

APPENDIX B

Comments Received and Applicant Rebuttal

FILE NO. 2008-01138

Proposed Recessed Excavation and Private Boat Docks

Sailboat Hollow Development

In an Embayment of Tennessee River Mile 271.3, Right Bank,
Wilson Lake, Lauderdale County, Alabama



United States Department of the Interior

FISH AND WILDLIFE SERVICE
1208-B Main Street
Daphne, Alabama 36526

DEC 31 2008

IN REPLY REFER TO:
2009-FA-0047

Nashville District Corps of Engineers
Regulatory Branch
3701 Bell Road
Nashville, Tennessee 37214

Attn: Ms. Lisa Morris

Dear Sir:

This is the report of the U.S. Fish and Wildlife Service (Service) concerning public notice (PN) 08-78, application No. 2008-01138, a joint public notice of the U.S. Army Corps of Engineers (USCOE) and the Tennessee Valley Authority (TVA), in which the applicant, Sailboat Hollow Development, Inc., proposes to excavate a 200' wide, 1,200' long, recessed channel into the hollow at the embayment on the right bank of Wilson Lake at Tennessee River Mile 271.3, Lauderdale County, AL. The new shoreline would front 15 of 28 planned lots and allow for construction of one boat house per lot (up to 1,000 sq. ft). We understand that the channel would be excavated and 38,000 cubic yards of sediment and alluvial material would be removed, to bottom Elevation 498.0, where summer pool elevation is 507.3 and winter pool is Elevation 505.3. We also understand that this activity would result in the removal of 0.5 acres of wetlands and 0.3 acres of emergent wetland vegetation. It is proposed that excavated materials would be loaded into trucks and disposed of at various previously disturbed properties within 0.5 miles of the site.

This report is prepared in accordance with the requirements of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e), the and the Clean Water Act (PL 92-500, as amended; 33 U.S.C. 1251 et seq.) and is to be used in your determination of 404 (b) (1) guidelines compliance (40 CFR 230) and in your public interest review (33 CFR 320.4) as they relate to protection of fish and wildlife resources.

Our evaluation of this project has included a review for threatened and endangered (T&E) species and/or their designated critical habitat in the proposed project area. According to our collection records, there are no known sites of T&E species or critical habitat in the proposed project site or in the vicinity (within a mile radius) of the project footprint.

www.fws.gov

PHONE: 251-441-5181



02 JAN

FAX: 251-441-6222

Past land management practices and the construction of Wilson Dam on the Tennessee River have likely limited the potential for federally listed aquatic species to occupy this site or re-establish populations in this area. We note, however, that collection records available to the Service may not be all-inclusive. Our database 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 habitats and thus does not 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 and past surveys conducted in areas close in proximity to the proposed project; we believe that the requirements under Section 7 of the Endangered Species Act (ESA) of 1973, as amended, are fulfilled. Obligations under Section 7 of the Act must be reconsidered if: (1) new information reveals impacts of this identified action that may affect listed species or critical habitat in a manner not considered, (2) the action is subsequently modified to include activities which were not considered in this consultation, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

There is the potential for this project to have negative impacts on the aquatic environment within Wilson Reservoir/Tennessee River, at least during and immediately following the excavation planned at the project site. Water quality conditions would be compromised in the area of, and adjacent to, the proposed excavation activities. Best management practices (BMPs) are essential in minimizing adverse impacts to fish and wildlife and plant resources; and therefore, their appropriate use should be employed prior to and maintained throughout the duration of the project to avoid or minimize sedimentation and turbidity in Wilson Reservoir/Tennessee River during all phases of the proposed dredge project.

Conditions

- # 1 We recommend excavation activities occur during winter drawdown/normal winter pool (NWP) conditions on Wilson Reservoir (normally October through March) to further reduce impacts to aquatic biota in the vicinity of the project site. If excavation activities are allowed to occur during normal summer pool elevation/full pool periods of the year, we recommend the USCOE and/or TVA coordinate planned operations with the applicant and/or their contractor to minimize turbidity and siltation impacts within Wilson Reservoir.
- # 2 We recommend that the excavated materials be placed in a previously disturbed upland site. No wetlands, streams, or other waterbodies at the proposed disposal area(s) should be filled or indirectly impacted from the placement of these excavated materials. We recommend the site be surveyed and a jurisdictional wetlands determination made by the USCOE prior to any excavated material disposal. All areas disturbed by the excavated materials should receive prompt stabilization measures to ensure erosion and sedimentation are kept to a minimum (e.g. use hay bales, erect and maintain geotextile silt fences, mulch and establish grass on bare soil areas, etc.), especially due to the close proximity (within 0.5 miles of the site) to the site.

We understand that wetland delineation was prepared by Geo-Source, Inc., Florence, Alabama, and submitted with the permit application, and was subsequently verified by the Army Corps of Engineers on November 20, 2008. Approximately 0.8 acres of wetlands would be impacted during the excavation activities. We understand the applicant proposes to compensate for the 0.8

acres by constructing a new shoreline interface (i.e. wetland shelf). The wetland shelf would encompass 1,800 linear feet of proposed shoreline created by the excavation; the shelf width would be 20 feet wide with a 2:1 slope for approximately 0.83 acres of wetland shelf area.

The Service is unconvinced that the proposed construction of a new shore line interface or wetland shelf would fully compensate for the wetland habitat lost. We understand that the applicant proposes an approximate 1:1 mitigation. We believe the construction itself would result in a net interim loss of wetland function. Also, from the diagram supplied with the public notice, it appears that the proposed wetland shelf would be dewatered at winter pool elevation providing reduced function; in addition the proposed mitigation appears to be out-of-kind. We believe that additional wetland mitigation could be required, and we request that current ecological function of the wetlands to be impacted be assessed using the Wetland Rapid Assessment Procedure (WRAP). We would like a chance to review the WRAP and finalized wetland mitigation plan.

OK, per Corps.

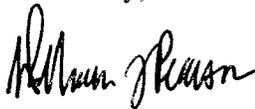
3 not needed

Nashville District does not require this. I will notify USFWS that we do not require WRAP.

while Mobile District does.

Due to our concerns, we request that this application be held in abeyance pending receipt and review of a WRAP, habitat assessments, and additional mitigation information. If you have any questions please contact Mr. Anthony Ford of my staff at (251) 441-5838. Please refer to the reference number located at the top of this letter in future phone calls or written correspondence.

Sincerely,



William J. Pearson
Field Supervisor
Alabama Ecological Services Field Office

cc: Ms. Heather McGee, TVA, Muscle Shoals, AL



STATE OF ALABAMA
ALABAMA HISTORICAL COMMISSION
468 SOUTH PERRY STREET
MONTGOMERY, ALABAMA 36130-0900

March 10, 2009

TEL: 334-242-3184
FAX: 334-240-3477

Kyle Wright
USACE Nashville District
3701 Bell road
Nashville, Tennessee 37214-2660

Re: AHC 09-0196
COE-T 08-078
Recessed Excavation & Private Docks (*Sail Boat Hollow*)
Lauderdale County, Alabama

Dear Mr. Wright:

Upon review of the additional information forwarded by your office, we have determined that the proposed activities will have no effect on properties listed on or eligible for the National Register. Therefore, we concur with this project.

However, should artifacts or archaeological features be encountered during project activities, work shall cease and our office shall be consulted immediately. Artifacts are objects made, used or modified by humans. These include but are not limited to arrowheads, broken pieces of pottery or glass, stone implements, metal fasteners or tools, etc. Archaeological features are stains in the soil that indicate disturbance by human activity. Some examples are postholes, building foundations, trash pits and even human burials. This stipulation shall be placed on the construction plans to insure contractors are aware of it.

We appreciate your continued efforts on this project. Should you have any questions, please contact Greg Rhinehart at (334) 230-2662. Please have the AHC tracking number referenced above available and include it with any correspondence.

Truly yours,

Elizabeth Ann Brown
Deputy State Historic Preservation Officer

MAR 16 2009

EAB/GCR/gcr



STATE OF ALABAMA
ALABAMA HISTORICAL COMMISSION
468 SOUTH PERRY STREET
MONTGOMERY, ALABAMA 36130-0900

FRANK W. WHITE
EXECUTIVE DIRECTOR

December 23, 2008

TEL: 334-242-3184
FAX: 334-240-3477

Lisa R. Morris
USACE Nashville District
3701 Bell Road
Nashville, Tennessee 37214

Re: AHC 09-0196
COE-T 08-78
Recessed Excavation, Private Boat Dock, & Development
Sailboat Hollow Development
Lauderdale County, Alabama

Dear Ms. Morris:

Upon review of the above referenced project, we have determined that it is unknown if sites potentially eligible for the National Register of Historic Places (NRHP) exist here. The project area is similar environmentally to areas which are known to have significant cultural resources. Therefore, it must be considered archaeologically sensitive. For this reason, we request that a professional archaeologist conduct a cultural resource assessment to identify any cultural resources which may be present. The archaeologist's report shall be submitted to our office for review and determination prior to project activities commencing.

In addition, we request photographs and for all structures (house and barn, etc.) within or within view of the project area; these locations should be keyed to a good quality USGS topographic map. We cannot make a determination on your project without this information.

We appreciate your continued efforts on this project. Should you have any questions, the point of contact for this matter is Greg Rhinehart at (334) 230-2662. Please have the AHC tracking number referenced above available and include it with any correspondence.

Truly yours,

Elizabeth Ann Brown
Deputy State Historic Preservation Officer

21 DEC 2008

EAB/GCR/gcr

Morris, Lisa R LRN

From: Bubba's Marine Construction [bubbasmarine@bellsouth.net]
Sent: Friday, January 30, 2009 1:09 PM
To: Morris, Lisa R LRN
Cc: hlmcgee@tva.gov

Bubba's Marine
Construction, LLC
2400 Hwy 101
Rogersville, AL 35652
Ph: 256-247-1373
Fax: 256-247-9373
Email: bubbasmarine@bellsouth.net

January 30, 2009

Lisa R. Morris,

I contacted Hunter Johnson with the Tennessee Valley Archaeological Research and he performed a site file search and found no archaeological sites had been recorded in the area, also he indicated that the only structures in the vicinity that possibly could have historical significance is Lock Four, which is obviously not going to be affected by my project. After reviewing this letter, if you need anything please contact me.

Sincerely,

Bubba Doss
256-335-8900

January 13, 2009

Lisa R. Morris
USACE – Nashville District
3701 Bell Road
Nashville, Tennessee 37214

Re: Response to Agency Comments
COE-T 08-78 – Proposed Residential Development
Wilson Reservoir, TN River Mile 271.3, Right Bank
Lauderdale County, Alabama

Dear Mrs. Morris,

This correspondence is to serve as a response to the comments received from the Alabama Historical Commission (AHC) and U.S. Department of the Interior Fish & Wildlife Service (FWS). The comments from these agencies were documented in their correspondence dated December 23, 2008 and December 31, 2008, respectively. The following information is offered respectfully on behalf of Sailboat Hollow Development, Inc (“Applicant”).

The AHC has requested in their correspondence that a cultural resource assessment by a professional archaeologist be conducted to determine if the site contains significant cultural resources. The Applicant is currently in communication with representatives of the Tennessee Valley Authority (TVA) to determine if historical maps exist in their archives which may have cultural resource information sufficient to satisfy this concern. If such maps are found, they will be reproduced and transmitted to the AHC for consideration. Otherwise the Applicant will engage a professional archaeologist to conduct a cultural resource assessment. In either case, the Applicant will provide to the AHC copies of requested photographs of all structures within view of the project area, keyed to a good quality USGS topographic map.

An evaluation of the project area performed by the FWS identified no known occurrences of federal or state listed threatened or endangered species or critical habitat. The FWS states however that the project has potential for negative impact to the aquatic environment and stresses that best management practices (BMPs) are necessary to prevent or minimize sedimentation and turbidity caused by construction activities. The FWS also recommends that excavation activities occur during the time period of October through March (winter drawdown/normal winter pool) and that excavated materials be placed in a previously disturbed upland site with appropriate BMPs to ensure stabilization and minimize erosion and sedimentation. **The Applicant concurs with these recommendations and intends to carry them out in accordance with a Construction Best Management Practices Plan to be prepared for the project area prior to**

initiation of construction activities. Due to the size of the project area, a Construction Stormwater Permit issued by the Alabama Department of Environmental Management will be necessary and will further require and enforce these recommendations.

The FWS expresses concern over the proposed compensatory mitigation for 0.8 acres of jurisdictional wetlands which would be lost due to excavation in the project area. Their comments indicate that they “believe the construction itself would result in a net interim loss of wetland function...[and] it appears that the proposed wetland shelf would be dewatered at winter pool elevation providing reduced function...[and that] the proposed mitigation appears to be out-of-kind”. Reductions in function of fringe wetlands such as the area proposed for excavation are typical during the calendar year due to seasonal rise and fall of the reservoir pool, as controlled by TVA. This control of the aquatic environment has resulted in a cyclical and predictable hydrologic regime that sustains the wetlands. Further analysis of this system, through the Wetland Rapid Assessment Procedure for example, is not necessary to fully ascertain and understand the functions and values of this system. If the existing wetlands were associated with headwater springs, sideslope seeps or some other hydrologic input, it may be appropriate to pursue comprehensive analysis (in addition to the required jurisdictional determination) to ensure that compensatory mitigation through a wetland shelf along Wilson Reservoir would be equitable. This is because, in such a case, the existing wetlands and wetland mitigation would be of different types and therefore may have differing functions and values. In reality, the existing fringe wetlands exist because of the same hydrologic input that will sustain the proposed wetland shelf, which is the controlled cyclical and predictable rise and fall of the reservoir pool. The proposed wetland shelf is designed to occur on a slope that will promote and sustain emergent wetland vegetation through the controlled and cyclical variation of reservoir pool elevations. This design concept is to mimic the existing hydrologic regime of the wetlands to be excavated. The existing wetlands are fully inundated during certain times of the year and are substantially dewatered at other times, again due to the rise and fall of reservoir pool, as controlled by TVA. For this reason, the proposed wetland shelf is in-kind with the existing jurisdictional wetlands.

I hope this information is helpful in your consideration of the proposed activity. Should you have any questions regarding these matters, please feel free to contact me at your convenience.

Sincerely,



GEO-SOURCE, Inc.

Brad Dethero, RF



STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
64 NORTH UNION STREET
MONTGOMERY, AL 36130

BOB RILEY
GOVERNOR

M. BARNETT LAWLEY
COMMISSIONER

HOBBIE SEALY
ASSISTANT COMMISSIONER

January 12, 2009

PATRICIA J. POWELL, DIRECTOR
GREGORY M. LEIN, ASSISTANT DIRECTOR
STATE LANDS DIVISION

TELEPHONE (334) 242-3484
FAX NO (334) 242-0999

Nashville District Corps of Engineers
Regulatory Branch,
Mrs. Lisa Morris
3701 Bell Road
Nashville, TN 37214

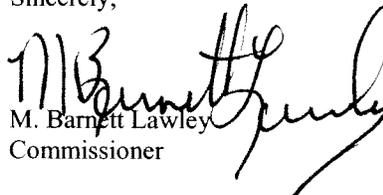
Re: Public Notice No.08-78

Dear Mrs. Morris:

The Department of Conservation and Natural Resources has reviewed the above mentioned permit application. We respectfully submit the following comments:

- Mitigation for wetland impacts by creation of a "wetland shelf" seems highly problematic. This development will include waterfront residences and boat houses spaced about every 100 feet. It is unlikely that a homeowners association or individual homeowners will tolerate dense emergent shoreline vegetation. Mitigation should be addressed by purchase of credits from an approved mitigation bank.
- The Natural Heritage Section office has developed the following information pertaining to state protected, and federally listed candidate, threatened, and endangered species. The closest sensitive species is recorded in our database as occurring approximately 1.3 miles from the subject site. This state protected species (Alligator Snapping Turtle) can be found in the southeastern U.S. in river systems that drain into the Gulf of Mexico. This includes most rivers from southern Georgia and northwestern Florida west to eastern Texas in the San Antonio River. This species inhabits slow moving, deep water of rivers, sloughs, oxbows, and canals or lakes associated with rivers, swamps, bayous, and ponds near rivers, and shallow creeks. This species sometimes enters brackish waters near river mouths and usually occurs in water with mud bottom and some aquatic vegetation but may use sand-bottomed creeks. Destruction and disturbance of this species' habitat should be avoided and "taking" of the animal itself is prohibited. This information does not suggest that protected species are not at this location. A survey conducted by trained professionals is the most accurate way to ensure that no sensitive species are jeopardized by the development activities.

Sincerely,


M. Barnett Lawley
Commissioner

Cc: Wildlife and Freshwater Fisheries,
ADEM

15 JAN

