APPENDIX B

Notice #2

Public Notice 05-73 (September 19, 2005)
and
Agency Comments

File No. 2002-00017

Laurel Marina and Yacht Club, Inc.

South Fork Holston River Mile 56.5, Sullivan County, TN

Public Notice

US Army Corps of Engineers.

Nashville District

05-73 Date: September 19, 2005

Application No. 2002-00017

Please address all comments to:
Nashville District Corps of Engineers, Regulatory Branch
3701 Bell Road, Nashville, TN 37214

JOINT PUBLIC NOTICE
US ARMY CORPS OF ENGINEERS
AND
TENNESSEE VALLEY AUTHORITY

SUBJECT: **Readvertisement** of Proposed Commercial Marina Expansion, Excavation, and Fill, Laurel Marina and Yacht Club, Inc., South Fork Holston River Mile 56.5 R, South Holston Reservoir, in Sullivan County, Tennessee

ATTENTION TO COMMENTERS: This proposal is being readvertised due to a significant change in the proposal that may affect the public's view of the proposal. Previous comments on proposal PN 05-14 will not be considered due to the significant change proposed by the applicant. If you have concerns that you wish to express after reviewing this revised proposal, you will need to submit your written comments to the above address during the comment period.

TO ALL CONCERNED: The application described below has been submitted for a Department of the Army Permit pursuant to **Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (33 U.S.C. 1344)** and a Tennessee Valley Authority (TVA) permit pursuant to **Section 26a of the TVA Act (16 USC 831y-1).** Before a permit can be issued, certification must be provided by the State of Tennessee, Division of Water Pollution Control (TDEC), pursuant to Section 401(a)(1) of the CWA, that applicable water quality standards will not be violated. The applicant has applied separately to TDEC for the required certification.

APPLICANT: Dalie T. Thomas
Laurel Marina and Yacht Club, Inc.
191 Shady Ford Road
Bristol, TN 37620

LOCATION: Mile 56.5, South Fork Holston River, in Sullivan County, TN, South Holston Lake, Coordinates: N 36-33-27, W 82-3-14 (Holston Valley USGS Quadrangle)

BACKGROUND: Public Notice 02-12 was issued April 19, 2002, for the applicant's original proposal. A joint public hearing was held by TVA and U.S. Forest Service in response to

comments received during the Public Notice comment period. Mr. Thomas withdrew his request on July 31, 2003, resulting from public land usage issues with the U.S. Forest Service. A second Public Notice 05-14 (**http://www.lrn.usace.army.mil/cof/proposed_activities.htm**) was issued on March 16, 2005, advertising the proposed work listed below. This third notice is being issued to advise the general public that the applicant has reduced the proposed number of slips by 82 slips.

DESCRIPTION: The applicant is proposing to expand the existing commercial harbor limits and marina facilities at Laurel Marina and Yacht Club on South Fork Holston Reservoir.

a. The applicant proposes the construction of floating boat slips (181 boat slips and 30 houseboats slips). The size and configuration of the proposed docks relative to the shoreline at this location is included in plans accompanying this notice. Slips would be constructed of metal framing and wood decking. Covered slips would have metal roofing. Flotation would consist of foam filled polystyrene. Structure 4 would occur outside the applicant's current authorized harbor limits.

b. In order to accommodate parking for the new facilities, the applicant proposes to place approximately 58,284 cubic yards (CY) of fill material below Normal Summer Pool (NSP) Elevation 1729.0 in area 1. This material would come from excavation conducted below elevation 1747 at grading areas 1, 2, and 3 as shown in the attached plans. Additional fill of 20,886 cubic yards would be placed between NSP elevation of 1729.0 and elevation 1747.0 for the proposed parking area. The fill placed above NSP would not require Department of the Army authorization. To mitigate for the shallow water habitat loss at the proposed fill site, the applicant proposes to construct various types of fish habitat structures. Excavation from grading areas 2 and 3 would create additional shallow water habitat.

c. The Tennessee Valley Authority (TVA) would evaluate the applicant's request for the expansion of authorized harbor limits for the marina and associated facilities under Section 26a of the TVA act.

The applicant has reduced the requested number of slips associated with this proposal. Listed below are the original request and the reduced (proposed) number of slips.

Slips:	**Original**	**Current**	**Change**
Pleasure Boats	213	181	-32
Large House Boats	66	30	-36
Small House/Sail Boats	14	0	-14
Total	**293**	**211**	**-82**

Plans of the revised proposed work are attached to this notice.

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b)(1) of the CWA (40 CFR Part 230). A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

An Environmental Assessment will be prepared by this office prior to a final decision concerning issuance or denial of the requested Department of the Army Permit.

The National Register of Historic Places has been consulted and no properties listed in or eligible for the National Register are known which would be affected by the proposed work. An archaeological survey conducted by the U. S. Forest Service for the original proposal identified one historic site that is within the area of potential effect of the current proposal. This site is regarded as potentially eligible for listing in the National Register of Historic Places pending further evaluation. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. Copies of this notice are being sent to the office of the State Historic Preservation Officer.

Based on available information, the proposed work will not destroy or endanger any Federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act. Therefore, we have reached a no effect determination and initiation of

formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

Other federal, state, and/or local approvals required for the proposed work are as follows:

a. Tennessee Valley Authority (TVA) approval under Section 26a of the TVA Act. In addition to other provisions of its approval, TVA would require the applicant to employ best management practices to control erosion and sedimentation, as necessary, to prevent adverse aquatic impacts. TVA would also review and expansion of harbor limits.

b. Water quality certification from the State Tennessee, in accordance with Section 401(a)(1) of the Clean Water Act for the placement of fill material below El. 1729.

c. The U.S. Forest Service has determined that a permit is not required for the applicant's revised request.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

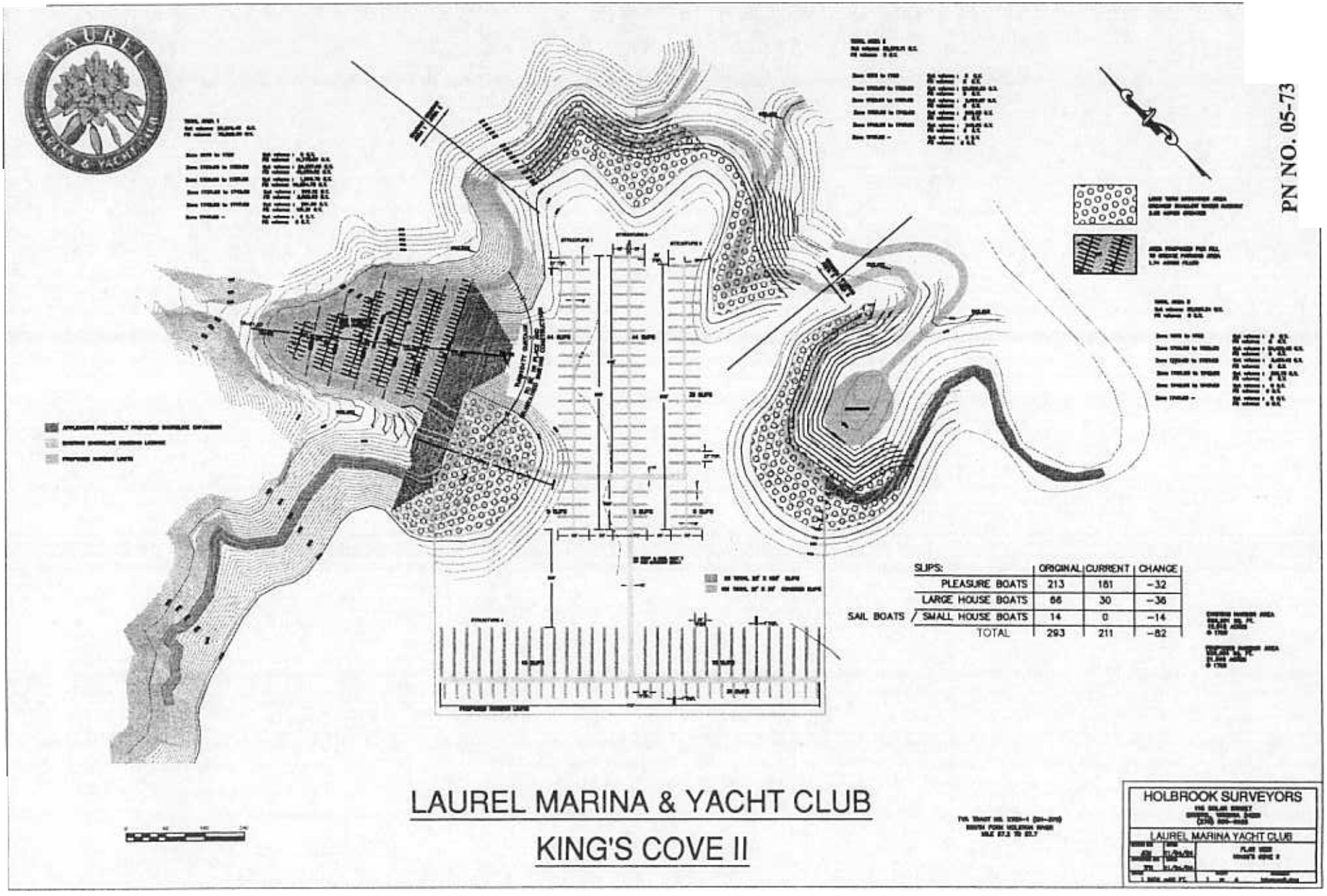
Written statements received in this office on or before October 19, 2005, will become a part of the record and will be considered in the determination. Any response to this notice should be directed to the Regulatory Branch, Attention: Carl Olsen, at the above address, telephone (615) 369-7513. It is not necessary to comment separately to TVA since copies of all comments will be sent to that agency and will become part of its record on the proposal. However, if comments are sent to TVA, they should be mailed to:

Ms. Anne Patrick
TVA
106 Tri-Cities Business Park Drive
Gray, Tennessee 37615
423-467-3809 awpatrick@tva.gov

USGS
HOLSTON VALLEY, TENN.

PN 05-73

FILE NO. 2003-00017



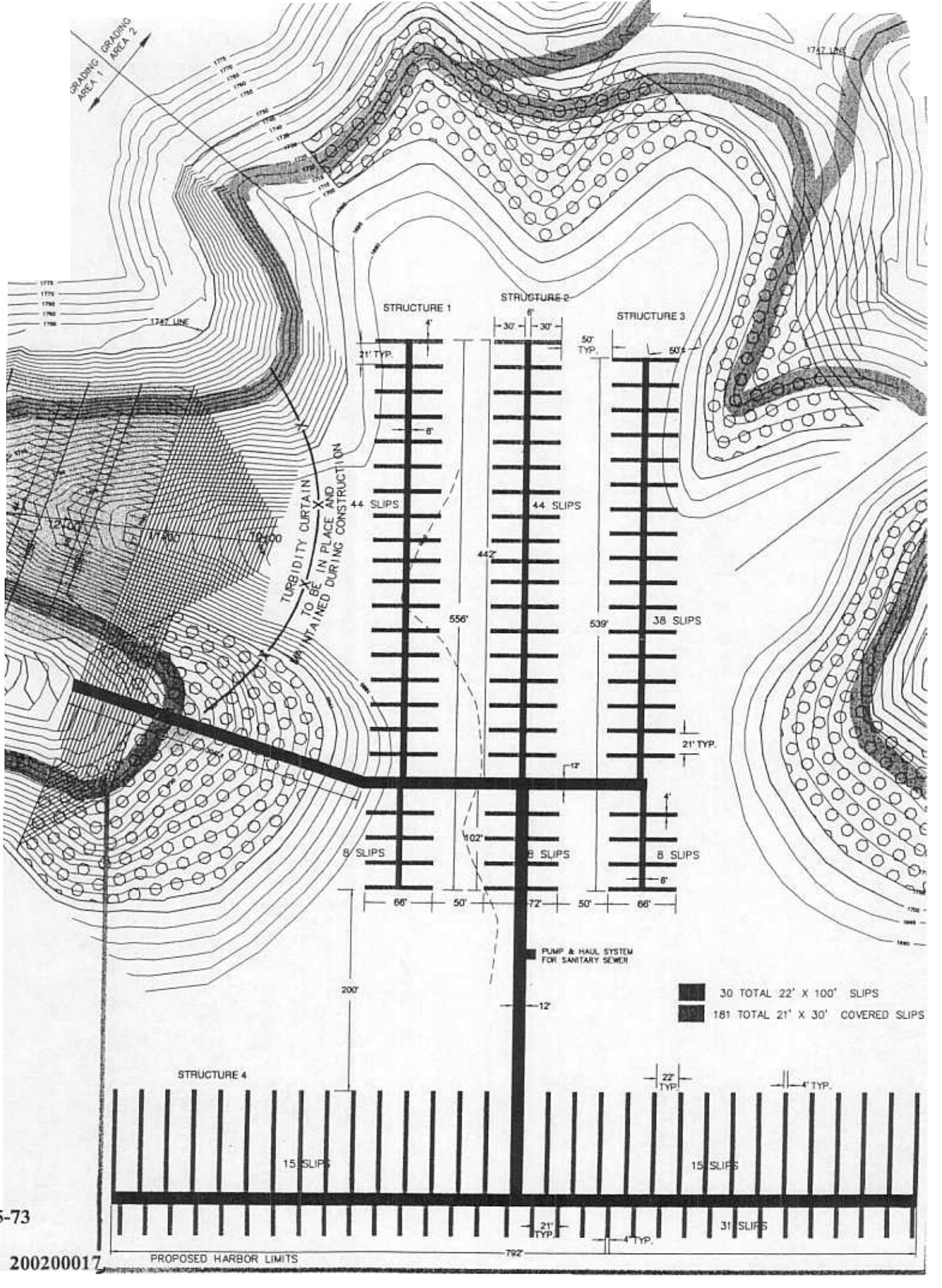
SLIPS:	ORIGINAL	CURRENT	CHANGE
PLEASURE BOATS	213	181	-32
LARGE HOUSE BOATS	66	30	-36
SAIL BOATS / SMALL HOUSE BOATS	14	0	-14
TOTAL	293	211	-82

LAUREL MARINA & YACHT CLUB

KING'S COVE II

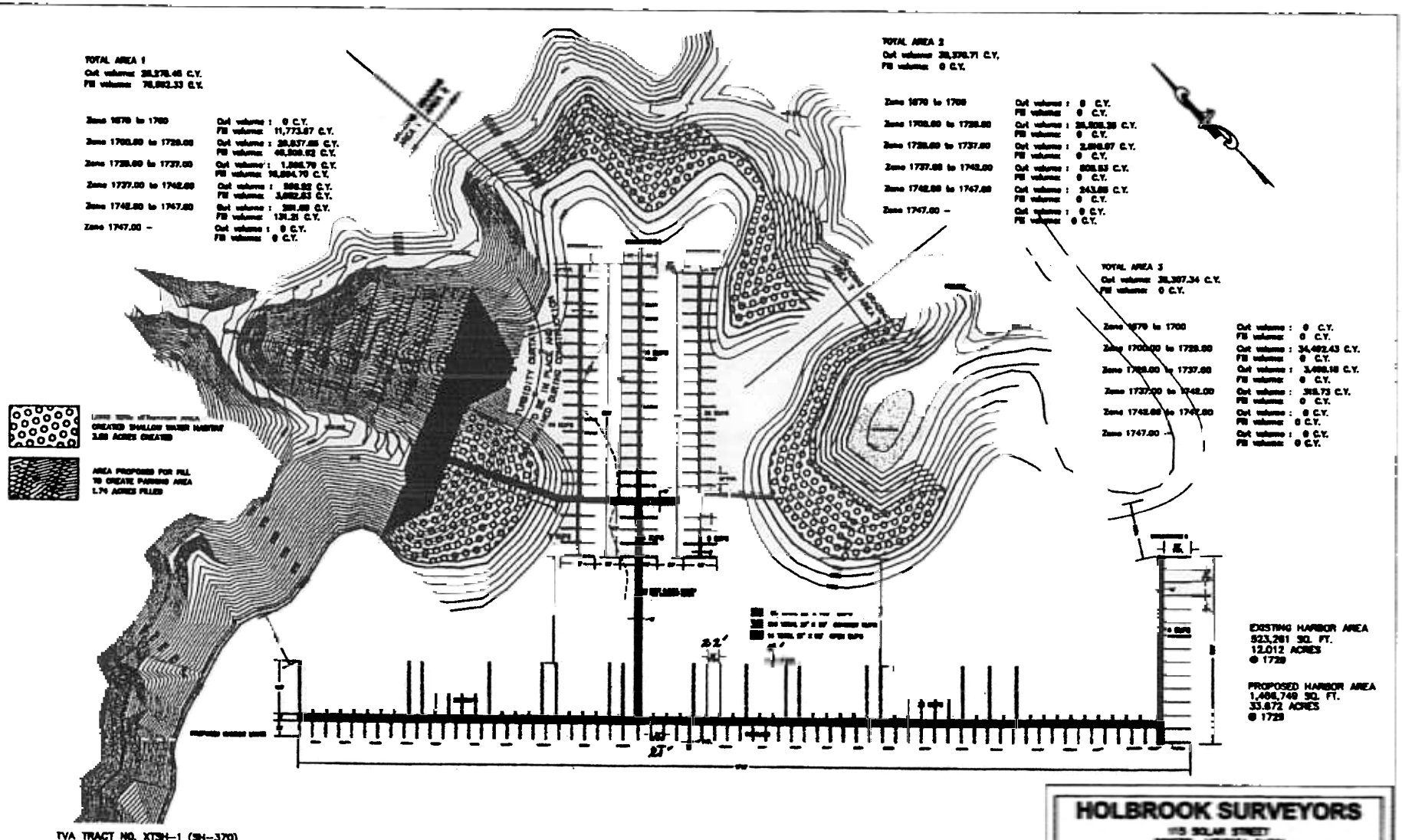
PN NO. 05-73

FILE NO. 200200017



NO. 05-73

LE NO. 200200017



MARCH 16 2005 PROPOSAL

PN 05-14
FILE NO. 200200017
PREVIOUS NOTICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
446 Neal Street
Cookeville, TN 38501

October 19, 2005

Lt. Colonel Steven J. Roemhildt
District Engineer
U.S. Army Corps of Engineers
3701 Bell Road
Nashville, Tennessee 37214

Attention: Mr. Carl Olsen, Regulatory Branch

Subject: Public Notice No. 05-73, Laurel Marina and Yacht Club. Proposed Commercial Marina Expansion (Revised) on South Holston Lake in Sullivan County, Tennessee.

Dear Colonel Roemhildt:

Fish and Wildlife Service (Service) personnel have reviewed the subject public notice. The notice advertises a revision of a previous joint public notice (PN 05-14) issued by the US Army Corps of Engineers (COE), the Tennessee Valley Authority (TVA), and the State of Tennessee, on March 16, 2005. The revised public notice is being issued due to "significant changes" to the proposal. The March 2005 proposal consisted of the construction of covered boat slips, excavation, development fill, and the expansion of authorized harbor limits on South Holston Lake in Sullivan County, Tennessee. The covered boat slips would accommodate 230 motorboats and 63 houseboats. In order to accommodate parking at the new facilities, the applicant proposes to place approximately 58,284 cubic yards of fill material below the Normal Summer Pool elevation of 1729 feet above mean sea level. The fill material would be obtained from excavation conducted at three areas within the harbor limits. The applicant proposes to mitigate the loss of public resources (filling of the inlet for a proposed parking lot) by creating shallow-water habitat and constructing various types of fish habitat structures within these shallow-water areas. The "significant changes" to the original proposal are the reduction of 293 boat slips to 211 slips. The following constitute the comments of the U.S. Department of the Interior, provided in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Endangered species collection records available to the Service do not indicate that federally listed or proposed endangered or threatened species occur within the impact area of the project. We note, however, that collection records available to the Service may not be all-inclusive. Our data base is a compilation of collection records made available by various individuals and resource agencies. This information is seldom based on comprehensive surveys of all potential habitat and thus does not

OCT 20 2005

necessarily provide conclusive evidence that protected species are present or absent at a specific locality. However, based on the best information available at this time, we believe that the requirements of section 7 of the Endangered Species Act of 1973, as amended, are fulfilled. Obligations under section 7 of the Act must be reconsidered if (1) new information reveals impacts of the action that may affect listed species or critical habitat in a manner not previously considered, (2) the action is subsequently modified to include activities which were not considered during this consultation, or (3) new species are listed or critical habitat designated that might be affected by the action.

Our opinion of the proposed project remains unchanged from that provided in our April 7, 2005, comment letter where we requested the permit be denied. **None** of the concerns outlined in our April 2005 letter have been addressed by the applicant. We were not opposed to the construction of any particular number of boat slips, but strongly opposed the placement of fill within waters of the United States without an alternatives analysis being conducted. We specifically requested that an alternatives analysis be conducted, but are unaware that such an analysis has been performed. As stated in our April 2005 letter, a previous proposal was withdrawn by the applicant on July 31, 2003. The applicant withdrew his original proposal because the United States Forest Service (USFS) had issues with the proposed parking facility being located on USFS land (public resources). To get around this issue, the applicant modified his request by proposing to fill Waters of the United States by placing 58,284 cubic yards of fill material below the 1747-foot mean sea level elevation; therefore, a permit from the USFS would not be required. We remain very concerned regarding the precedence that the proposal would set if permitted. If permitted, we foresee future applicants that would desire to place marinas in areas that are not suitable, and who would demand to be held to the same standards. If this occurs, at what point would the regulatory agencies restrict the filling of lakes (public resources) to obtain additional land for private development purposes?

Based on the 404(b)(1) guidelines, the COE must determine the basic and overall project purpose, the water dependency of the project, and evaluate alternatives (including offsite and alternative methods) to determine the least environmentally damaging practicable alternative. For Waters of the United States, only the least environmentally damaging practicable alternative can be permitted. Therefore, we **continue** to recommend that an alternatives analysis be conducted to determine other options that may exist in the area.

We also feel that the proposed mitigation is inadequate. The proposed shallow-water habitat is basically the areas where the fill material would be excavated. These areas and the proposed fish habitat structures would all occur within the harbor limits of what would appear to be a very crowded marina. These proposed mitigation measures would likely offer little in the way of fish usage and/or public fishing access because of the increased amount of boat traffic in and out of a marina this size. During a conference call conducted by the Corps and TVA, we and the Tennessee Wildlife Resources Agency requested that the fish habitat structures and other mitigation take place outside of the harbor limits if the project were permitted. This issue was also apparently not addressed. We feel the proposed mitigation in these areas does not adequately compensate for the loss of public resources. If this proposed project eventually meets the requirements of the 404(b)(1) guidelines and is permitted, we recommend that the mitigation occur outside of the proposed harbor limits to facilitate increased fish usage and fishing opportunities to the general public.

We continue to recommend that the subject permit, as proposed, be denied. If the applicant modifies the proposal to exclude fill being placed within waters of the United States, we would likely not oppose the project.

We appreciate the opportunity to review the subject permit application. Please contact Robbie Sykes (telephone 931/528-6481, ext. 209) of my staff if you have questions regarding the information provided in this letter.

Sincerely,

for Lee A. Barclay, Ph.D.
Field Supervisor

xc: Robert Todd, TWRA, Nashville, TN
Dan Eagar, TDEC, Nashville, TN
Darryl Williams, EPA, Atlanta, GA

TENNESSEE WILDLIFE RESOURCES AGENCY

ELLINGTON AGRICULTURAL CENTER
P. O. BOX 40747
NASHVILLE, TENNESSEE 37204

October 12, 2005

Carl Olsen
Nashville District Corps of Engineers
Regulatory Branch
3701 Bell Road
Nashville, TN 37214

1 4 OCT 2005

Re: Public Notice #05-73
Applicant: Dalie T. Thomas
Proposed Commercial Marina Expansion, and Fill at Laurel Marina and Yacht Club, Inc.
Mile 56.5, South Holston River, South Holston Lake
Sullivan County, Tennessee

Dear Mr. Olsen:

The applicant proposes to construct 181 boat slips and 30 houseboat slips and fill a cove of South Holston Lake with 58,284 cubic yards of material in Sullivan County for the purpose of constructing a parking lot for the new facilities. The applicant proposes mitigate for the fill impact by excavation conducted below elevation 1747 at grading areas 1, 2, and 3 as shown in the public notice (3.66 acres) from surrounding shoreline to durable rock out-crop (as stated in the original public notice #05-14) to create shallow water habitat and install various types of fish habitat structures. The excavated material will be used as fill material for the parking lot.

The Tennessee Wildlife Resources Agency continues to object to the fill of public waters for the purpose of creating a parking lot for private commercial use by Laurel Marina and Yacht Club, Inc. It is the opinion of the Tennessee Wildlife Resources Agency that the mitigation offered by the applicant is insufficient. In fact, we consider the excavation of 3.66 acres of surrounding shoreline to durable rock in order to obtain fill material an impact, not mitigation. In our opinion, the only mitigation for these impacts offered by the applicant is the construction and installation of several artificial fish habitat structures.

In the applicant's mitigation plan, it is proposed to install various types of fish habitat structures. Most of the structures proposed only concentrate fish and do not address the loss of spawning habitat. Depending on placement location and proximity to high boat traffic areas, the structures designed to concentrate fish may not fulfill their intended purpose nor may sport fishers utilize the structures. One structure that does attempt to address the loss of spawning habitat is entitled as "flat area design" in the mitigation plan. This structure is to be 10 feet by 15 feet with sand or suitable bedding material placed in this area. In our opinion even if several of these structures were constructed, they would not replace the resource values that would be lost from the 3.66 acres of shallow water habitat that currently exists in the area to be excavated. It is also unclear on how the applicant intends to stabilize the sand or bedding material that will be placed on these structures to prevent these materials from eroding or washing away due to wind and wave action.

According to design detail information, the excavation will remove the currently gradually sloping shoreline consisting of shaley-sandy-clay with sparse cobble and replace it with approximately fifty feet of flat rock and the rest of the bank at a 2:1 slope. In a conversation on June 3, 2005 with Mr. Thomas, he stated that the proposed excavation would not be to durable rock as stated in the notice but the substrate would be similar to that which currently exists at the project area. I requested a statement from his geologist stating that the excavation would not be to durable rock but provide substrate similar in nature as that which currently exists at the project area. I never received the requested statement from his geologist, so my concerns regarding the proposed mitigation for shallow water habitat remains the same.

The Tennessee Wildlife Resources Agency requests that this permit be held in abeyance until the applicant proposes appropriate mitigation for the loss of shallow water habitat and spawning substrate due to fill and excavation impacts. It is our opinion that mitigation should be in the form of replacement for the loss of these resource values. If the applicant fails to provide appropriate mitigation, the Tennessee Wildlife Resources Agency requests that this permit be denied.

Thank you for the opportunity to comment.

Sincerely,

Robert M. Todd

Robert M. Todd
Fish and Wildlife Environmentalist

cc: Rob Lindbom, Region IV Habitat Biologist
Bob Nichols, Region IV Manager
USFWS, EPA, WPC

→ CPO
10/11

TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

September 29, 2005

05 OCT 2005

Mr. Carl Olsen
U.S. Army Corps of Engineers, Nashville District
Regulatory Branch
3701 Bell Road
Nashville, Tennessee 37214

RE: COE-N, PN# 05-73/LAUREL MARINA EXPANSION, UNINCORPORATED
SULLIVAN COUNTY

Dear Mr. Olsen:

The Tennessee State Historic Preservation Office has reviewed the above-referenced undertaking received on Wednesday, September 21, 2005 for compliance by the participating federal agency or applicant for federal assistance with Section 106 of the National Historic Preservation Act. The Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739).

After considering the documentation submitted, it is our opinion that there are no National Register of Historic Places listed or eligible properties affected by this undertaking. This determination is made either because of the location, scope and/or nature of the undertaking, and/or because of the size of the area of potential effect; or because no listed or eligible properties exist in the area of potential effect; or because the undertaking will not alter any characteristics of an identified eligible or listed property that qualify the property for listing in the National Register or alter such property's location, setting or use. Therefore, this office has no objections to your proceeding with the project.

If you are applying for federal funds, license or permit, you should submit this letter as evidence of compliance with Section 106 to the appropriate federal agency, which, in turn, should contact this office as required by 36 CFR 800. You may direct questions or comments to Jennifer M. Barnett (615) 741-1588, ext. 17. This office appreciates your cooperation.

Sincerely,

Herbert L. Harper

Herbert L. Harper
Executive Director and
Deputy State Historic
Preservation Officer

HLH/jmb