

ENVIRONMENTAL ASSESSMENT
STATEMENT OF FINDINGS
AND
FINDINGS OF NO SIGNIFICANT IMPACT

File No. 2006-01721

Two Proposed Community Fixed Docks and Bank Stabilization at Elk River Mile 1.8, Left Bank,
Wheeler Reservoir, Limestone County, Alabama

Two Rivers, LLC

Lead Agency:
U.S. ARMY CORPS OF ENGINEERS
Nashville District, Regulatory Branch

Cooperating Agency:
TENNESSEE VALLEY AUTHORITY

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CHAPTER 1.0 PURPOSE AND NEED FOR ACTION

1.1 Background. On August 28, 2006, Billy Christopher, d/b/a Two Rivers, LLC, 211 South Jefferson Street, Athens, AL, 35611, submitted applications for a Department of the Army (DA) permit application pursuant to **Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act** and a Tennessee Valley Authority (TVA) permit pursuant to **Section 26a of the TVA Act**. The proposed action is located at Elk River Mile 1.8, left bank, Wheeler Reservoir, Limestone County, AL. The Elk River is a tributary of the Tennessee River at Mile 285.0R. USGS Quad- Rogersville, AL, lat: 34° 47.00'; lon: 87° 16.50'.

1.2 Purpose and Scope of Work. The purpose of the proposed action is to construct water use facilities for property owners in an adjacent proposed 61 unit condominium complex. The applicant proposes to construct two fixed day-use docks on steel piling with concrete decks and octagon piers at the end. In the original application, the 200-foot long fixed docks with 9-foot wide walkways and 60-foot wide octagon-shaped platforms extended approximately 260 feet from the normal summer pool (NSP) shoreline, 556 feet. This length exceeded the TVA guideline of 150-foot length for piers in this location. However since then, the applicant reduced the length to 150 feet to meet the TVA guideline. The reduced docks measure 90 feet long with 6-foot wide walkways with the 60-foot octagon at the end for a total of 150 feet length. The docks would be spaced 80 feet apart. In addition, the applicant proposes to place approximately 1,775 linear feet of riprap along the shoreline. This riprap would range in size from 6 inches to 18 inches in diameter and be placed over filter fabric (bottom elevation 554 to top elevation 558). Two areas would be recontoured with approximately 40 cubic yards of clean backfill material. Also, the applicant would install a beach. Sand (366 cubic yards) for the beach would be placed above NSP on top of a natural peninsula then stabilized with riprap around its perimeter. Public Notice 06-92 dated August 31, 2006, Appendix A, described the original proposed work. Plans of the modified reduced scope of work are located in Appendix B. Two Rivers, LLC (Two Rivers) would also implement a mutually agreed upon vegetation planting and management plan on TVA public land fronting its proposed development.

1.3 Existing Setting. Two Rivers would build a condominium complex on a peninsula at the mouth of the Elk and Tennessee Rivers. Its privately-owned property contains approximately 1800 linear feet of shoreland fronted by TVA property. A portion of the private property, also developed by Christopher Realty and currently under development is known as The Pointe Subdivision. The Pointe Subdivision has approved community waterfront facilities used by interior lot owners and some owner of lots where waterfront development is prohibited. The community docking facilities are located in a cove approximately 3000 linear feet upstream from the newly proposed Two Rivers development property and can not be seen from The Pointe community facilities.

The proposed site has river views in three directions. Corps and TVA staff have conducted inspections of the site, both from land and from the river. Photographs taken by TVA, dated August 17, 2006, are located in Appendix D. The property was originally a farm and pastureland and few trees exist on the uplands. The peninsula is exposed and above the level of the reservoir water during normal summer pool elevation. The proposed piers would lie in the wide mouth of the Elk River away from the main navigation channel. With the total length of the docks reduced to 150 feet, water depths would be sufficient for boating in this area at summer pool elevation. However, even with the originally proposed longer lengths (260 feet), winter depths would not allow boat access to the docks. TVA's guidelines for maximum pier lengths are 150 feet. Since minimal advantage would be gained by exceeding the TVA guideline of 150 feet; for this and other reasons, the applicant reduced the total length of the docks.

1.4 Decision Required.

- Section 10 of the Rivers and Harbors Act of 1899 prohibits the alteration or obstruction of any navigable water of the United States unless authorized by the Secretary of the Army acting through the Chief of Engineers. The location for the proposed work is a navigable water of the US as defined by 33 CFR Part 329.

- Section 26a of the TVA Act prohibits the construction, operation, or maintenance of any obstruction in, on or along the Tennessee River System or its tributaries that affect navigation, flood control, or public lands or reservations until plans for such construction, operation, or maintenance have been approved by TVA. The applicant, as backlying landowner, has ingress/egress rights over TVA land below the 560-foot mean sea level (msl) contour elevation to the waters of Wheeler Reservoir. No TVA land or landrights were requested as a part of this proposal.

DA and TVA permits and approvals are required; therefore, the Corps of Engineers and TVA must decide on issuance of permits for the proposal, issuance of permits with conditions, or denial of the requested permits. TVA is a cooperating agency in the development of this environmental assessment.

1.5 Other Approvals Required. Section 301 of the Clean Water Act (CWA) prohibits the discharge of fill material into waters of the US unless authorized by the DA pursuant to **Section 404 of the CWA**. The beach sand material would be placed above NSP; therefore, no DA permit would be required. The fill material associated with the bank stabilization activities would be placed below NSP; however, this activity has been previously authorized by Nationwide Permit (NWP #13). The Alabama Department of Environmental Management (ADEM) issued a conditional water quality certification for the NWP #13 on March 21, 2002, that applicable water quality standards would not be violated for bank stabilization activities. As a condition of the certification, ADEM requires that best management practices (BMPs) be employed while performing the work (Appendix E).

CHAPTER 2.0 Public Involvement Process. On August 31, 2006, DA and TVA issued Joint Public Notice 06-92(Appendix A) to advertise the proposed work. The modified scope of work was received on October 23, 2006. Since the modification was a reduction in the originally proposed action and the overall concept of the proposal was not changed; it would not have served any purpose to re-issue the notice. Three agency and ten public comments were received and are summarized as follows (copies in Appendix C):

Agency Comments.

- By letter dated October 5, 2006, the Alabama Historical Commission concluded that the proposed work would have no effect on National Register of Historic Places listed or eligible properties and had no objections to proceeding with the project provided work ceases should any archaeological resources be encountered during the project activities.

- By letter dated September 21, 2006, the U.S. Fish and Wildlife Service (USFWS) stated that no federally listed threatened or endangered species have been identified in the proposed construction site. No significant adverse effects on fish and wildlife, their habitats, and human uses are expected to result from the proposed action. USFWS recommended that BMPs be employed prior to construction and maintained to avoid or minimize sedimentation into the river during all phases of construction and that stabilization activities be conducted from the shore during low winter pool conditions. USFWS has no objections to issuance of the permit.

- By memorandum dated October 2, 2006, TVA's navigation staff stated that the Two Rivers' proposed day-use docks would lie in the mouth of the Elk River away from the main navigation channel. The originally proposed lakeward extension of the piers was 260 feet. Water depths are sufficient for boating in this area at NSP elevation, but even at 260 feet from shore winter depths are insufficient for boating. Minimal advantage would be gained by exceeding the TVA guideline of 150 feet. TVA's navigation staff recommended issuance of the requested permit contingent on the following conditions:
 - 1) The maximum lakeward extent of the facilities should not exceed 150 feet from the NSP shoreline.
 - 2) The floor elevation of the fixed structures should be a minimum of 1.5-feet above the NSP elevation 556.
 - 3) The piers are lit with U.S. Coast Guard approved lighting.
 - 4) The applicant is advised in writing that the facilities will be adjacent to a commercial navigation channel and recreational waters at a location which makes the facilities and any moored boats vulnerable to wave wash and possible collision damages from passing vessels.

The applicant modified the plan for the community day-use piers on October 23, 2006. A copy of the modified plan is located in Appendix B. The structures were reduced in length to 90-foot long piers and 6-foot wide walkways with 60-foot octagons at their lakeward ends.

Public Comments. During the comment period, nine comments from the public were received; seven were opposed and two were in support. There were five requests for a public hearing. After the comment period closed, seven additional opposing comments were received. Copies of the letters are located in Appendix C. Among other things, a perception of reduced on-water safety and increased boat traffic were the main concerns. The following is a summary of the most frequently mentioned issues.

- Opposed to development of any docks or beaches on the Elk River;
- River too narrow to accommodate the piers; docks too long; 260' takes away 1/4th of channel; TVA only allows 150';
- Safety; prime skiing and water spot location; accident waiting to happen;
- Navigation is already a problem in the river;
- Lighting at night would be a nuisance; changing the face of the river and landscape of the area; ruining the entrance of the Elk River;
- Big boats tied to the piers would hinder views of the adjacent property owner;
- Values adjacent lands may depreciate;
- Concerns over private property owners encroaching on the public waterways; transfer of valuable public water resources would be contrary to the spirit and intent of the 2006 presidential Executive Order forbidding a federal agency from using eminent domain for economic development;
 - Inadequate notice given to the public regarding the application - persons in the area and county were not given sufficient notice of the proposed activity;
 - Concerns over developers profit from the action.

CHAPTER 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 on resources, including cumulative impacts, of the proposed activity and its intended use on the public interest. Public Notice 06-92 lists factors that may be relevant to the proposal and must be considered. The following sections discuss factors and resources identified as relevant and provide a concise description of the anticipated impacts. The relevant resources affected by the proposed action are checked, following with a description of the impacts. Consideration of environmental sustainability and cumulative effects on the resources affected by the proposed action are addressed in Section 3.5.

3.2 Physical/Chemical Characteristics and Anticipated Changes.

(x) substrate. Minor disturbance of the affected bottom substrate would occur during the facility construction but due to small fraction involved relative to the total bottom area available, there would be only minor impacts. No dredging would be required under the proposed action. Our inspection of the site revealed that the substrate in the cove was mostly composed of silt, clay, and gravel accumulation. The proposal includes the placement of riprap which would cover existing substrate along 1,775 feet of shoreline. The average width of the riprap at its base would be 2-foot.

(x) currents, circulation or drainage patterns. The day-use piers would act as a wave break to currents into and out of the cove during normal and high flows and may divert drainage patterns towards the shoreline. With boats moving into and around the docks, increased wave action from their movement could start deterioration of the shoreline. The applicant is proposing to armor the bank with riprap so the bank would become more stable and reduce deterioration. Placement of various large sized riprap may trap and cause a reduction in the amount of silt accumulation in the cove.

(x) storm, wave and erosion buffers, shore erosion and accretion patterns. Stabilizing the shoreline with riprap provides hard armoring to reduce erosion to the shoreline from the boats going to and from the proposed piers. By nature of riprap, waves and currents during high flow events would generally break on the riprap before causing shoreline deterioration.

(x) suspended particulates, turbidity. Riprap would be placed from the landside of the site during normal winter pool with minimum elevation around 551 msl. There would be some minor dust, turbidity, and suspended particulates during these activities. No dredging is proposed. Special conditions required by ADEM relating to turbidity control and BMPs would be made a part of any permits issued for the work.

() baseflow. No issues.

(x) flood control functions. The deposit of riprap on the shoreline involves fill in the floodway. While this area does not participate with the Federal Emergency Management Agency flood protection plan, TVA has a flowage easement interest with deposits of fill material within the floodplain that may offset flood storage. The placement of riprap would displace less than 1-acre-foot of flood control storage, which would comply with TVA's Flood Control Storage Loss Guidelines requiring no offset for this specific activity.

(x) water quality (temperature, color, odor, nutrients). The proposed placement of riprap along the shoreline may cause some temporary turbidity of the water. However, the work meets the criteria of NWP #13, for which ADEM has categorically issued a water quality certification. The materials to be used for bank stabilization would be quarry-run riprap with no waste. Construction of the two fixed docks on sheet pilings with concrete decks should have no long-term impacts on water quality. Overall, adverse water quality impacts would be minor.

3.3 Biological Characteristics and Anticipated Changes.

() special aquatic sites (wetlands, pool and riffle areas, refuges). No issues.

(x) endangered or threatened species. By letter dated September 21, 2006, the USFWS stated that there are no known sites of federally listed T&E species or critical habitat in the proposed project site or in the vicinity (within mile radius) of the project footprint (Appendix C).

(x) habitat for fish and aquatic organisms. By placing the riprap during winter pool drawdown, effects would be minimized. The community docks should provide shading, which is a positive benefit to fish and aquatic habitat on the river bottom. Construction would have a temporary minor adverse impact on aquatic organisms until the area achieves equilibrium. Aquatic organisms would be expected to colonize within the voids of the rock (riprap) located below water level.

(x) wildlife habitat. Wildlife habitat in the project site is presently of low quality and diversity. The site was historically used as pasture and farmland and few trees exist on the upland property. A few trees exist along the TVA marginal strip property around the shoreline. These trees would not be removed under the proposed action and additional vegetative planting and streamside management zone protection would be implemented on the TVA property (see land use classification and consideration of private properties below). Because Two Rivers would plant only native grasses, shrubs, trees, and other vegetation on the TVA property, authorization of this work on federal property would be consistent with Executive Order 13112 (Invasive Species). Waterfowl and other aquatic birds in the area would be disturbed by the docks, the condominium, and associated human activity. A few waterfowl may use the riprap shoreline for perching, resting, and in the pursuit of prey. The proposed development would result in a small overall loss of wildlife habitat.

(x) biological availability of possible contaminants in dredged or fill material. Clean shot rock would be used for riprap bank stabilization. No contaminants would be deposited behind the riprap.

3.4 Human Use Characteristics and Anticipated Impacts.

() existing and potential water supplies; water conservation. No issues.

(x) air quality. Dust and general construction disturbance may temporarily affect air quality near the site until construction is finished and levels return to normal. The proposed activity would not exceed de minimus levels of direct emissions of a criteria pollutant or its precursors and is exempted by 40 CFR part 93.153 (See Section 5.2).

(x) traffic/transportation patterns. The proposed action would increase traffic by a small amount and alter current traffic flow patterns into and out of the Elk River. The Tennessee River is over 1 mile wide at the mouth of the Elk River. The Elk River at the Two Rivers development is over 2,100 feet wide and broadens to approximately 1-mile wide at its mouth. Elk River embayment of Wheeler Reservoir extends up river for approximately 25 miles. The Elk River navigation channel is located on the opposite bank from the Two Rivers development. The land along the eastern shore of the Elk River from U.S. Highway 72 at Joe Wheeler State Park (approx. 5 mile upstream) to the Pointe Subdivision consists of TVA fee-retained planned land. Also, along this bank between Two Rivers and the mouth of Elk River, there is more TVA land. This land is allocated for a variety of uses including visual protection, visual management, small wild area, forest multiple use or wildlife management, minor commercial landing, navigation safety harbor/landing, and informal or public recreation. None of this public land is developed and its land use designations (TVA and USACE 2006) do not allow the development of water use facilities. Recreational vessel use of this section of the Elk River is relatively sporadic and typically summer holiday and weekend boating traffic are the busiest periods (Ibid 2006).

The Two Rivers development has approximately 1700 feet of land which fronts TVA shoreline with deeded access rights across the public land to Wheeler Reservoir. Two Rivers has proposed to construct two day use docks on this land; the docks would have a total area of 7,200 square feet and moor an expected 30 recreational vessels during daylight hours. There is no expectation of any overnight boat mooring or equipment storage at these docks. It is expected that less than half or a similar number of the 61 condominium owners would own boats and about ¼ to one-third (or a maximum of 10 boats from Two Rivers) would likely be on the water at the same time even on the busiest holiday weekends. Boat launching would likely be provided at an existing boat ramp at the adjoining Pointe Subdivision (see Section 3.1 Existing Setting). It is expected that these boats would be trailored out of the water or placed in dry storage at night.

The private, community dock facility associated with the Pointe Subdivision is located within a small embayment and is permitted for a maximum capacity of 89 slips. Use of these slips is restricted to property owners in the Pointe Subdivision. Two additional fishing piers have also been approved and built where water depth would not allow boat mooring. Even considering boats originating from the Pointe Subdivision, the additional number of boats from Two Rivers

would be small and not contribute significantly to crowding or reduced boating safety in this reach of Elk River. Boats entering or leaving the proposed Two Rivers day use docks would be some 3000 feet (greater than ½ mile) away and would not interfere with boat traffic at the Pointe community facility. All other developed subdivisions in this reach of the Elk River are located on the opposite bank. Boats entering and leaving private water use facilities would be on the opposite side of the river at least 1,500 feet away and would not interfere with boat traffic at Two Rivers. Compared to Two Rivers' original request for 260-foot docks, the proposed docks would be 150 feet long, consistent with TVA guidelines. It is anticipated that vessels passing and maneuvering at the vicinity of the mouth of the river would not be restricted.

(x) navigation, water-related recreation, safety. The proposed work is located at the mouth of the Elk River as it meets the Tennessee River. The docks would be located out of the commercial navigation channel. The work would be for the water-related recreational benefit of the condominium homeowners. The lengths of the community docks have been reduced to be consistent with TVA guidelines for this section of river and would not restrict navigation in the river. However, any temporarily moored boats may be vulnerable to wave wash and possible unforeseen collision damages from passing vessels. The fixed docks are for day-use only and would be securely anchored to prevent them from floating free during major floods and breakaways. In addition, the docks would be lit according to U.S. Coast Guard requirements, as a navigational safety component.

(x) noise. Work would be performed during daylight hours. Equipment shall be limited to small machinery, within normal ranges expected for construction equipment.

(x) aesthetics. The construction of the piers and establishment of a beach area would change the aesthetics of the river from a relatively undisturbed, undeveloped site into an area with much human activity. The docks would be lit according to U.S. Coast Guard requirements, which would be a visual impact to adjacent property owners. Placement of riprap material around the shore would change a natural riparian shoreline to one covered with quarried limestone. Over time weathering and reservoir fluctuations and resultant silt deposition would darken the rocks and make them less visually conspicuous. During construction, there would be a temporary visual effect from the work and the workers and equipment in the area.

(x) historic properties and cultural values. By letter dated October 5, 2006, the Alabama Historical Commission determined that the project activities will have no effect on any known cultural resources listed or eligible for the National Register of Historic Places (Appendix C).

() conservation or mineral needs/energy consumption or generation. No issues.

() food and fiber production. No issues.

(x) land use classification and consideration of private properties. The proposed work would occur on and adjacent to a TVA-owned shoreline strip of land around the cove and along the river. The applicant owns former farmland and pastureland on the uplands where the construction of the condominiums would occur just above the TVA strip.

Two Rivers Condominiums would be located on a portion of TVA Tract No. XWR459, sold at public auction on July 17, 1957. The special warranty deed states "the right of ingress and egress from the waters of Wheeler Lake over and upon the adjoining land lying between the 560 foot contour elevation and the waters of the lake." All property below the 560-foot contour remains in the ownership of the United States under the custody and control of TVA.

To restore and minimize future use affects, Two Rivers would implement a vegetation management plan on the TVA land below contour elevation 560 msl. Vegetative plantings would be implemented in accordance with a plan and native plant species list included in Appendix G. Condominium owners would be afforded access through a maximum 20-foot wide path across this TVA land to each of the day-use docks and beach area. This access path specifies the area of public land which can be managed (e.g., mowed) by Two Rivers as the adjacent property owner.

(x) economics. The proposed facilities would likely increase the owner(s) property values by enhancing the lake benefits of the property. The work may attract buyers to the condominium, which may have a positive benefit to the developer, future property resale values, and local property tax receipts.

(x) environmental justice. The project has been reviewed with respect to environmental justice and it has been determined that there is no disproportionate concentration of minority or low-income persons within the vicinity of the project site. Further, the proposed action would not affect minority or low-income persons.

(x) floodplain values. TVA has determined that the proposal would cause no impacts to the floodplain storage of the area.

3.5 Cumulative and Secondary Impacts. This section considers what actions by others (including those actions completely unrelated to the action) have and will affect the same resources affected by the proposed action, determined relevant in Sections 3.2 through 3.4. Cumulative environmental effects for this action are assessed in accordance with USEPA 315-R-99-002, dated May 1999. In this case, a subjective five-year focus period for reasonably foreseeable future actions on the same resources, on the river and uplands in the vicinity of the proposed action, both by the applicant and by others includes:

- More changes to land use patterns in the area from farmlands to developed areas
- Additional construction on the upland tract
- Construction of new adjacent developments with similar water use facilities
- Future dredging of this location around the piers
- Increases and changes in waterfront facilities
- Construction of more docks on the river proper, by the applicant or by others
- Placement of riprap (floodplain fill) on the river banks by others in the vicinity
- Maintenance and/or improvement to areas roads

Determining the magnitude and significance of the effects of future activities on the same resources affected by the proposed action would have to be addressed on a case-by-case basis. In this case, while there would be temporary and permanent impacts on relevant resources; given the relatively small area of impact, the proposal is not anticipated to have a cumulative effect on the sustainability of environmental resources affected by the proposed action. Native vegetation plantings on the public shoreland near former upland farmland would have a small beneficial effect on the long-term terrestrial ecology of the general area.

CHAPTER 4.0 ALTERNATIVES

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

4.2 Description of Alternatives.

a. **No Action.** This alternative would result in denial or withdrawal of the applicant's request to perform the proposed actions at the subject location.

b. **The Proposed Action (as modified).** The proposed work consists of the placement of riprap for bank stabilization, as described and shown in plans in the Public Notice 06-92, Appendix A, and the construction of two day-use docks and establishment of a beach area, as described and shown in the modified plans, dated October 23, 2006, Appendix B.

c. **Appropriate Mitigation to Proposed Action.** In accordance with CFR 320.4(r), our review of the proposed action has revealed mitigation measures (listed in Section 5.5) typical for activities of this nature, which would reduce environmental impacts of the proposed action. This alternative is the modified proposed action above performed under special conditions to minimize and mitigate unavoidable adverse impacts.

4.3 Comparison of Alternatives. (and affects on Relevant Resources).

a. No Action. With this alternative, the applicant would not construct the community docks or place the riprap. The riparian habitat along the TVA shoreline would remain and revert via natural succession. The shoreline would not be armored by placement of riprap. Substrate, used by fish and aquatic organisms for feeding, would not be enhanced by the placement of riprap around the shoreline. The construction of the docks and increased movement of boats in the area would not change currents in the cove and shoreline area. Temporary turbidity in the cove would not occur from the shoreline stabilization activity. Aesthetics of the mouth of the river shoreline, lighting and visual impacts of the new piers and human activity, from the construction of the piers would not occur. Private recreational facilities and access to the river for the owners of the condominiums would not occur. The applicant could still develop the upland condominiums; however, the location may not be as attractive without the community docking or beach facilities, which may suppress the economic growth of the development.

b. Applicant's Proposal. While this alternative would cause permanent changes to the aesthetics of the cove and river shoreline, the proposed facilities are river dependent and not out-of ordinary for riverfront properties on Wheeler Reservoir. The proposed action would have economic benefits to the developer and homeowners in the condominiums. The proposed action is solely for summer recreational access to the lake and safe day-use storage of private boats for condominium homeowners. The proposed community docks are off the maintained commercial navigation corridor, have been reduced in length to be consistent with TVA guidelines, and would cause no adverse impacts to navigation. Public access to the use of the river for fishing or recreational navigation would not be restricted. Under the proposed action, TVA and the applicant have developed and the applicant has agreed to implement a vegetation management plan on the TVA land fronting the proposed development. The shoreline would be armored by riprap to minimize erosion that may be increased due to the construction of the piers and increased boat activity. Aquatic organisms might be expected to colonize over time and within the voids of the riprap on the shoreline. No properties listed in or eligible for the National Register of Historic Places would be affected. No federally-protected species would be affected. The work meets the desired needs of the applicant.

c. Applicant's Proposal with Special Conditions. The impact of this proposal would be similar to the description in b. above. The addition of special permit conditions would require that the work be constructed in a manner that would minimize adverse impacts to the environment. In addition to the conditions required by TVA some conditions, which apply to this type of work, include using only clean shot rock in varying sizes of 6-inch to 18-inch around

the shoreline, properly stabilizing disturbed areas, and performing the work during low pool conditions. This alternative would have the least adverse impacts of the two action alternatives under consideration. If these appropriate mitigation measures are implemented along with the vegetation management plan, impacts to the environment could be further minimized.

5.0 Findings

5.1 Consideration of Comments. An initial concern by TVA about the length of the community docks has since been resolved by a modification of plans by the applicant. By response to the notice, the USFWS recommended that the proposed bank stabilization activity be performed during winter pool elevation; however, there would be no impacts to threatened and endangered species. The Alabama Historic Commission stated that there would be no impacts on cultural resources. Comments were received from 16 citizens; 14 of which opposed the project and two in support. During the public notice comment period there were five requests for a public hearing. The comments were evaluated for consideration of the permit decision and resulted in additional correspondence with the applicant, subsequent information being furnished and minor reductions to the overall scope of work. All valid concerns have been addressed. The public was given ample opportunity to express their views on this proposal through the extended comment period and a public hearing is not likely to provide additional information that would assist in a final decision. The decision was made to not hold a public hearing.

5.2 Clean Air Act (CAA) General Conformity Rule Review. The proposed action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the CAA. It has been determined that the activities will not exceed de minimus 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. For these reasons, a conformity determination is not required.

5.3 Water Quality Certification. ADEM issued a conditional water quality certification that applicable water quality standards would not be violated for bank stabilization activities authorized by NWP. A copy of ADEM's required conditions, or "Best Management Practices", Appendix E, would be made a part of any permit issued for the proposed work, by condition. No further water quality determination is required.

5.4 404(b)(1) Determination. The purpose of section 404(b)(1) of the CWA is to restore and maintain the chemical, physical, and biological integrity of the waters of

the US through the control of discharges of fill material. A NWP is issued only after the permitting authority has applied the section 404(b)(1) Guidelines to the class of discharges covered by the permit (40 CFR 230), and then there is no need to repeat the process at the time a particular discharge covered by the NWP takes place. By issuance of the NWPs on March 18, 2002, the activities performed in accordance with the NWPs comply with the Guidelines and the intent of Section 404(b)(1) of the CWA.

5.5 Recommended Special Permit Conditions.

- The work must be in accordance with any plans attached to the permit. A copy of the permit must be available on the site during construction and the permittee shall ensure that all contractors are aware of its conditions and abide by them. *Justification: Ensure compliance.*
- Use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the US. *Justification: 33 CFR 325, Appendix A.*
- The permittee shall recognize the possibility that any permitted structures may be subject to damage by wave wash from passing vessels. Issuance of a permit would not relieve the applicant from taking all proper steps to ensure the integrity of the structure and the safety of the boats moored thereto from damage by wave wash and the applicant shall not hold the United States liable for any such damage. *Justification: Recommended at 33 CFR 325, Appendix A.*
- The permittee must install and maintain, at their expense, any safety lights and signals prescribed by the United States Coast Guard, through regulations or otherwise, on the authorized facilities. *Justification: Recommended at 33 CFR 325, Appendix A.*
- Only quarry-run stone (size range from 6-inches to 18-inches in diameter) shall be used to stabilize the bank. The materials will be clean and free of waste metal products, organic materials, unsightly debris, etc. *Justification: To reduce to possibility of harm to environment and water quality and negate the use of contaminated materials.*
- The contouring around the shoreline required for the placement of riprap shall be performed during winter pool elevation of Wheeler Reservoir. The work shall be in accordance with the NWP permit conditions and the ADEM required BMPs. *Justification: Recommended by USFWS to minimize aquatic impacts.*
- Permittee shall insure that all upland areas disturbed from the construction of the facilities authorized herein are properly seeded, ripped, or otherwise stabilized as soon as practicable to prevent erosion. *Justification: To minimize the amount of disturbance in the work area.*

5.6 DA Findings of No Significant Impact (FONSI). The proposed work would provide convenient docking locations with safe summer navigation depths for homeowners in the adjacent condominium development. The proposed work would enhance economic prosperity of the condominium, and meets the applicant's desires and needs. The work would occur off the maintained navigation channel and the lengths of the two docks have been reduced, so adverse impacts to commercial or recreational navigation are not expected. The banks along the river would be stabilized under the proposed action, occurring during winter pool elevation. The proposal would have short-term adverse impacts to aquatic organisms in the river, however, over time, organisms are expected to colonize in the voids of the riprap. No federally-protected species or cultural resources would be affected. Our inspection of the site has revealed no other extraordinary concerns.

Based on a full consideration of the environmental assessment and information obtained during the public interest review, I have concluded on behalf of the DA that issuance or denial of the requested Section 10 permit would not constitute a major federal action that would significantly affect the quality of the human environment. This constitutes a 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.

5.7 DA Public Interest Determination. I have weighed the potential benefits that may be accrued as a result of the proposed action against its reasonably foreseeable detrimental effects and conclude that permit issuance would not be contrary to the public interest. The general conditions contained within the DA permit together with incorporating the recommended special conditions adequately address the environmental concerns identified in this document.

FOR THE COMMANDER:

1-24-07

Date



Bradley N. Bishop
Chief, Western Regulatory Section
Operations Division

Please consider adding the following literature cited section where appropriate:
Tennessee Valley Authority and U.S. Army Corps of Engineers. 2006. *Final Environmental Assessment – Elk River Resort Proposed Recreation Easement and Marina Facilities, Wheeler Reservoir, Lauderdale County, Alabama*, March 2006.

APPENDIX A

Public Notice 06-92

Two Rivers, LLC
Elk River Mile 1.8L, Limestone County, AL
File No. 2006-01721



**US Army Corps
of Engineers**

Nashville District

Public Notice

Public Notice No. 06-92

Date: August 31, 2006

Application No. 2006-01721

Expires: September 29, 2006

Please address all comments to:

Nashville District Corps of Engineers, Regulatory Branch

3701 Bell Road, Nashville, TN 37214 Attn: Lisa Morris, telephone 615/369-7504

JOINT PUBLIC NOTICE
US ARMY CORPS OF ENGINEERS
TENNESSEE VALLEY AUTHORITY

SUBJECT: Proposed Community Fixed Docks and Bank Stabilization at Elk River Mile 1.8, Left Bank, Wheeler Lake, Limestone County, Alabama (Two Rivers Condominiums)

TO ALL CONCERNED: The application described below has been submitted for a Department of the Army (DA) permit pursuant to **Section 10 of the Rivers and Harbors Act of 1899** and Tennessee Valley Authority (TVA) approval pursuant to **Section 26a of the TVA Act**. The discharge of fill material associated with bank stabilization activities have been previously authorized by Nationwide Permit (NWP #13). The Alabama Department of Environmental Management issued a water quality certification for the NWP #13 on March 21, 2002.

APPLICANT: Two Rivers, LLC
211 South Jefferson Street
Athens, AL 35611

LOCATION: Elk River Mile 1.8, Left Bank, Wheeler Lake, Limestone County, Alabama.
USGS Quad- Rogersville, AL, lat: 34-46-00; lon 87-16-00. TVA RLR 174717, Tract XWR-459.

DESCRIPTION: The applicant proposes to construct two fixed docks on steel piling with concrete decks at the subject location for owners of a new adjacent 61 unit condominium complex. The fixed docks would extend approximately 260 feet from the normal summer pool (NSP) shoreline, Elevation 556. Each fixed dock would be composed of a walkway 200' x 9' and a 60' octagon at the end. The docks would be spaced 80 feet apart. In addition, the applicant proposes to place: (1) approximately 1,775 linear feet of riprap along the shoreline. The riprap would range in size 6" to 18" diameter over filter fabric (bottom Elevation 554 to top Elevation 558) and two areas would be recontoured with clean backfill material; (2) Also, the applicant proposes to install a beach. Sand (566 cubic yards) would be placed atop a natural peninsula above NSP and stabilized with riprap. Plans of the proposed work are attached.

File No. 2006-01721
Public Notice 06-92

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. 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 (EA) 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 EA will be prepared by this office prior to a final decision concerning issuance or denial of the requested permits.

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. 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 upon available information, the proposed work would 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 US Fish and Wildlife Service is not planned at this time.

File No. 2006-01721
Public Notice 06-92

In addition to the DA and TVA permits, other federal, state, and/or local approvals may be required for the proposed work. 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.

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 hearing. **Written statements received in this office on or before September 29, 2006, 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, Attn: Lisa Morris, at the above address. It is not necessary to comment separately to TVA since copies of all comments will be sent to them and become part of their records on the proposal. Point of contact with TVA is Heather Turner, Project Leader, PO Box 1010, Muscle Shoals, AL 35662, telephone (256) 386-2561.

If you received this notice by mail and wish to view all of the Exhibits, please visit our web site at: <http://www.lrn.usace.army.mil/cof/notices.htm>, or contact Ms. Morris at telephone (615) 369-7504 or the address above.

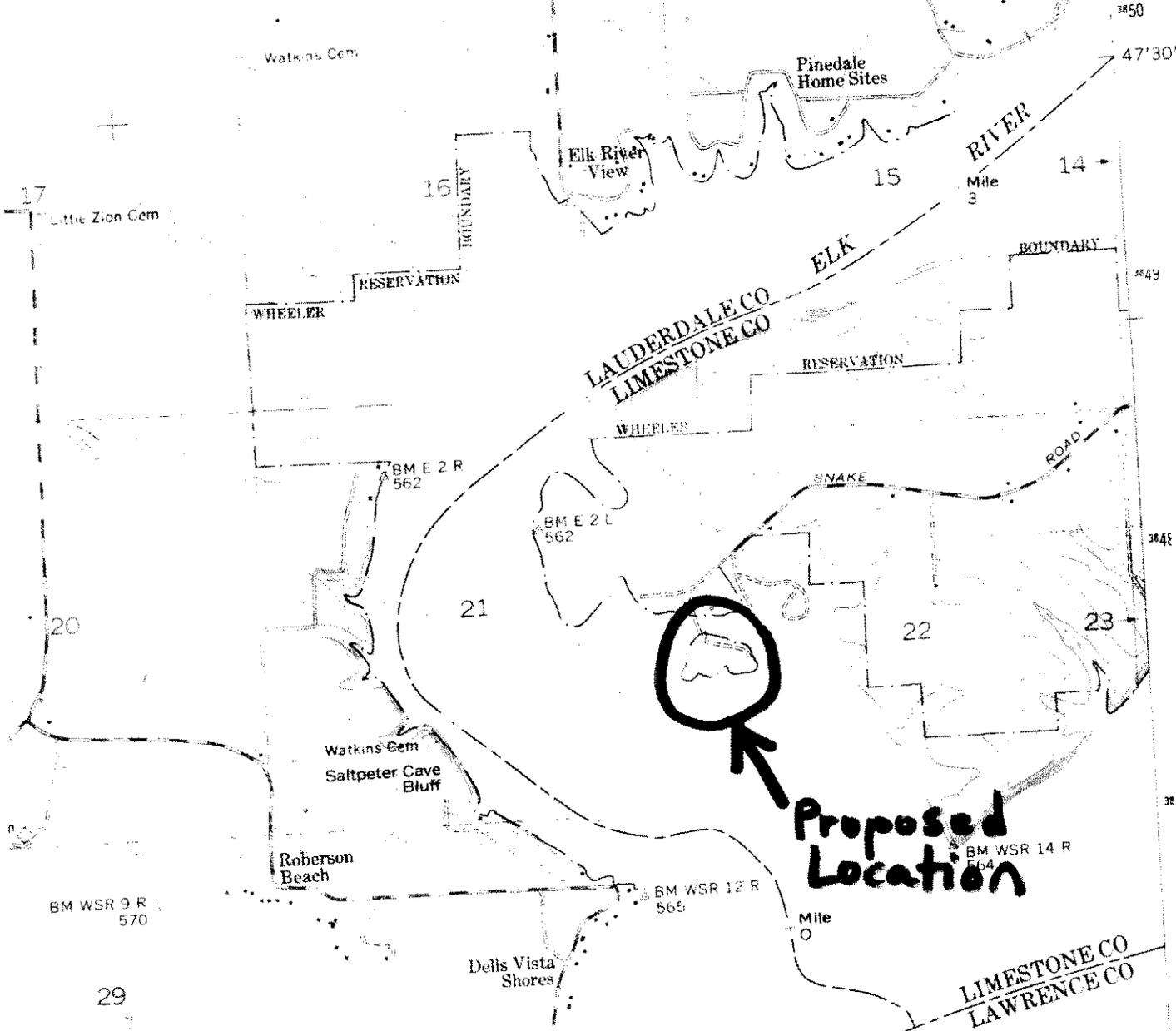
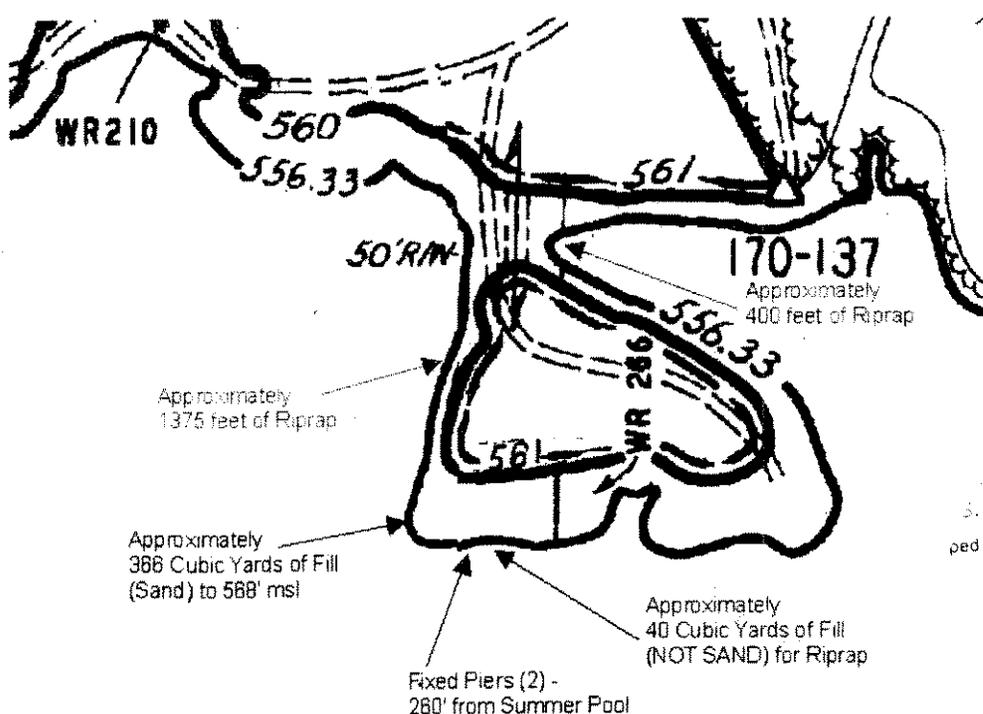


EXHIBIT A
 FILE NO. 2006-01721
 PN 06-92



CLASSIFICATION
 Poor motor road
 Wagon and jeep track
 Foot trail
 State Route
 ped areas, only through roads are classified

ROGERSVILLE, ALA.
 N3445-W8715/7.5
 1974
 AMS 3555 IV 66-SERIES V344

24

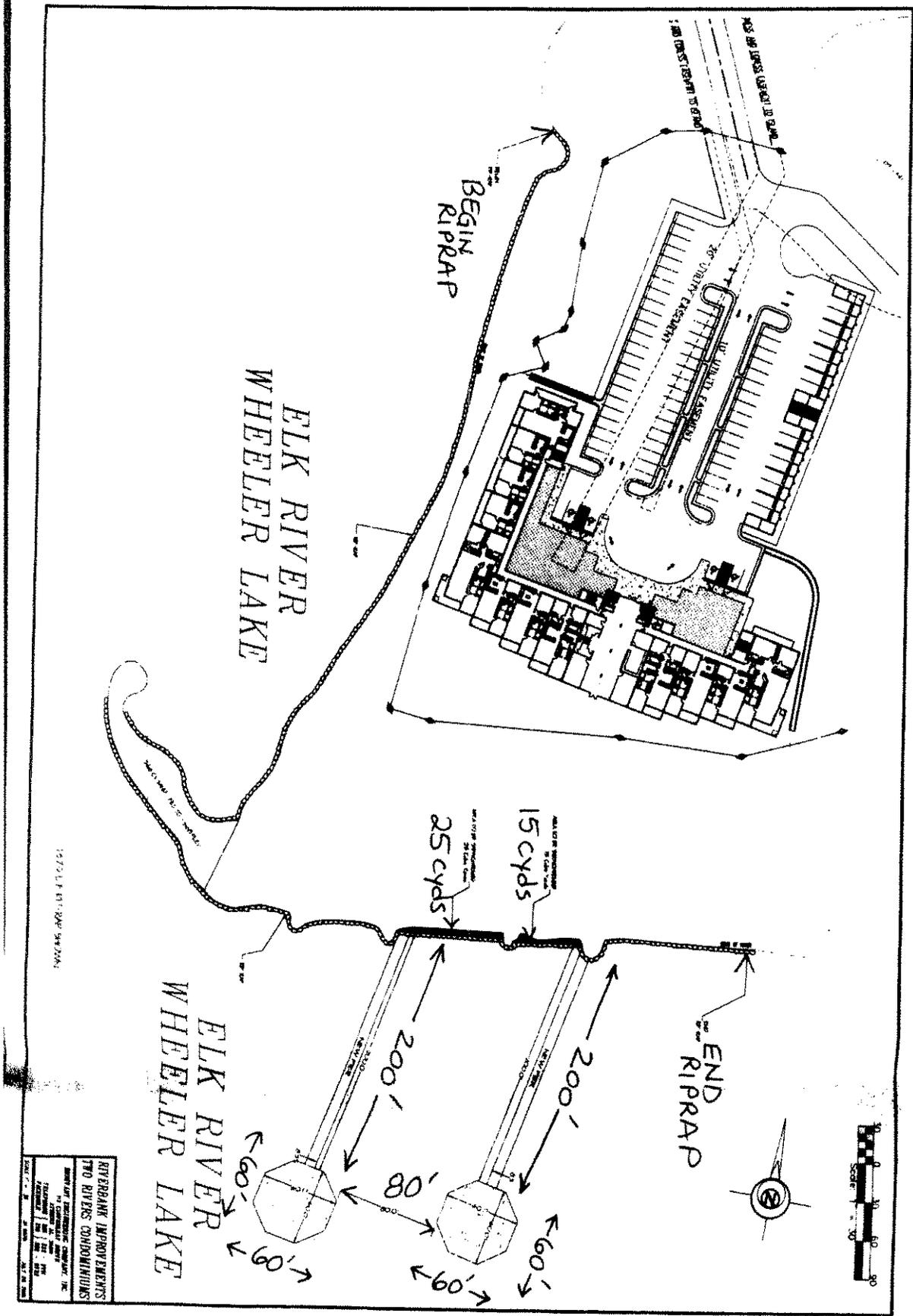
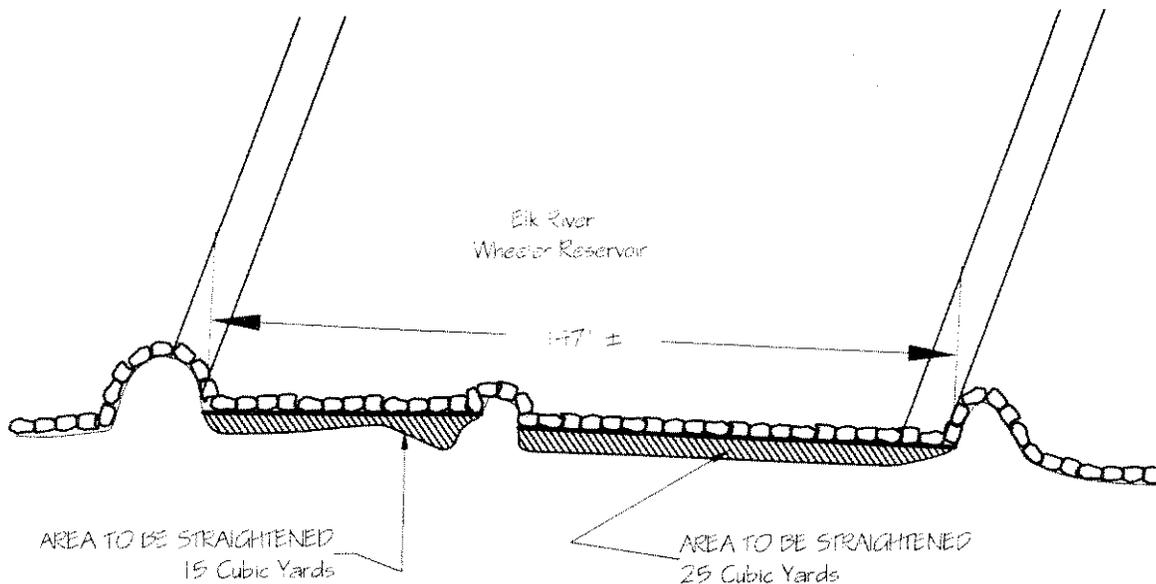
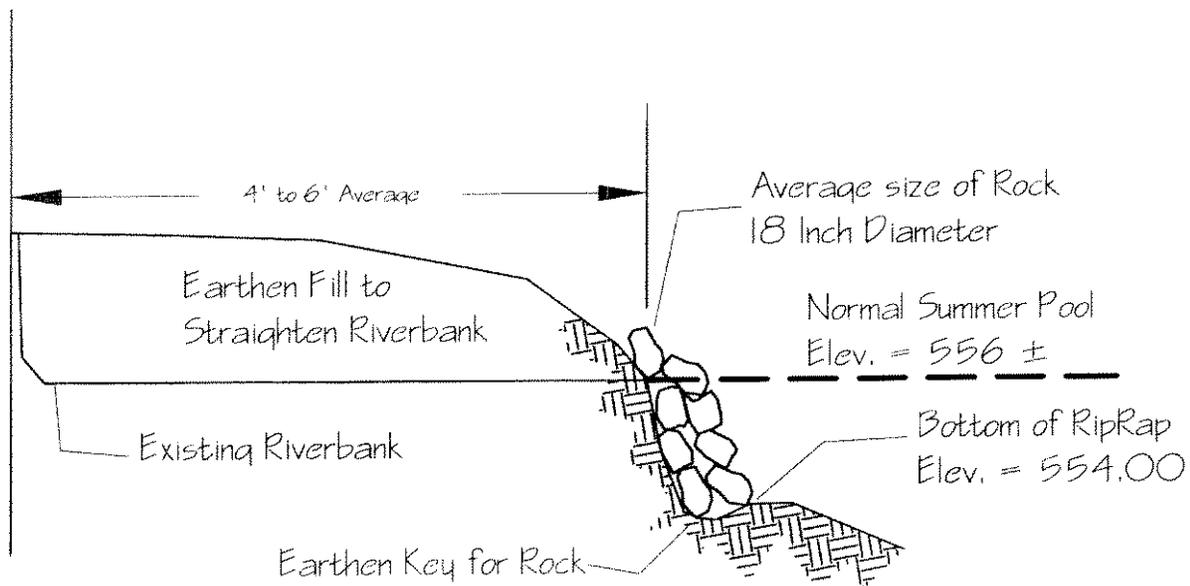


EXHIBIT B
 FILE NO. 2006-01721
 PN 06-2

RIVERBANK IMPROVEMENTS
 TWO RIVERS CONDOMINIUMS
 12751 E. 127th AVENUE
 DENVER, CO 80231
 303.751.1275
 WWW.TWORIVERSCONDO.COM



PLAN SHOWING FILL AREA

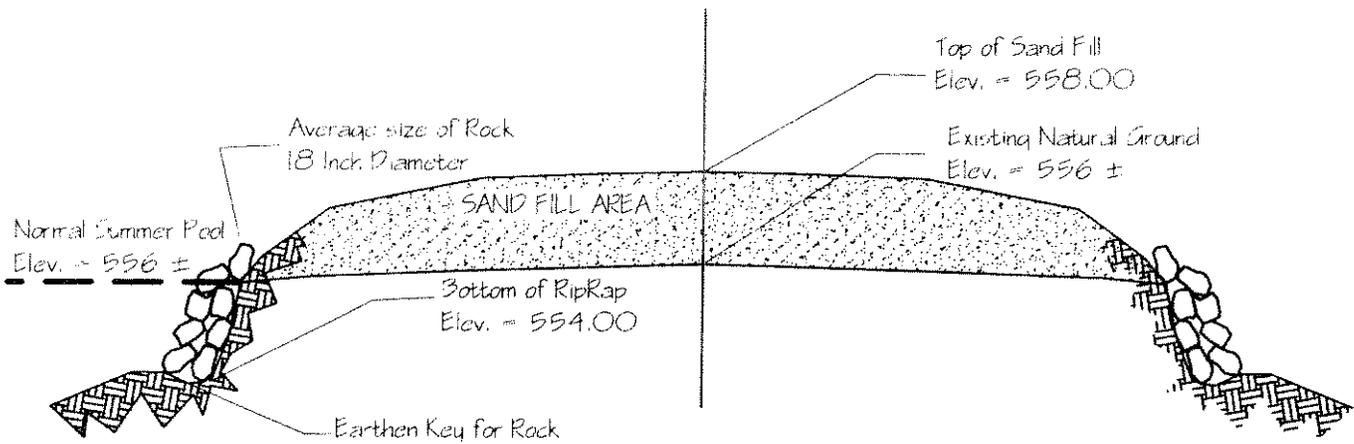
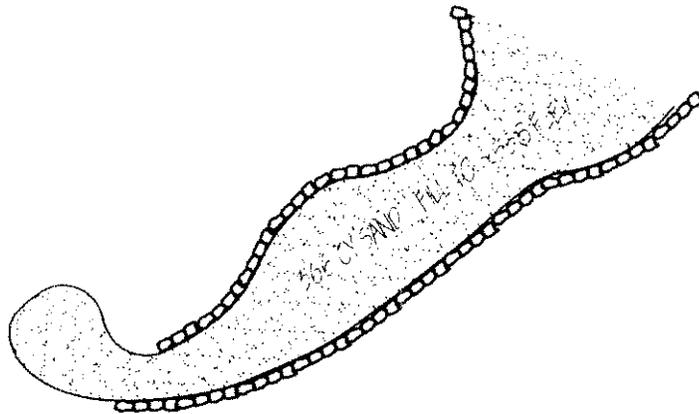


SECTION SHOWING FILL AREA

EXHIBIT C
FILE NO. 2006-01721
PN 06-92

FILL DETAIL	
PROJECT LOCATION INFORMATION:	
STREAM NAME: ELK RIVER	SUBDIVISION NAME: TWO RIVERS
RESERVOIR NAME: WHEELER	LOT NUMBER: N/A
MILE MARKER: 1.8L	MAP NO. 164D
(APPLICANTS NAME:)	BILLY A. CHRISTOPHER

PLAN SHOWING SAND FILL AREA



SECTION SHOWING SAND FILL AREA

EXHIBIT D
 FILE NO. 2006-01721
 PN 06-92

WHITE SAND FILL DETAIL	
PROJECT LOCATION INFORMATION:	
STREAM NAME: ELK RIVER	SUBDIVISION NAME: TWO RIVERS
RESERVOIR NAME: WHEELER	LOT NUMBER: N/A
MILE MARKER: 1.8L	MAP NO. 164D
(APPLICANTS NAME:)	BILLY A. CHRISTOPHER

APPENDIX B

Modified Plans

Two Rivers, LLC
Elk River Mile 1.8L, Limestone County, AL
File No. 2006-01721



211 S. Jefferson Street
Athens, AL 35611
(256) 232-7072

October 18, 2006

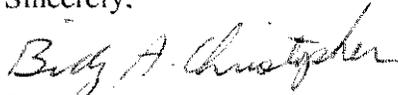
Lisa R. Morris
Project Manager
Operations Division

Dear Ms. Morris:

In reply to the Public Notice 06-92 which expired on September 29, 2006, Two Rivers, LLC has reduced the request of the size of the two fixed piers. As shown on the attached exhibit we have reduced the overall length to 150 ft and the width of the walkway to 6 ft.

We hope that this change will be acceptable to all parties concerned. If any further information is needed please do not hesitate to contact me.

Sincerely,


Billy A. Christopher
Manager
Two Rivers, LLC

cc: Heather Turner, TVA

