

## **ADOPTION AND FINDING OF NO SIGNIFICANT IMPACT TENNESSEE VALLEY AUTHORITY**

**BILLY CHRISTOPHER, D/B/A RIVER FRONT DEVELOPMENT LLC  
PROPOSED DREDGING, COMMUNITY DOCK, BANK STABILIZATION, AND BOAT RAMP  
AT MILE 7.3, RIGHT BANK, ELK RIVER, WHEELER RESERVOIR  
LIMESTONE COUNTY, ALABAMA**

### **Proposed Action and Need**

Billy Christopher, doing business as River Front Development LLC (applicant), proposes to construct a community dock, boat ramp, and courtesy dock at Mile 7.3, right bank of the Elk River on Wheeler Reservoir, Limestone County, Alabama. The actions are being proposed to provide water access and enhanced recreation opportunity in conjunction with a proposed land-based residential development on private property. Related activities include dredging a portion of the reservoir bottom, bank stabilization, and construction of land-based facilities including a boardwalk, a dry-stack storage building, a small inland lake, parking, roads, and residential lots. Because of their location above elevation 560 mean sea level (msl), construction and operation of the inland lake, dry-stack storage building, parking area, roads, and residential development do not require Tennessee Valley Authority (TVA) approval. Similarly, two access road culverts, mentioned below, would be located in ephemeral drainages and, therefore, do not need to be approved by TVA.

The proposed community docks, dredging, boardwalk, boat ramp, courtesy dock, and bank stabilization require approval by TVA under Section 26a of the *TVA Act* and approval by the U.S. Army Corps of Engineers (Corps) under Section 10 of the *Rivers and Harbors Act* and Section 404 of the *Clean Water Act* (CWA). Because the applicant owns the back-lying land, has the necessary landrights, and has presented his proposal for necessary approval, TVA and the Corps under their respective authorities must review the project and make a decision to approve or deny the application. TVA land lies below the normal summer pool elevation of Wheeler Reservoir and up to elevation 556.3 msl at the site; however, no TVA land action is involved.

TVA cooperated with the Corps in the preparation of the attached environmental assessment (EA) of the proposed action, which was completed in November 2009. Because of the connection between the upland and shoreline development, the EA scope includes the affected shoreline and the adjoining area of the residential development. The Corps' EA is incorporated herein by reference.

### **Alternatives**

The following three alternatives were evaluated in the EA: (A) No Action, (B) Issuance of Approval for the Applicant's Proposed Action, and (C) Issuance of Approval for the Applicant's Proposed Action With Special Conditions or Mitigation. Alternative C, involving modifications to the originally proposed action and special conditions and mitigation, was developed during the environmental review process to minimize anticipated environmental effects of the proposed action.

Under the No Action Alternative, the dredge, community dock, and related shoreline alteration approvals would be denied or the applicant would elect to modify the proposal to avoid triggering federal jurisdiction, and the proposed work requiring TVA approval would not be performed. Under the No Action Alternative, the applicant could develop the uplands, outside TVA's jurisdiction, for residential, commercial, or other purposes if such development complies with applicable state or local laws or regulations.

Under Action Alternatives B and C, TVA would issue Section 26a approval for the proposed facilities and shoreline alterations. The Action Alternatives differ in the number of special conditions and mitigation measures imposed to reduce potential environmental impacts.

Under Alternative B, the proposed dredging site would measure 90 feet wide by 500 feet long by 7 feet deep and would remove roughly 20,000 cubic yards of material. No dredging would occur within 25 feet of the normal summer pool elevation 556.0 msl. The dredged material would be removed from the reservoir via backhoe and truck, where possible, and via suction drill if needed. Dredged material would be transported to an upland-contained holding pond and placed on private land above elevation 560.0 msl. Return water would be filtered prior to its runoff from the pond. The community dock would include one 10-foot by 30-foot covered floating slip and 16 20-foot by 30-foot covered floating slips. The slips would be for use by residential lot owners in the upland residential development. A 6-foot-wide by 910-foot-long boardwalk would be built from the docks parallel to the shoreline and leading to a private boat ramp. The docks and boardwalk would be secured with spud poles. The boat ramp, 18-foot-wide by 80-foot-long with attached 8-foot-wide by 43-foot-long floating courtesy dock, would be built beside a dry storage boat launch. The launch would require 150 cubic yards of fill. Riprap stone would be placed along 600 feet of shoreline for bank stabilization.

The proposed upland facilities, under Alternative B, would include a 100-foot-wide by 200-foot-long parking lot, a 200-slip dry storage building, 33 developed lots, and two culverts in drainages along needed access roads off of Richter Road. Altogether, 17 community dock wet slips, with a capacity to accommodate 33 boats, would be constructed. The dry stack facility would allow storage of up to 200 boats. The dry-stack storage building and associated parking would be operated commercially and would be made available to the general public via rental agreements. The boat launching ramp and courtesy dock would be shared by the commercial operation and the residents of the development.

Under Alternative C, the amount of dredge material would be reduced to roughly 7,000 cubic yards as opposed to 20,000 cubic yards under Alternative B. The size of the dredge area would also be reduced from 500 feet long by 90 feet wide to 335 feet long by 90 feet wide. No riprap would be placed in the back of the embayment to avoid impacts to the emergent wetland area. Riprap placed on either side of the proposed boat ramp would be limited to the minimum needed to prevent erosion and undercutting. Total length of riprap, including placement along both sides of the ramp, would be reduced to 320 feet. The proposed boardwalk to access the community dock would be moved landward and constructed immediately adjacent to the normal summer pool shoreline. It would be a fixed structure with a floor elevation a minimum of 2 feet above normal summer pool elevation 556.0 msl. Signage would be placed along the boardwalk indicating that no mooring of vessels to the structure is permitted. To the extent practicable, dredging and bank stabilization (riprap) activities and construction of the community dock, boardwalk, and boat ramp would be conducted so that any effects on wetlands, terrestrial ecology (rare plant), and water quality would be minimized. The proposed dry stack and associated parking area would be placed above elevation 560 msl. Measures to maintain

structural integrity, shoreline stability, and navigational safety would also be included. Alternative C is TVA's Preferred Alternative.

### **Impacts Assessment**

Under Alternative A, the No Action Alternative, the applicant could modify his project so that all the development would affect only his private upland property outside (above) the limits of either the Corps' or TVA's jurisdiction; therefore, no federal approvals would be required. In this instance, there would be no requirement to avoid or mitigate project-related effects on state-listed as threatened or endangered plants. Alternative A could also be brought about if the application for shoreline structures and alterations requiring the Corps' and TVA's approvals were denied by the agencies or withdrawn by the applicant. The applicant has indicated that the upland portion of the project would not occur without the proposed shoreline structures and alterations; therefore, there would likely be no effects on any evaluated resources caused by either the Corps' or TVA's denial of approval or the applicant's withdrawal of his application.

Under Alternatives B and C, the Applicant's Proposed Action and the Applicant's Proposed Action With Special Conditions or Mitigation, effects on water quality, wetlands, habitat for fish and aquatic organisms, wildlife habitat, designated natural areas, water-related recreation, aesthetics, and navigation and safety would be minor and insignificant, but without mitigation, the impacts under Alternative B would be greater than under Alternative C. Effects on flood control, traffic/transportation patterns, land use, air quality, noise, economics, environmental justice, and private property would not occur or would be minor and insignificant. During the recreational boating season, an increase in boating activity and usage would occur on this part of the reservoir under Alternatives B and C. The increased contribution of boaters from the community dock and dry-stack storage facility is expected to be small and achieved gradually. Therefore, the increased water-related recreational boating demand and boating use would not significantly affect recreational opportunities; boating and navigation safety would not be reduced. Under Alternatives B and C, with the use of appropriate best management practices (BMPs), including the temporary installation of silt curtains during dredging, impacts from the proposal on water quality and habitat for fish and aquatic organisms would be minor and insignificant.

The applicant applied for water quality certification (WQC) from the Alabama Department of Environmental Management (ADEM), but such certification has not yet been issued. In accordance with the CWA, TVA would not issue its shoreline development approval until the WQC is issued to the applicant by ADEM. See Section 4.4 in the attached EA. All dredged spoil material would be disposed of above the 500-year floodplain and the project would not impact flood control; therefore, the proposed actions are consistent with Executive Order 11988 (Floodplain Management). In accordance with Executive Order 11990 (Protection of Wetlands), the applicant reduced the scale of the proposed shoreline alterations under Alternative C, and the loss of a small amount of a special aquatic site (wetland) would be minimal in light of the amount of similar habitat in the lower Elk River area and on Wheeler Reservoir.

Under Alternatives B and C, TVA determined that no federally listed plant or animal species would be affected by the proposed actions. In response to the project's Joint Public Notice (JPN), by e-mail dated October 16, 2008, the U.S. Fish and Wildlife Service (USFWS) stated that no significant adverse effects on fish and wildlife resources are expected to result from this project. The USFWS contacted TVA on September 29, 2009, and indicated that its prior comments would suffice for its review of the draft EA (DEA). This evidences that TVA's compliance with requirements under Section 7 of the *Endangered Species Act of 1973*, as amended, is fulfilled. TVA would work with the applicant during project construction to minimize

the loss of the number of individual plants of Allegheny-spurge, a species of conservation concern in Alabama, and, if practicable, to relocate plants that would otherwise have been destroyed (see Mitigation and Special Commitments below and Section 4.4 in the attached EA).

No archaeological sites or historic structures listed or eligible for listing in the National Register of Historic Places (NRHP) would be affected by the undertaking. By letter dated April 2, 2009, the Alabama Historical Commission (AHC), State Historic Preservation Officer (Alabama SHPO), concurred with TVA and the Corps that no properties listed or eligible for listing in the NRHP would be affected by this undertaking. By letter dated September 16, 2009, the Alabama SHPO indicated continued concurrence with the project activities provided the scope of work remains the same (see Appendices F and G in the attached EA).

Under Alternative C, special permit conditions included in Section 4.4 would be adhered to so that project-related impacts would be further reduced.

### **Public and Intergovernmental Review**

On September 11, 2008, the Corps and TVA issued JPN No. 08-19 to advertise the River Front Development LLC proposal. Of the 53 written responses, 50 individuals stated opposition to the project and 23 requested a public hearing be held. One federal and two state agencies provided comments. These agencies included the USFWS, AHC, and Alabama Department of Conservation and Natural Resources (ADCNR). ADCNR indicated that the project should not result in loss of stream or wetland functions, included suggested use of BMPs, and encouraged strict adherence to state water quality standards. After receiving a copy of the JPN, ADEM advised the applicant by letter dated September 17, 2008, that he should apply for WQC for the originally proposed project (see water quality in Section 3.2 and Section 4.4 in the attached EA).

On July 28, 2009, TVA released the DEA on compact disc to 19 individuals including representatives of various federal, state, and local agencies, and political representatives. Postcard notifications were forwarded to 48 individuals who provided written comments on the JPN. The DEA was also posted on the TVA Web site and made available at public libraries in Athens, Rogersville, and Killen, Alabama. TVA initially requested that all comments be submitted by August 31, 2009. At the request of Congressional representatives, the comment period on the DEA was extended through September 14, 2009. In response to review of the DEA, 84 comments were received from private citizens, interest groups, two state agencies, and one federal agency. No additional comments were received from ADCNR. See discussion of agencies' final comments in Impacts Assessment above and comments on the DEA in Chapter 2 of the attached EA for a brief summary of the public's sentiments. TVA reviewed all of the comments, reexamined the proposal in light of them, revisited the site, and revised the final EA accordingly to take these comments into account. All relevant issues raised during this public involvement process have been addressed in the final EA.

In its statement of findings and finding of no significant impact, the Corps denied a request for a public hearing after deciding that a hearing would not likely provide any additional information bearing on the decision to be made. TVA concurs with this decision.

### **Mitigation and Special Commitments**

In addition to the requirements of any necessary permits and the General and Standard Conditions contained in the TVA Section 26a approval, the following mitigation measures would be required by TVA to further reduce potential impacts. These measures would be included as conditions of the Section 26a approval.

- The applicant must install and maintain adequate safety lights, reflectors, and/or signals that would allow the boating public to recognize the community dock's water-based structures between dusk and dawn. This shall be coordinated with the Alabama Marine Police Division.
- To prevent the spread or introduction of invasive plants, all the applicant's equipment used on site will be cleaned by removing any soil, seeds, or vegetation adhering to tires, digging implements, or any other surface of vehicles or machinery that enter the site. Disturbed areas will be revegetated with native or noninvasive plant species. Clean and weed-free quarried shot rock will be used for bank stabilization.
- Upon advance notification from the applicant, TVA will work with the applicant to minimize the number of individual Allegheny-spurge (plants) destroyed during project construction and, if practicable, relocate plants that would otherwise be destroyed.
- The applicant will notify TVA prior to initiation of construction of shoreline alterations so as to provide TVA staff an opportunity to visit the site to examine placement of the structures.
- Site lighting associated with the proposed community water use facilities shall be equipped with full cutoff features that limit the amount of waste light produced at a vertical angle of 80 degrees above the lowest light emitting portion of the luminaire.
- Upon completion of the construction activities, the applicant will provide a written report to the manager of the Pickwick-Wheeler Watershed Team, Tennessee Valley Authority, P.O. Box 1010, SB 1H, Muscle Shoals, Alabama 35622-1010, verifying the completion of these measures.

Additionally, in accordance with Section 401 of the federal CWA, TVA will not issue its approval for the project until the applicant provides evidence that he has obtained the required WQC from ADEM indicating that state water quality standards would not be violated.

**Conclusion and Findings**

TVA has independently reviewed the Corps' EA and found it to be adequate. TVA is therefore adopting the Corps' EA. Based on the findings in the EA, TVA concludes that the Section 26a approval of the proposed dredging, community dock, boardwalk, bank stabilization, boat ramp, and courtesy dock as proposed under Alternative C would not be a major federal action significantly affecting the quality of the environment. Accordingly, an environmental impact statement is not required.

*Linda B. Shipp*

11-30-09

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Date Signed