FINAL ENVIRONMENTAL ASSESSMENT
STATEMENT OF FINDINGS
AND
FINDINGS OF NO SIGNIFICANT IMPACT

(File No. 200601425)
Sachs Construction Co.

Application for Proposed Dredging for Boat Access at Big Spring Creek Mile 5.2 to 5.6, Right Bank, Tennessee River Mile 358.4, Left Bank, Guntersville Lake, Marshall County, Alabama

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1.0 Proposed Activity

1.1. Background. On December 1, 2006, OMI, Inc. on behalf of Sachs Construction Co., submitted an application for a Department of the Army (DA) permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 for dredging boat access channels. An application for a Section 26a permit of the Tennessee Valley Authority (TVA) Act was submitted to TVA on November 21, 2006. OMI submitted two plans for the proposed activity. After determining which plan the applicant was going to pursue, additional information was requested from OMI on the dredging activity. On January 31, 2007, all of the requested information was received, and on February 7, 2007, Public Notice 07-13, Appendix A, was issued.

OMI had also requested from TVA on November 21, 2006, a proposed deed modification (pertaining to TVA Tract XGR-363) for the abandonment of flowage rights above the TVA's straight line boundary on the applicant's property to allow the fill of approximately 2.36-acres for the subsequent construction of new houses. In the deed, the applicant is restricted from constructing any buildings or other structures except water use facilities in accordance with approved plans by TVA, on any portion of land which is located below the 600-foot elevation. On September 19, 2007, OMI submitted a letter to TVA on behalf of the applicant, withdrawing the request for a deed modification. TVA property below the straight line boundary and fronting the Sach's residential development will adhere to the Shoreline Management Initiative (SMI) guidelines with access corridors to be reviewed at time of submittal of permit applications for individual water use facilities.

The proposed work consists of the dredging approximately 15,065 cubic yards of material from Guntersville Lake for boat access. The length of the main boat access channel would be approximately 4180' long and would extend 40' in width and 2.6' in depth. A 100' buffer would be maintained between the main channel and shoreline. In addition, the applicant proposes to dredge 27 lateral access channels. The lakeward extension of the lateral channels would be 60' and extend 30' in width and 2.6' in depth, a 30' buffer would be maintained between the lateral channels and the shoreline. The toe of the dredging would be at Elevation 587.4. Elevation 595.0 is the Normal Summer Pool (NSP) elevation for Guntersville Lake. The material would be removed by suction dredge and pumped to an upland containment area above Elevation 600.0 on the applicant's property. The dredging would allow adequate water depth for possible dock facilities for a proposed lakefront development.

An on-site inspection was conducted on February 27, 2007, see Appendix B for the MFR.

1.2. Decision Required. Section 10 of the Rivers and Harbors Act of 1899 (Section 10) prohibits the alteration or obstruction of any navigable waters of the United States unless authorized by the Secretary of the Army acting through the Chief of Engineers. Big Spring Creek Mile 5.2 to

5.6, Right Bank, Tennessee River Mile 358.4, Left Bank, Guntersville Lake, is a navigable water of the United States as defined by 33 CFR Part 329. A Section 10 permit is required for the work; therefore, the Corps of Engineers must decide on one of the following:

a. issuance of a permit for the proposal
b. issuance of a permit with modifications or conditions
c. deny the permit

1.3. Other Approvals Required. Other federal, state, and local approvals required for the proposed work are as follows:

a. Tennessee Valley Authority (TVA) approval under Section 26a of the TVA Act.

2.0. Public Involvement Process. On February 7, 2007, Public Notice 07-13, Appendix A, was issued to advertise the proposed work. All responses are included in Appendix C. A summary of the responses are as follows:

a. Mr. Billy Abeson (last name was not decipherable) responded to the public notice by letter dated February 19, 2007. Mr. Abeson objected to the proposed dredging, he stated that this was an inside job since the applicant worked for the City of Guntersville and the work would damage the infrastructure of other homeowners in the area. Mr. Abeson went on to state that the roads in the area were narrow plus the dredged area would fill back in and the property owners would not be financially able to perform maintenance dredging. Mr. Abeson concluded by saying that the mosquitoes were bad in the area.

b. The US Fish and Wildlife Service (Service) responded to the public notice by letter dated March 1, 2007. The Service stated that they were contacted by the applicant's agent, OMI, Inc., on June 28, 2006, requesting comments on the proposed residential subdivision and dredging activities. The Service responded to OMI by letter dated July 28, 2006, requesting a threatened and endangered species survey be conducted for the Indiana bat (*Myotis sodalist*), gray bat (*Myotis grisescens*), bald eagle (*Haliaeetus leucocephalus*), green pitcher plant (*Sarracenia oreophila*), Price's potato bean (*Apios priceana*) and Red cockaded woodpecker (*Picoides borealis*). The Service states that in January 2007, they received OMI's survey report which determined there were no threatened and endangered species located on the subject property. The Service concurred with the survey that the habitat required by these species does not occur on the subject property and the Service determined that the proposed action should not have adverse affects on theses listed species. The Service stated that based on their records and the best information available at this time, it is their belief that there are no federally listed or proposed endangered or threatened plant or animal species in the impact area of the project, and that requirements of Section 7(c) of the

Endangered Species Act (ESA) of 1973, as amended, are fulfilled. The Service strongly recommends that activities associated with this project be conducted in a manner as to reduce the potential for impacting fish and wildlife resources. The Service made several other recommendations which include, asking the Corps and TVA to consider the actual need for new dock facilities, encourage developers to consider community dock facilities rather than individual dock facilities. The Service recommends construction materials utilized in building the docks should be Environmental Protection Agency (EPA) approved to ensure no adverse environmental impacts occur to the aquatic biota or water quality and a sediment control plan be developed, erosion control measures be in place prior to dredging and best management practices (BMPs) be employed prior to and maintained throughout all phases of the project to avoid or minimize sedimentation into and turbidity/siltation of the Tennessee River. The Service also recommends that the proposed activities occur during summer pool conditions, preferably during dry weather conditions and/or periods when Guntersville Dam is not generating electricity and that the applicant to reduce the scope of the proposed dredging and that the dredged material be placed in an upland area and stabilized immediately to reduce erosion and sedimentation. Finally, the Service goes on to state that they would not object to the proposed dredging for boat access and the construction of any individual dock facilities provided the ESA is met, BMPs are fully implemented and maintained, the dredged material is placed in upland areas and fully maintained through appropriate erosion control measures, and all permits are granted from the various state and federal agencies.

c. There were no requests for a public hearing.

2.1. Rebuttal Comments. In accordance with standard DA permit processing procedures, the objections and comments that are received in response to the public notice are forwarded to the applicant for attempted resolution or rebuttal. See the rebuttal comments in Appendix D.

The objecting comment to public notice 07-13 was forwarded to the applicant, Sachs Construction, on March 12, 2007. Ms. Amy Werkheiser of OMI, provided this office a response to the comments on behalf of the applicant in a March 28, 2007, email. Ms. Werkheiser stated in her email that the comments have no basis in fact and should not be considered a serious regarding the proposed activity.

3.0 Environmental and Public Interest Factors Considered

3.1. Introduction. 33 CFR 320.4(a) states the decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. All factors that may be relevant to the proposal must be considered. Public Notice 07-13 listed factors that may be relevant to the proposal. The

following sections show which factors that are relevant in this proposal, and if relevant, provide a concise description of the impacts.

3.2. Physical/Chemical Characteristics and Anticipated Changes. The relevant blocks are checked with a description of the impacts.

(X) Substrate. The proposed work would excavate approximately 15, 065 cubic yards of bottom substrate. The substrate is chiefly composed of clay and silt material which has accumulated from upland run-off or has settled from Big Spring Creek and the Tennessee River. The dredged material would be removed by suction dredge and pumped to an upland containment area above Elevation 600.0 on the applicant's property.

( ) Currents, circulation or drainage patterns. No Issues

(X) Suspended particulates, turbidity. The dredging would be performed by a suction dredge. There would be turbidity in the vicinity where the dredging is actively occurring, the turbidity would be short lived and would dissipate soon after each time the dredging has stopped.

(X) Water quality (temperature, color, odor, nutrients, etc). Since the work would be conducted in the wet by a suction dredge, there would be turbidity in the vicinity where the dredging is actively occurring. The turbidity would be short lived and would dissipate soon after each time the dredging has stopped. The dredged material would be pumped to an upland containment area above Elevation 600.0 on the applicant's property where it would be contained and stabilized, however; there is a possibility that return water from upland contained disposal area could re-enter the waterway.

(X) Flood control functions. If no fill is placed below Elevation 600, then the project would comply with the TVA Flood Control Storage Loss guideline because there would be no loss of flood control storage.

(X) Storm, wave and erosion buffers. TVA property below the straight line boundary and fronting the Sach's residential development would adhere to the Shoreline Management Initiative (SMI) guidelines with access corridors to be reviewed at the time of submittal of permit applications for individual water use facilities.

(X) Shore erosion and accretion patterns. The dredging would open this area up to additional boating activity which would likely increase shore erosion from additional boat wakes

and wave action. However; if the dredging were not to occur, the area would still be subject to boat wakes and wave action.

( ) Baseflow. No Issues

3.3. Biological Characteristics and Anticipated Changes. The relevant blocks are checked with a description of the impacts.

( ) Special aquatic sites (wetlands, mudflats, pool and riffle areas, vegetated shallows, sanctuaries and refuges, as defined in 40 CFR 230.40-45). No Issues

(X) Habitat for fish and other aquatic organisms. The proposed excavation would result in substantial alteration of the existing bottom substrate within the footprint of the boat access channel. During NSP elevation, water depths within the footprint of the boat access channel would be increased resulting in reduced light penetration to the bottom substrate. Since the dredging would be conducted in the wet, there would be adverse impacts on the biological productivity in the vicinity of the dredging. There would be some aquatic organisms that would be displaced by the proposed work. The displacement would be temporary as aquatic organisms would recolonize the area or in adjacent areas after the work has been completed. The composition of the new communities may be slightly different due to increased water depths, however, fish species may benefit from the increased water depths.

(X) Wildlife habitat. The site where the dredging is to occur is characterized by being a thinly wooded area which is proposed to be transformed into a residential development. Dredging the material from the channel would temporarily impact wildlife habitat in the vicinity of the boat access channels. The presence of construction workers and construction equipment dredging the access channels may frighten wildlife from the area. The dredged material would be placed in an upland containment area above TVA's straight line boundary (and including the 2.36 acres currently identified in the property deed as flowage rights) and spread throughout the applicant's property for the subsequent construction of new houses. After the work has been completed, wildlife should return to the area.

(X) Endangered or threatened species. The Service indicates that no federally-listed or proposed endangered or threatened species occur within the area of the project. The Service states that based on their records and the best information available at this time, there are no federally-listed or proposed endangered or threatened plant or animal species in the impact area of the project, and that requirements of Section 7(c) of the Endangered Species Act of 1973, as amended, are fulfilled.

(X) Biological availability of possible contaminants in the excavated or fill material. The material that is to be removed for the boat access channel, is not expected to contain any contaminants, as it is composed mainly of clay and silt which has accumulated from upland run-off or has been deposited over the years from Big Spring Creek and the Tennessee River.

3.4. Human Use Characteristics and Anticipated Impacts. The relevant blocks are checked with a description of the impacts.

( ) Existing and potential water supplies; water conservation. No Issues.

(X) Water-related recreation. The proposed work may have minor impacts on water-related recreation since the work would be conducted in the wet by a suction dredge. The impacts would be minor since the work is occurring on the right ascending bank of Big Spring Creek. The work would benefit the applicant by having an improved boat access to the proposed lakefront development. Current usage of the river at this location includes pleasure/recreation boating and fishing.

(X) Aesthetics. The site where the dredging is to occur is characterized by being a thinly wooded area which is proposed to be transformed into a residential development. The proposed work would have a temporary impact upon the aesthetics of the site caused by the appearance of the construction workers, the suction dredge, and the pipes associated with pumping the dredged material to the upland location. All of the work would be conducted during daylight hours. The work would be temporary and the area would return to natural conditions after the dredging has been completed. Since the dredging would be performed by a suction dredge, there would be turbidity in the vicinity where the dredging is actively occurring. The turbidity would be short lived and would dissipate soon after each time the dredging has stopped. A long-term visible impact to the existing landscape would result from the placement of the dredged material on the applicant's property with and the subsequent construction of houses and possible construction of water use facilities. However, the changes to the landscape would be similar to that of other areas along Guntersville Lake that is being converted into residential developments.

(X) Traffic/transportation patterns. This was an issue that was noted by the commentor. The commentor noted that the roads in the area where the dredging was to occur were narrow. According to Mr. Floyd M. Carnes' on-site investigation on February 27, 2007, the roads in the area where the dredging is proposed to occur are standard two lane city roads.

( ) Energy consumption or generation. No Issues

(X) Navigation. The proposed work would occur at Big Spring Creek Mile 5.2 to 5.6, Right Bank, Tennessee River Mile 358.4, Left Bank, Guntersville Lake. The proposed work may impact recreational navigation since the proposed work would be conducted in the wet by a suction dredge. The work would not impact commercial navigation since it is occurring on Big Spring Creek, which is off of the main navigation channel.

(X) Safety. The floating plant used to dredge the material would be required to display proper lights and signals as required by the current Inland Navigation Rules (INR).

( ) Air quality. No Issues

(X) Noise. The site where the dredging is to occur is characterized by being a thinly wooded area which is proposed to be transformed into a residential development. The noise associated with the dredging of the boat access channels would be temporary. The work would be performed during daylight hours. The additional noise would have only a negligible impact to the surrounding area. Equipment would be expected to operate within normal ranges for construction equipment. The dredging would open up this area to additional boating which would increase noise from boats and other watercraft. However, motorboat noise is very common on Guntersville Lake. Regardless if the dredging is conducted, the area would still be subject to noise from boats and other watercraft utilizing this portion of Guntersville Lake.

(X) Historic properties and cultural values. For the purpose of the dredging, the archaeological area of potential effects was identified as the 16-acres of TVA lakefront property adjacent to Guntersville Lake and the lateral access channels. A Phase I Archeological survey was conducted by Alexander Archaeological Consultants (AAC) in October 2006 and again in September 2007. The AAC survey identified one archeological resource and identified six historic resources which were recommended ineligible for the National Register of Historic Places (NRHP). A letter of TVA's findings and determinations was sent to the Alabama State Historic Preservation Office (AL-SHPO) and federally recognized Indian Tribes. TVA determined the project would have no effects to historic properties on or eligible for the NRHP. The AL-SHPO did not respond to the public notice, but did respond to TVA's on November 16, 2007. In their letter to TVA, the AL-SHPO stated that they have determined that project activities will have no adverse effects on cultural resources eligible for or listed on the NRHP (see Appendix C).

(X) Land use classification. In order to construct a residential development and access the lake, the applicants would have to cross TVA land. The property adjacent to TVA land is privately owned and the possibility exists for the owner to develop the property for residential development purposes without needing to dredge a boat access channel subject to DA permit requirements. 33 CFR 320.4(j)(2) states that the primary responsibility for determining zoning and

land use matters rests with state, local, and tribal governments and the CE will normally accept the decision by such governments on those matters unless there are significant issues of overriding national importance.

( ) Conservation. No Issues

(X) Economics. Dredging of the boat access channel would benefit the contractors and sub-contractors performing the work. In addition, the dredging of the access channel would likely increase the applicant's property value by enhancing the lake benefits to the property. The proposed work would provide an economic stimulus to this portion of Marshall County, Alabama. The economy may be improved by the presence of construction workers living and spending money in the area. The dredging of the access channels may pump revenue into the local economy through purchasing of supplies from local merchants. Economics was concern raised by the commentor. The commentor stated that the dredged area would fill back in and the property owners would not be finically able to perform maintenance dredging. Over time, the dredged channels would eventually fill in with silt; however, maintenance dredging would be the responsibility of the applicant or an arrangement would be made between the applicant and the future property owners.

( ) Food and fiber production. No Issues

( ) General environmental concerns. No Issues

( ) Mineral needs. No Issues

(X) Consideration of private property. The applicants own the property where the proposed work would occur. 33 CFR 320.4(g)(1) states that " an inherent aspect of property ownership is a right to reasonable private use." The right of property owners to a reasonable use of their property has been fully considered in our permit evaluation.

(X) Floodplain values. The proposed action involves dredging of access channels for a proposed residential development. Future anticipated actions would include construction of individual water use facilities enabled by the dredging. Consistent with Executive Order (EO) 11988, dredging and individual water use facilities are considered to be a repetitive action in the floodplain that should result in minor impacts provided the dredged material is deposited outside of the floodplain. The applicant has indicated that the dredged material will be spoiled above Elevation 600 which should be outside the 100-year floodplain and flood control zone.

To ensure that the proposed project would not adversely impact floodplains and flood control, TVA would include the following conditions in their 26a permit:

1. The applicant would agree that dredged material would be disposed of and contained on land lying above the 600-foot contour. Every precaution would be made to prevent the re-entry of dredged material back into the waterway.

2. The applicant would agree that no fill material would be placed on existing ground below elevation 600.

3. Any future development proposed within the limits of the 10-year floodplain, (Elevation 597.2) would be consistent with the requirements of EO 11988.

4. Any future facilities or equipment subject to flood damage would be located above or flood proofed to flood Risk Profile elevation 598.0.

5. All future development would be consistent with the requirements of the TVA Flood Control Storage Loss Guideline.

6. The applicant is advised that TVA retains the right to flood this area and that TVA would not be liable for damages resulting from flooding.

( ) Other. No Issues.

3.5. Cumulative and Secondary Impacts. One of the most important aspects of cumulative effects assessment is that it requires consideration of how actions by others have and will affect the same resources. In assessing cumulative effects, the key determinant of importance or significance is whether the incremental effect of the proposed action will alter the sustainability of the resource in light of other effects that resource has experienced up until the present and/or will experience in the future.

Cumulative environmental effect for the proposed activity was assessed in accordance with guidance provided by the President's Council on Environmental Quality (USEPA, EPA 315-R-99-002, May 1999).

In this case, the spatial boundary for the assessment has been broadened to consider effects within the corridor of the proposed dredging. The dredging would not be undertaken if not for the need for adequate water for the possibility of proposed dock facilities at the applicant's location.

Projecting the reasonably foreseeable future actions is difficult at best. Clearly, the proposed action is reasonably foreseeable. However, the actions by others that may affect the same resources are

not as clear. Projections of those actions must rely on judgment as to what is reasonable, based on existing trends, and where available, projections from qualified sources. Reasonably foreseeable does not include unfounded or speculative projections. In this case, reasonably foreseeable future actions include:

- Future construction related to utility line infrastructure that may involve the crossing of additional streams, creeks and tributaries to gain access to retail developments
- Growth in commercial development
- Increase in sewerage system needs
- Increase in city services, such as police, fire and garbage services
- Increased traffic generated from increased development due to the action
- Maintenance and/or improvement to areas roads
- Increase in recreation boating traffic generated from increased use due to the action
- Implementation of various programs to deal with non-point sources of water pollution and to restore degraded environments, and
- Continued application of environmental requirements such as those under NPDES and/or NEPA

Additional structures and/or future associated work that may be proposed in the vicinity of the site can be identified as cumulative and/or secondary impacts; however, determining the magnitude of cumulative effects; modifying to avoid, minimize or mitigate the cumulative effects, and planning for monitoring and adaptive management would have to be addressed on a case-by-case basis.

The proposal could have minimal cumulative or secondary effect upon the existing environment with additional boating in the area due to the dredging of the boat access channels and the possible construction of future dock facilities.

4.0 Alternatives

4.1. Introduction. This section discusses alternatives as required by 33 CFR 320.4(a)(2). The relevant environmental issues identified in Chapter 3.0 were used to formulate the alternatives. The alternatives that were given detailed consideration are listed in the following section.

4.2. Description of Alternatives.

a. No Action. The no action alternative equates to denial of the DA permit or the applicant modifying the proposal such that a DA permit is not required. This alternative would result in the boat access channels not being dredged and increases the possibility of the applicant having limited access to the proposed lakefront development and possible future dock facilities.

b. The Proposed Action. This alternative consists of dredging a main channel extending approximately 4180' long and extending 80' wide and 2.6' in depth. A 100' buffer would be maintained between the main channel and shoreline. In addition, the applicant proposes to dredge 27 lateral access channels. The lakeward extension of the lateral channels would be 60' and extend 30' in width and 2.6' in depth, a 30' buffer would be maintained between the lateral channels and the shoreline. The total amount of dredged material for this alternative would be approximately 31,171 cubic yards of material.

c. The Revised Proposed Action. This alternative consists of the applicant reducing the scope of work. The length of the main channel would remain the same at approximately 4180' long; however, the width would be reduced from 80' to 40' wide and the depth would remain at 2.6'. A 100' buffer would be maintained between the main channel and shoreline. The number of lateral channels would be reduced from 27 to 23 lateral channels. The lakeward extension of the 23 lateral channels would remain the same at 60'; however, the width would be reduced from 60' to 30' and the depth would remain the same at 2.6'. A 30' buffer would be maintained between the lateral channels and the shoreline. The total amount of dredged material for this alternative would be reduced to approximately 15,065 cubic yards of material.

d. The Revised Proposed Action with Special Conditions. This alternative would be composed of the applicant's proposal as described in section b. above with the inclusion of additional mitigation measures that would minimize unavoidable environmental impacts.

4.3. Appropriate Mitigation Included in the Proposed Action. Mitigation measures would be implemented to minimize impacts to the environment. The dredged material would be removed and placed on the applicant's property above Elevation 600.0 where the material would be contained and stabilized. Instituting and maintaining erosion and sediment control measures for the life of the project and ensure that all disturbed riparian areas are properly stabilized as soon as practicable to prevent erosion and associated runoff from re-entering the waterway. Additionally, the applicant would provide at least a 30' buffer between the dredging and the existing shoreline.

4.4 Comparison of Alternatives.

a. No Action. The no action alternative equates to denial of the DA permit or the applicant modifying the proposal such that a DA permit is not required. No action would also result if the applicant withdraws the DA permit application being considered. The proposed work would not be performed. This alternative would result in no impacts to the bottom substrate and aquatic life and habitat at this location of Guntersville Lake. The no action alternative would not

meet the needs of the applicant and would result in an economic loss in planning costs and possible real estate losses.

b. The Proposed Action. This alternative would allow the dredging of approximately 31,171 cubic yards of material from Guntersville Lake for a boat access channel. The main channel would be approximately 4180' long and extending 80' wide and 2.6' in depth. A 100' buffer would be maintained between the main channel and shoreline. In addition, the applicant proposes to dredge 27 lateral access channels. The lakeward extension of the lateral channels would be 60' and extend 30' in width and 2.6' in depth, a 30' buffer would be maintained between the lateral channels and the shoreline. The toe of the dredging would be at Elevation 587.4. Elevation 595.4 is the NSP for Guntersville Lake. The work may have some minor impacts on recreational navigation, since the work would be conducted in the wet by a suction dredge. This alterative would result in an alteration of the existing bottom substrate within the footprint of the boat access channel. During NSP elevation and winter drawdown, water depths within the footprint of the boat access channel would be increased resulting in reduced light penetration to the bottom substrate. The probable cumulative and secondary adverse impacts likely to result from the proposed activity are relatively minor. The proposed work would allow the applicant to have access to an area that is proposed to be developed and the prospect of future dock facilities at the applicant's location.

c. The Revised Proposed Action. This alternative consists of the applicant reducing the scope of work. This alternative would allow the dredging of approximately 15,065 cubic yards of material from Guntersville Lake for the boat access channels. The length of the main channel would remain at approximately 4180' long; however, the width would be reduced from 80' to 40' wide, and the depth would remain at 2.6'. A 100' buffer would be maintained between the main channel and shoreline. The number of lateral channels would be reduced from 27 to 23 lateral channels. The lakeward extension of the 23 lateral channels would remain the same at 60'; however, the width would be reduced from 60' to 30' and the depth would remain the same at 2.6'. A 30' buffer would be maintained between the lateral channels and the shoreline. The toe of the dredging would be at Elevation 587.4. Elevation 595.4 is the NSP elevation for Guntersville Lake. The work may have some minor impacts on recreational navigation, since the work would be conducted in the wet by a suction dredge. This alterative would reduce the amount of bottom substrate that would be dredged and reduce the impacts to the environment. However, this alternative would have the same impacts to the bottom substrate as the original proposed action, during NSP elevation and winter drawdown, water depths would be increased within the footprint of the boat access channel resulting in reduced light penetration to the bottom substrate. The probable cumulative and secondary adverse impacts likely to result from the proposed activity are relatively minor. The proposed work would allow the applicant to have access to an area that is proposed to be developed and the prospect of future dock facilities at the applicant's location.

d. The Revised Proposed Action with Special Conditions. The impacts of this proposal would be similar to the description in c. above. Some conditions, which might apply to this type of work, would include the work being carried out in a manner that would minimize adverse impacts to the environment. Additionally, the applicant would provide a 30' buffer between the dredging and the existing shoreline.

5.0. Findings

5.1. Consideration of Public Comments. The comments received in response to the public notice have been considered and addressed in this Environmental Assessment and in the decision making process for a permit. Ample opportunity was provided to the general public and the commenting agencies to comment on the proposal through the public notice process. All comments received from the general public and commenting agencies during the public notice period have been given full consideration in the evaluation of this permit. There were no requests for a public hearing. Mr. Billy Abeson responded to the public notice by stating his objection to the proposal. Mr. Abeson thought the work was an inside job since the applicant worked for the City of Guntersville. Mr. Abeson stated that the work would damage the infrastructure of homeowners in the area and that the roads in the area were too narrow. Mr. Abeson concluded by saying that the dredged area would fill back in and the property owners would not be financially able to perform maintenance dredging and mosquitoes were bad in the area. If the area is developed, new infrastructure would be installed and the older infrastructure would be upgraded. The on-site inspection revealed that the roads in the area meet city and county standards. Over time, the dredged channel would eventually fill in with silt. Maintenance dredging would be the responsibility of the applicant or an arrangement would be made between the applicant and the future property owners. As for dealing with the mosquitoes, insects are a part of everyday life, especially if one is living next to a water body. The Service states that they were contacted by the applicant's agent, OMI, Inc., requesting comments on the proposed residential subdivision and the dredging activities. The Service responded by requesting a threatened and endangered species survey be conducted for the Indiana bat (*Myotis sodalist*), gray bat (*Myotis grisescens*), bald eagle (*Haliaeetus leucocephalus*), green pitcher plant (*Sarracenia oreophila*), Price's potato bean (*Apios priceana*) and Red cockaded woodpecker (*Picoides borealis*). The Service received OMI Inc.'s survey report which determined there were no threatened and endangered species located on the subject property. The Service concurred that the habitat required by these species does not occur on the subject property and determined that the proposed action should not have adverse affects on theses listed species. The Service made recommendations that activities associated with this project to reduce the potential for impacting fish and wildlife resources. These recommendations include, building docks from EPA approved materials, develop a sediment control plan, have erosion control measures in place prior to dredging employ BMPs prior to and maintained throughout all

phases of the project to avoid or minimize sedimentation and turbidity/siltation and performing the proposed activities occur during summer pool conditions, preferably during dry weather conditions and/or periods when Guntersville Dam is not generating electricity. In addition, the Service requests the Corps and TVA to consider the actual need for new dock facilities, and encourage developers to consider community dock facilities rather than individual dock facilities. The activity being considered in this application is dredging of the boat access channel pursuant to Section 10. It will be the responsibility of future lot owners to secure authorization to construct their own dock facility, if they chose to have a dock facility. Additionally, the Service recommended that the applicant reduce the scope of the proposed dredging and place the material in an upland area and stabilize it immediately to reduce erosion and sedimentation. The applicant did reduce the scope of work by decreasing the width of the main and lateral channels. The main channel's width was reduced from 80' to 40 and the lateral channels width were reduced from 80' to 30'. The overall amount of material that is to be dredged was reduced from 31,171 cubic yards to 15,065 cubic yards. Finally, the Service stated that they would have no objections to the proposed dredging for boat access and the construction of the proposed individual dock facilities provided none of the ESA conditions occur, BMPs are fully implemented and maintained, the dredged material is placed in upland areas and fully maintained through appropriate erosion control measures, and all permits are granted from the various state and federal agencies. All of the Service's recommendations were taken into full consideration.

5.2. Findings of No Significant Impact. Based on a full consideration of the EA, information obtained from cooperating federal/state agencies, and comments received from the interested public, I have concluded that issuance or denial of the requested permit would not constitute a major federal action that would significantly affect the quality of the human environment. This constitutes a Findings of No Significant Impact (FONSI); therefore, the preparation of an Environmental Impact Statement is not required. This FONSI was prepared in accordance with paragraph 7a of Appendix B, 33 CFR 325 dated February 3, 1988 (effective March 4, 1988).

5.3. Clean Air Act General Conformity Rule Review. The proposed project has been analyzed for conformity applicability, pursuant to regulations implementing Section 176(c) of the Clean Air Act and it has been determined that the activities proposed under this permit will not exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility, and cannot be practicably controlled by the Corps, and, for these reasons, a conformity determination is not required for a permit.

5.4. Environmental Justice Review. Executive Order (EO) No. 12898 (February 11, 1994) directs certain federal agencies, including the Department of the Defense, to consider environmental justice, as defined in the order, in the environmental reviews of their programs and activities.

Environmental justice refers to the idea that no segment of the population should bear a disproportionate burden of health and environmental impacts of society's activities. Environmental justice concerns relate to the potential effects proposed actions might have on minority communities and low-income communities, and whether or not impacts are likely to fall disproportionately on minority and/or low-income people living in the vicinity of the proposed action.

Such disproportionate impacts, if they would be caused by the proposed project, would most likely affect persons living within the immediate vicinity of the project site, generally, the central portion of Marshall County, Alabama.

Accordingly, the proposed project would not disproportionately impact minority or low-income populations. There are no minority or low-income communities adjacent to the proposed project area. Therefore, the proposed work would not affect minority or low-income populations at any higher rate than others in the project area.

5.5. Recommended Special Conditions. With the applicant's compliance with the special conditions and the implementation of the proposed mitigation, adverse environmental impacts associated with the channel dredging would be minimal. The recommended special conditions are as follows:

1. A copy of this permit must be available at the site. All contractors must be aware of its conditions and abide by them. Justification: This ensures that all of the contractors are aware that the work to be performed conforms to the approved plans.

2. The work must be in accordance with the plans attached to this permit. Justification: To ensure that the work being performed is the work that was permitted.

3. The permitee shall maintain at least a 30' buffer between the area that is to be dredged and the existing shoreline. Justification: To ensure that the existing 30' of shallow water habitat is maintained between the area that is to be dredged and the existing shoreline.

4. The work must not interfere with the public's right to free navigation on navigable waters of the U.S. Justification: To minimize effects to shallow water habitat.

5. All excavated material from the channels shall be pumped upland and placed above Elevation 600. The dredged material must be properly stabilized, which includes placing seed, mulch, and hay over the excavated material. In addition, staked hay bales and silt fence shall be used around

the material to prevent re-entry into any waterway. Justification: To ensure that the material that is removed during the excavation process does not re-enter the waterway and is properly stabilized.

6. The floating plants used to dredge the boat access channel must display proper lights and signals as required by the current Inland Navigation Rules (INR). For INR information, please contact: Eighth Coast Guard District, Hale Boggs Federal Building, 500 Poydras Street, New Orleans, LA 70130. Telephone (504) 671-2328. Justification: To ensure the construction activities comply with the U. S. Coast Guard regulations.

7. The permitee shall notify this office in writing two weeks before work commences on the dredging. Justification: To give this office an indication that work is about to commence so that this office can perform compliance inspections while the work is taking place.

5.6. Public Interest Determination. I have reviewed the application, responses to the Public Notice, and the EA. The comments from the general public and the Service were taken into full consideration during the public's interest review of this permit decision. There were no requests for a public hearing. Mr. Billy Abeson responded to the public notice by stating his objection to the proposal, he thought the work was an inside job since the applicant worked for the City of Guntersville. Mr. Abeson stated that the work would damage the infrastructure of homeowners in the area and that the roads in the area were narrow. If the area is developed, new infrastructure would be installed and/or constructed in the area and older infrastructure would be upgraded. The roads in the area meet city and county standards. Mr. Abeson concluded by saying that the dredged area would fill back in and the property owners would not be financially able to perform maintenance dredging and mosquitoes were bad in the area. Over time, the dredged channel would eventually fill in with silt. The maintenance dredging would be the responsibility of the applicant or an arrangement would be made with the future property owners. Dealing with the mosquitoes and insects is a routine part of everyday life especially living next to a water body. The Service stated that they were contacted by the applicant's agent, OMI, Inc., requesting comments of the proposed residential subdivision and dredging activities. The Service responded by requesting a threatened and endangered species survey of the area. OMI Inc.'s survey revealed neither the existence of any threatened and endangered species nor any of their habitats located on the subject property. The Service concurred with the survey and determined that the proposed action should not have adverse affects on any threatened and endangered species. The Service made several recommendations that the activities associated with this project be conducted in a manner as to reduce the potential for impacting fish and wildlife resources. These recommendations include, building docks from EPA approved materials, develop a sediment control plan, have erosion control measures and BMPs in place prior to dredging and maintained throughout all phases of the project, request the Corps and TVA to consider the actual need for new dock facilities, encourage developers to consider community dock facilities rather than individual dock facilities and conduct

the proposed activities during summer pool conditions, preferably during dry weather conditions and/or periods when Guntersville Dam is not generating electricity. In addition, the Service recommends the applicant to reduce the scope of work. The applicant did reduce the scope of work from the original proposal by decreasing the width of the main and lateral channels. The main channel's width was reduced from 80' to 40 and the lateral channels width were reduced from 80' to 30'. Additionally, the number of lateral channels was reduced from 27 to 23. The overall amount of material that is to be dredged was reduced from 31,171 cubic yards to approximately 15,065 cubic yards. Finally, the Service states that they would have no objections to the proposed dredging for boat access and the construction of the proposed individual dock facilities provided the ESA conditions are met, BMPs are fully implemented and maintained, the dredged material is placed in upland areas and fully maintained through appropriate erosion control measures, and all permits are granted from the various state and federal agencies. The activity being considered in this application is dredging of the boat access channel. It will be the responsibility of the future lot owners to secure authorization to construct their own dock facility, if they chose to have a dock. The Service's recommendations were taken into full consideration. With adherence to the permit conditions and full implementation of the recommended special conditions, impacts to waters of the United States would be minimal. The special conditions required by this permit deal with adverse impacts to aquatic life and are fully justified and reasonable. The excavation of the boat access channels would provide economic stimulus to the area through construction workers spending money in the area. The applicant would benefit by having adequate water depths for future proposed boat dock facilities. Additionally, the applicant's property values would likely increase by having enhanced lake access. Having weighed these potential benefits that may be accrued against the reasonably foreseeable detrimental effects, I conclude that permit issuance would not be contrary to the public interest.

FOR THE COMMANDER:

1/18/08
Date

Bradley N. Bishop
Chief, Western Regulatory Section
Operations Division