maintain or rebuild the existing facility.

**C. Business/Industrial Access**

Additional business/industrial access to the Queens Creek Project may be allowed on a case-by-case basis. The applicable standard land use article (i.e. Article 408) and the applicable joint use article (i.e. Form L-12, Article 10) in the license provide the licensee with limited approval authority and guidance for reviewing proposed business/industrial uses of Project lands and waters. All new business/industrial access will be reviewed by the appropriate resource management agencies in accordance with the standard land use article. Land disturbing activities associated with business/industrial access will be reviewed on a case-by-case basis and limited to that absolutely necessary to provide access to the reservoir. Except for implicit uses (i.e. those uses of Project lands and waters or Duke-owned property that the company allows without requiring written authorization), all business/industrial uses of the lake must be authorized in writing by Duke's Lake Management Office prior to beginning any activity or activating a conveyance within the FERC Project boundary or on property owned by Duke. Business/industrial access must not conflict with any recreation area upgrades proposed for the Project or with any current, FERC-approved recreation plan (Note – For the

Queens Creek Project, the Recreation Plan was filed with the FERC on November 5, 2002 as required by the new license order, but FERC approval is still pending).

**D. Public Recreation Access**

Duke Power will authorize additional public recreation access to the Queens Creek Project as required to meet FERC licensing commitments. Except for implicit uses, all public recreation access must be authorized in writing by Duke's Lake Management Office prior to beginning any activity within the FERC Project boundary or on property owned by Duke Power. Land disturbing activities associated with public recreation access will be reviewed on a case-by-case basis and limited to that absolutely necessary to provide access to the reservoir. Public recreation access must not conflict with any recreation area upgrades proposed for the Project and must not be inconsistent with any current FERC-approved recreation plan. (Note – For the Queens Creek Project, the Recreation Plan was filed with the FERC on November 5, 2002 as required by the new license order, but FERC approval is still pending). Public recreation access must also be reviewed according to the standard land use article (Article 408).

**E. Public Infrastructure Access**

Except as noted herein, additional public infrastructure access to the Queens Creek Project is allowed. The standard land use article (Article 408) and the applicable joint use article (i.e. Form L-12, Article 10) in the license provides the licensee with limited approval authority and guidance for reviewing proposed public infrastructure uses of Project lands and waters. Except for implicit uses, all public infrastructure uses of the lake must be authorized in writing by Duke's Lake Management Office prior to beginning any activity or activating a conveyance within the FERC Project boundary or on property owned by Duke Power. Land disturbing activities associated with public infrastructure access will be reviewed on a case-by-case basis and limited to that absolutely necessary to provide access to the reservoir. Public infrastructure access must not conflict with any recreation area upgrades proposed for the Project or with any current, FERC-approved recreation plan. (Note – For the Queens Creek Project, the

Recreation Plan was filed with the FERC on November 5, 2002 as required by the new license order, but FERC approval is still pending).

**F. Lake Use Permitting and Management Responsibilities**

1. Duke Power's Lake Management Office is responsible for all lake use permitting approvals and shoreline management planning (including approval of any hydro station lake structures/activities), and managing the Duke Power public access areas (including any island/access area leases). (Note – routine maintenance of the existing public access area at the Queens Creek Project is performed by the North Carolina Wildlife Resources Commission).
  
2. Duke's Lake Management Office will coordinate the development of any leases, easements or deeds necessary to convey interests in Duke-owned islands or public recreation areas or any FERC hydro project lands in accordance with established lake use permitting programs. The Duke Energy Law Department will review any proposed lease, easement or deed conveyance. The managers of Hydro Generation and Hydro Licensing for Duke Power will also review and must approve any leases, easements or deeds involving (a) water withdrawals from or effluent discharges to hydro project waters, (b) use of any land on or adjoining a water retaining structure or hydropower generating station or (c) islands or public recreation areas. The Duke Energy Real Estate Department will execute all such leases, easements or deed conveyances. After document execution, Duke's Lake Management Office will have compliance oversight and lease management responsibility.