

**APPENDIX D - PUBLIC COMMENTS ON THE DRAFT  
ENVIRONMENTAL ASSESSMENT AND TVA RESPONSES**

## **1. In support of Proposal**

- I support the proposed project by Mr. Doss and I encourage TVA to grant the easement allowing development of this marina. This resort will be an asset to the Rogersville area. It will help the community and their business grow, create jobs, improve the economy by providing recreation, camping, restaurants and tourism. **(Comment by: Darrel Voss, W. L. Crowson, Marcia Huffman, Tamara Teeples, unknown, Bobby Trousdale, Ron Boyd, Bob Khym, unsigned from Feb 9 2006 open house, Lisa McGees, Anne L. Atkinson, G. Ralph Jones, Marty Boyd)**
- Please do not let the vocal minority stand in the way of progress for our area. **(Comment by: Darrel Voss, Crowson, W. L., Marcia Huffman, Tamara Teeples, unknown, Bobby Trousdale, Lisa McGee, court reporter comments )**
- We think the Elk River Resort will be a wonderful improvement to the area! A planned project like this we all can benefit from. Please honor the intent of the TVA act by improving the economy in this area, by providing recreation. **(Comment by: Fritz and Jane Schmidt, Bernie Groome, Bob Khym, unsigned from Feb 9 2006 open house, Randy Comer, Bama Clines)**
- We are in favor of a new marina on Elk River. We need a marina on Elk River to serve all people involved in fish and boating, and that can handle this growing number of transient traffic. The closest marina to the proposed one is at Bay Hill. There are no places on Elk River to purchase gas or supplies. Most marinas are full with long waiting list. It could be used and enjoyed by many people instead of just the people living near it. **(Comment by: Claude P. Williams, unsigned from Feb 9 2006 open house, unsigned from Feb 9 2006 open house, G. Ralph Jones, Marty Boyd, Doug Gates, William Crowson, Pat Williamson )**
- I am in favor of awarding the easement it should have minimal negative impacts to the environment and surroundings.. **(Comment by: Brad Dethero - GEO Source, Inc, Doug Gates.)**

**TVA Response:** These comments have been reviewed and noted.

## **2. Opposed to the Proposal**

- I would like to let you know of my families' opposition to the proposed marina on Elk River. **(Comment by: James Rich - City of Athens, Chris Hamilton - Athens City Schools, unsigned from Feb 9 2006 open house)**
- Please do the right thing and DO NOT let them build this marina. I go to this area many times a year to fish and enjoy the UNDEVELOPED land. My father started bringing me when I was young, and I would like to do the same for my children. YOU HAVE COMPLETE CONTROL. DO NOT LET THE MAJORITY OF THE PEOPLE DOWN. STOP THE MARINA. **(Comment by: John Deemer)**
- This marina would not be beneficial to our community. It would affect our "nice" community and the pleasant quality of life we enjoy. The environment of those living

on the Elk and wildlife in the area would be impacted greatly. (**Comment by:** *Kerri Barnett*, unsigned from Feb 9 2006 open house)

- I do not want any of this to happen to one of our last natural wonders at this place. (**Comment by:** *Troy Barnett*)
- I oppose the proposed Elk River Resort development on 92 acres of TVA land. (**Comment by:** *Nancy Muse, Susan Phelan, Michael - mreke@bellsouth.net, Sharon Robinson, Rodney Smartt, Mabel Smartt, Emily Smartt, Chris Otto, Sharon Bridges, Charles Rose, Woodfin and Carla Gregg, unknown, Helen Ball, Bruce Morgan, Jimmy Wayne Cosby, Michael Ezell, Milly Caudle, Charles & Maude Ezell, Renault Gilbert*)
- I do not feel that developing this land for a marina, to benefit one man, is the best. (**Comment by:** *Melita Hicks, unknown*)
- I have a residence or property in the Elk River area next to or near the proposed site, and strenuously object to the proposed project. (**Comment by:** *J Thomas Noojin, Frank Noojin, Thomas Gary Wicks, Melita Hicks, unknown, Bob Blanks, Mabel, Rodney, Emily Smartt, Sharon Bridges, Thomas Gary Wicks, Jay Copley, Deborah Vaughn*)
- I'm against anything that gets rid of wild areas. (**Comment by:** *Arthur John Peck*)
- I am a citizen of the Southern Cherokee Nation of Oklahoma, and a lifelong citizen of Alabama. I feel that the Elk River should remain as it now is, in the interest of the wildlife and historical values. The perceived profit would in reality be a devastating loss to the ecosystem. (**Comment by:** *Michael Baggett*)
- I would like to make it known that I and all of my fishing and boating friends in North Alabama are OPPOSED to this proposed marina on Elk River in Lauderdale County, AL. (**Comment by:** *Mike Kelley*)
- Our public lands are NOT FOR PRIVATE MARINAS! Please do not allow this. (**Comment by:** *Rufus McKinney*)
- ....TVA forced us to resort to litigation over your attempt to give away 1000 acres of public land for a golf course. We encourage you to do the right thing and save the tax-payers the inevitable legal charges this project would incur. We intend to challenge this project in a court of law if we are forced to. (**Comment by:** *Wild South - Lamar Marshall*)
- I strongly urge you to do the right thing for the good of all - keep that marina off the river! We don't need it and we don't want it. Defend and protect the land you have been entrusted with. (**Comment by:** *Janice Barrett*)
- I am actively working to ensure this projects' prompt disapproval. (**Comment by:** *Thomas Gary Wicks*)
- It has always been my feeling that TVA wanted to preserve the land, the serenity, and the beautiful water shores of our river. In fact, it has been difficult for many

people over the years to get permits for a boat house or seawall. The reason always being that it would ruin the view, disturb the natural habitat of fish and other wildlife, and reclaim land from the river. Now you are proposing that 91 acres of your land be developed into a commercial marina and resort. Residents are against this proposal for the same reasons you have been against us building in the past. This marina and resort will ruin the peaceful and beautiful Elk River. (**Comment by:** *Paul Hargrove*), *Tom Ress*

**TVA Response:** These comments have been reviewed and noted.

### 3. Recreation

#### Current Recreation Uses

- The current *recreation* use of that land is unique and cannot be replaced locally. Equestrian trails are a diminishing resource; they require extensive rural lands that have minimal other uses. There is no way the trail through the property can be maintained for horseback riding while 250 people are camping and boating there. We seem to support all kinds of sports to the detriment of equestrians. Why should we build yet another marina (there are 5 or 6 in the area already) and eliminate one of the only horseback riding trails in the area? (**Comment by:** *Lu Parberry, Susan Roessel, Dale Hice*)
- Will you provide another equestrian trail when this one is closed? (**Comment by:** *unknown*)
- There is currently an equestrian trail on the proposed site. Horse trails in my observations, produce their share of waste and promote erosion. Perhaps Mr. Doss could work with the users of the equestrian trail to keep an equestrian trail on part of the site and insure it is maintained to minimize associated erosion. (**Comment by:** *Atkinson, Anne L.*)
- Now that 40 acres will be 'opened' will the equestrian trails still be maintained? (**Comment by:** unsigned from Feb 9 2006 open house)
- Presently this site is used informally in many ways, including: Informal camping, equestrian trails, nature walks, bank fishing, hunting (squirrel, duck **Camping, Equestrian Trails, Nature Walks, Bank Fishing, Hunting, Bird Watching, Fishing From Boats**, and deer), bird watching, fishing from boats, and hiking. **Hiking**. All these uses are free to the public. The area was used by people to ride all terrain vehicles, until recently when TVA posted signs prohibiting their use. If this easement is given to Mr. Doss, how will TVA make mitigation to the public for the loss of all these activities? (**Comment by:** *Charles Rose, Helen Ball*)

**TVA Response:** This equestrian trail is not a designated maintained trail but an informal recreation use. Informal equestrian use happens in many places on TVA property. There are a variety of informal recreation uses, e. g. bank fishing, hunting, horseback riding, wildlife viewing, hiking, primitive camping, etc. that would give way to developed recreation opportunities if the applicant secures land-rights for developed (commercial) recreation opportunities. There are about 200 tracts of TVA land on Wheeler Reservoir containing approximately 10,000 acres, which remain available for informal recreation. Parcels 24 and

25, totaling approximately 268 acres, directly across Elk River are also available for informal recreational uses such as hiking, biking, equestrian use, etc. These other tracts will continue to sustain informal recreation uses such as horseback riding.

### Proposed Campground and Facilities

- If this project is approved (and hopefully not) there should be a limit of not more than 14 day stay in the campground. If unlimited stays are approved the campground will turn into a trailer park with all that goes on in one. (**Comment by:** *unknown*)
- Will the camping facilities be controlled in a way to prevent squatters or other undesirable presences (vandals) that will disturb or invade the Pinedale Homesites. (**Comment by:** *Leonard E. Reid*)
- Nothing in the EA sets rules and regulations. There are a lot of "I plan to do this but I don't know yet" from Mr. Doss. Rules shall be established prior to lease agreement. No stays over 30 day's mandatory, quiet time after 9pm. No pets running loose (all on leash), gates locked after certain time. (Keep them in your neighborhood.) (**Comment by:** *Robin Burchfield*)
- This document states that the proposal indicates that 75 percent of the campsites would be available for long term and 25 percent would remain for short term. The TVA representative was requested to define long term and short term campsite occupancy. Long term was loosely defined as by the week, by the month or by the season (paid by the month). Season was defined, as you know probably March to November. When asked if this implied that 75 percent of the campsites would be residential, the TVA representative responded that it would not be a mobile home park; residents would be required to keep wheels on the campers so that they would remain mobile. It does not follow that the vehicles would be required to move; many private campgrounds have vehicles with wheels and are occupied at the same campsite for years (residential). How does residential fit into TVA's Commercial Recreational classification? Short term was defined as 21 days, a full week longer than the maximum stay allowed at government operated campgrounds such as Joe Wheeler State Park. (Excluding FEMA trailers made available to Hurricane victims) As advised in the October 27, 2005 East Lauderdale News, Page 5, TVA campgrounds close November 7 for the 2005 season but TVA campgrounds operated by concessionaires may stay open year-round. The TVA representative's answer was evasive and not applicable. What are the actual TVA guidelines for Commercial Recreation properties and what is the enforcement process? (**Comment by:** *Joe Serocki*)
- I would still like to see some type of rules and regulations established for a campground prior to turning Mr. Doss loose. "No stays longer than 30 days." "quiet times," "gated entrance," "24 hour security." I do not want to see RV rallies and Jamborees held in the middle of two residential areas. I do RVing myself and private campgrounds are usually the roudiest. State Parks are the best do to the rules and regulations. There is just to much history and environmental impacts involved in this for TVA to use old text books information. (**Comment by:** *Robin Burchfield*)

**TVA Response:** The final land-rights agreement would dictate specific language the applicant will be required to abide by to stay in compliance with the agreement. The watershed team staff monitors and oversees compliance by commercial recreation operators on TVA land. In this case, the applicant is proposing that “25 percent of available sites will be reserved as short-term or 21-day rentals only to attract transient campers.” The operator and local law enforcement will be responsible for controlling illegal behavior. Generally, TVA's guidelines address the issue of long-term stay at campsites. First, by definition, recreational vehicles (campers and RV's) are limited as to their overall size of 400 square feet or less; second, camping units are required to be permanently tow-able or movable; third, stays in campers/RV's on long-term sites are limited to use on a temporary/intermittent basis only; and fourth campers/RV's are not permitted to have any fixed or attached structures (e.g. decks, porches or roofs). For TVA-owned campgrounds operated in partnership with government and non-government organizations, guidelines require at least 25 percent of campsites be limited to 21-day length of stay with the balance allowed to be used as long-term campsites. Through administration of TVA's easement language and these guidelines, concerns regarding use of these commercial recreation areas/campgrounds as mobile home parks have been minimized, and the need for operators to produce revenue has been balanced. A survey of area campgrounds revealed a blend of both short-term and long-term stay sites in the immediate area of the Elk River site.

- Does the development provide a designated area for lake access and swimming that will not encroach on the Wetland protected area? (**Comment by:** *Sharon Tidwell*)
- The proposed action to allow the lease holder to control and walking access to the easement area does not meet the standards normally seen on joint use areas. Most state parks and federal parks have walking trails that are used by the public. Many times the trail head is at a camping or picnic area. The joint use does not seem to be any problem. Your assessment rules out this possibility by stating the public will only be allowed access to TVA land in this area with permission of the lease holder. (**Comment by:** *unknown*)

**TVA Response:** TVA accepts proposals for commercial recreation development at parcels zoned for “developed recreation,” and then initiates public reviews. Trails are included in the resort proposal. Whether access to these trails is limited to the campground user or available to the general public is left to the discretion of the applicant. TVA is not aware of any trail proposals that would require trail head parking in the proposed project area. The proposal does not include a swimming area and lake access will not encroach on the wetlands.

- In addition, the applicant, the City of Rogersville, and/or the County should have to build a local park close to Barnett Road, with ample space for the children to ride bikes, play basketball, skateboard, and play in safety. After all, the mayor and a few of the local businessmen want the marina. It appears to me that they should do something to make it more palatable to the people who will have to live close by. (**Comment by:** *Bob Freeman*)

**TVA Response:** Usually, localities (towns, cities and counties) conduct local recreation surveys to determine which recreation facilities are desired by a

majority of their local citizens. These surveys typically lead to development of a mix of public recreation opportunities that complement the area's state park, commercial and private recreation facilities. It is up to the local elected leadership to decide how they approach investment of public funds for recreation areas.

- RV parks do not promote the scenic beauty of the area. There are many ways to encourage revenue in natural areas without destroying 91 acres of forest; an RV park is not one of them. (**Comment by:** *Kathleen Marshall*)

**TVA Response:** Comment reviewed and noted.

- No one will be able to use a kayak in the area if the Marina is built. (**Comment by:** *Catherine Tackett*)

**TVA Response:** Kayaking will still be permitted in this area.

### Operation of the Proposed Facilities

- All restaurants on water fronts in area are underused or closed down. (**Comment by:** *unknown*)
- I think it's doomed to failure. I think you can look at McFarland Bottom, where their hands are changing. We go from one seafood restaurant to closure. He's talking about putting a restaurant in. The restaurant on the waterfront is not even working in Florence at McFarland Bottom. The Marina at Joe Wheeler, I'm told that Joe Wheeler is in the red; that they are not making money there. Even though they are going to put in chalets, I think that he's got too many sources of competition. And I just simply can't see TVA letting him have the land; clearing land, destroying trees, what have you, when something is probably not going to work anyway. So I protest. I don't think it's physically responsible for TVA to let him have the land. (**Comment by:** *Helen Ball*)
- Just a commonly known fact...Marinas do not make money. They are like golf courses, adjacent lots can be sold for substantially more money. The marinas by themselves make no money at all. Even the big new Florence Marina below Wilson Dam is a loser...not enough large slips or large boats to fill them...Please save this pristine area for those of us who will take care and protect it... (**Comment by:** *John Peck*)
- With the rising economics of petroleum it seems like another boating marina at this time will be a poor use of resources, land, and construction materials. SUV's are expensive enough to fill up and having to fill boat tanks is definitely worse since their gas mileage is seemingly measured in feet. Most of my boating friends are currently curtailing their marine outings due to cost. I don't think the additional proposed marina will ever be profitable at this economic cycle (somewhat like the taxpayer investment in the Tenn-Tom Waterway and its struggle to break even ). (**Comment by:** *Renault Gilbert*)

**TVA Response:** Applicants for TVA land-use must meet certain minimum financial responsibility requirements. Area/regional review of the current and

future projected demand for developed campsites and marina slips (applicant's core business) leads TVA to conclude that sufficient demand exists to provide opportunity for a successful commercial recreation business to operate in this area. Phase 5 of the proposal provides for a restaurant and the applicant indicates that this approach allows phases to be initiated in response to favorable market conditions; therefore, the restaurant would be constructed only if the future market were judged favorable.

- While TVA may have sampled a single day of the highest boat traffic conditions, it has only estimated the average traffic. As a resident of the area affected I can state that due to the price of gas the boat traffic this summer has been the LOWEST that I have seen it in the fifteen years that I have lived on the Elk River. This effect only further increases the risk that this project will face serious challenges to survive. Does the TVA honestly believe that fuel prices will never spike again in the future? Or that a business that will be very dependant upon the price of fuel will be unaffected in the event of another spike in price? (**Comment by:** *Eric Kelso*)

**TVA Response:** The proposal includes both a campground and commercial marina. Phase I includes 100 campsites and according to the proposal could be successful as a stand alone commercial recreation business. Since the primary market for the proposed development would be approximately a 50-mile radius around the site, the following counties were included in this analysis: Colbert, Cullman, Franklin, Lauderdale, Lawrence, Limestone, Madison, and Morgan in Alabama, and Giles, Lawrence, Lincoln, and Wayne in Tennessee. The population in these counties over the next ten-years is projected to grow by 9 percent or 81,633 persons. Alabama has recreation participation rates of 20.8 percent for “developed camping” and 25.4 percent for motorboating. These participation rates when applied to the population growth would reflect a ten-year increase in demand for developed camping of approximately 16,980 individuals participating in camping and 20,735 individuals participating in motor boating. Although not all of these individuals would own their own campers or motorboats, this increase in demand should be sufficient to support the additional facilities such as those proposed for Elk River Resort.

- Who will patrol/enforce the waterway where we/our children are? (**Comment by:** *Barnett, Kerri*)

**TVA Response:** The State of Alabama has initiated statewide operator licensing to address boater safety concerns. Additionally, Alabama Marine Police and TVA Police patrol the waters on Wheeler Reservoir.

- If you want to see what a marina looks like after a couple of owners and neglect, take a look at Emerald Shores Marina in Killen. It used to be a beautiful place to live and boat. (**Comment by:** *Walter Busby*)

**TVA Response:** Comment reviewed and noted.

#### **4. Need for facilities**

- Ms. Crosby's reference to the past commercial designation is invalid today. Bay Hill Marina is in the process of opening approximately 50 slips on the Wheeler Lake

lower end, approximately a mile from the proposed site. Bay Hill also has a very large campsite and two public access points with parking. Directly across from the Elk River Resort site is a new large residential development that has already put 20 slips into the water and land is selling for \$171,000 a quarter acre on the water. In addition there are four additional public access points within a quarter of a mile in either direction of the proposed development as well as a State Park with public access and campsites. Therefore, since the “designation” of the area as a potential commercial recreation area there has been significant commercial and public access development providing more than ample public access to the water as well as camping and residential sites, in addition to the State Park on the Elk River and Wheeler State Park in the area, both with ample uncrowded camping and water access capacity. **(Comment by: J. Thomas Noojin)**

- Why destroy or alter natural shoreline when we have enough marinas and campgrounds etc, on wheeler lake. **(Comment by: unknown)**The undisturbed land will be raped and in its place will come parking lots, RV camp sites, buildings of various purposes and the expansion will continue. And the irony of it all is that the marina is not needed. Within few minutes to the East and to the West are large, well established marinas. **(Comment by: Steve Copeland)**
- What is wrong with the underused Joe Wheeler State Park a few miles away**(Comment by: unknown)**
- The business of our existing Joe Wheeler Parks, as will the business of the commercial marina a few miles up river, will be damaged if the Elk River Marina becomes a reality. **(Comment by: Jackie Tipper)**
- There are at least five ramps on that side of the river at that end of the river and major access along the river as well. Therefore public access is not needed. Bay Point has recently been developed with more slip capacity than is currently needed in the Wheeler lower basin. Ms. Buff Cosby's comments about the agency having identified the property a decade ago as a good location for commercial development did not take into account all the commercial development that has taken place since that assessment. **(Comment by: J Thomas Noojin)**
- Nothing in this study proves that a marina in this area is a better plan than the preservation of a small wild area that will offer habitat for wildlife and the enjoyment of people for years to come. What will a marina be 20 or 30 years from now? Something local residents can be proud of? **(Comment by: Bonita McCoy)**
- This is a simple 'run for the money' and nothing else. The real estate would be better utilized as a state-owned youth facility or senior citizen recreation area, sans the marina. **(Comment by: Mike Kelley)**
- TVA has been inundated with comments questioning why local residents have to have their lives and their neighborhood disrupted, why this fully forested 91 acre tract supporting a variety of wildlife has to be decimated, and why spawning beds local fishermen describe as “their favorite fishing hole” have to be dredged, all to build an unnecessary marina and resort complex in a location that TVA itself thought was unsuitable ten years ago. It’s all very curious. **(Comment by: Charles Rose)**

Proposed Elk River Resort

- For 30 years, I've fished the shoreline of the property you want to give a private developer-every stump, every weed bed, every sandbar-I know this shoreline. For 30 years, I've boated and skied the waters in front of the property you want to give to a private developer. Every wave, every log, every shallow. I know these waters. Your justification for another marina next to two marina and a third new one going in, is convoluted logic, and on the contrary, argues convincingly against a fourth marina. **(Comment by: Thomas Gary Wicks)**
- The proposed marina is not needed. There are already three marinas in the area: Lucy's Branch (Bay Hill), Al St Park at First Creek, and Joe Wheeler Dam State Park. Decatur Boat Harbor, Jay's Landing, Etc. A marina on the Limestone County Side of Elk River is being developed directly across from the proposed site. There is a marina at Joe Wheeler in Rogersville. There is a marina at Lucy's Branch. There is a marina at Double Head Resort. There are marinas in Florence. There used to be a gas service area at Elk River Bridge. None of these is filled. There exist a variety of boat launches in the area. We do not need another marina in such close proximity to the ones that are already there. Joe Wheeler has cabins, open RV parking and tent camping. **(Comment by: Jay Copley, Chris Otto, Mabel Smatrt, Rodney Smartt, Emily Smartt, Joseph and Valerie Miles, Susan Phelan, Mike Kelley, Bob Freeman, Helen Ball, Johnny Tidwell, Janice Barrett, Bob Blanks, Melita Hicks or North American Indian Name is "Runnin Late", Jay Copley, Jimmy Wayne Cosby, Paul Hargrove)**
- I am outraged that TVA is considering leasing 91 acres of land on the Elk River to a private developer for the construction of a marina and RV Park. We do not need another polluting marina (pollution as in gas and oil in the water, noise from powerboats, run-off from parking lots, in-ground dump stations for the RVs, not to mention all that construction and road building add to the list) or any other high-impact commercial development on our rivers. **(Comment by: Janice Barrett)**
- This part of the river is already heavily developed with properties such as Brigadoon, Black's Landing, and Lucy's Branch resulting in heavy usage and disturbance on busy days. Adding a new development with marina facilities would compound the disturbance to wildlife and bring heavy recreational river traffic to an already over utilized area. **(Comment by: Tom Ress)**
- In reading the Draft EA, the discussion of need for such a facility does not seem well supported by the data provided. There are several public marina/campground facilities within 10 river miles of the proposed project. Based on the information provided in the Draft EA, these existing facilities are under-utilized, revealing no reason or need for expansion based on their current use. We believe the applicant should demonstrate a clear need for such facilities on Wheeler Reservoir and Elk River. TVA should give consideration to denying the permit for this proposal due to the apparent lack of use of similar facilities in the vicinity of TVA Tract XWR-21PT. **(Comment by: U.S. Fish and Wildlife Service)**
- The character of the landscape for which North Alabama is valued is at stake. If this development is granted, how long will it be until real estate cronies of Mr. Doss build neighboring developments to tie in with the marina?? **(Comment by: Nancy Muse)**

- One thing is obvious - there is no need now for another marina in this area. Marinas and golf courses have a lot in common-they tend to destroy the "commons" of the public while providing developers opportunity to profiteer from developing around them. (**Comment by:** *Nancy Muse*)
- I keep my boat at Joe Wheeler State Park, and I never have a problem getting a slip. All I got to do is take my boat up there and drop it off and I've got a slip. They've built new slips in the last year also, so now they have a bunch of extras. Their RV campsites are always available; they have cabins, and they have tent camping, which is the same exact thing that this place is offering; also they have a restaurant which is never full. I don't see why we need this kind of a project in the area, when there's two others just like it that are not full. I think this land could be used for better purposes. (**Comment by:** *Jay Copley*)
- The Florence Marina in a highly populated area, failed. This marina has changed hands several times. Robbins recently sold Doublehead Resort. The new owners promptly sold the cabins, or began to sell the cabins. Interestingly, they did not continue to operate the cabins as rentals. They sold them. Surely this indicates that they felt they could make more profit in this manner - over rental. When others have failed, how is Mr. Doss going to succeed in a less populated area? (**Comment by:** unsigned from Feb 9 2006 open house)
- And what is in it for TVA? From my experience with TVA over the past 8 months or so, it appears that they are "hell bent" on shoving this down our throats no matter what the good citizens of Elk River think, no matter what the cost, and no matter if TVA ever gets a dime out of it. Instead of Mr. Doss having to convince TVA why he should have this property, TVA seems to simply spend all of their trying to tell the good people of this area why we should welcome this marina with open arms. It is simply absurd. Your own study in 1995 indicates that it is not a good idea to have another marina on this side of the river and within 6 miles of two other marinas. And this was before Bay Hill exploded, you allowed Christopher to decimate the property and shoreline at The Pointe, and all these other condos, homes, and cabins were built on every inch of available shoreline. (**Comment by:** *Robert Freeman*)
- Another marina will just add to the traffic and take away from our quite and peaceful area. If the Tennessee is rough (which it is most of the time), then the traffic will become greater in our area. (**Comment by:** *Paul Hargrove*)
- Joe Wheeler Lodge would suffer if a new marina were built. We do not need three so close together. TVA must preserve our wild lands and water ways. (**Comment by:** *Jackie Tipper*)
- If a ¾ mile long road and ten cabins is costing \$3,260,000.00, how much is this proposed development going to cost? How will it be financed? Granted the rent to TVA will be cheap, but is the development going to be a cheap, shoddy development as well? Will it be constructed to safely dispose of waste? If marinas in other more populated areas have failed, how will this one survive? Why do marinas in other areas fail to thrive if there is such a great need for marinas? Will Mr. Doss employ people at his establishment, only to cause the failure of Joe Wheeler in Rogersville and the concomitant loss of jobs there? The interest rate is rising, gas prices are

rising, how many people will even have boats to need a marina? (**Comment by: Helen Ball**)

**TVA Response:** The Wheeler Reservoir Land Management Plan (Plan) also noted that the future commercial needs were being met locally for the middle and upper reaches of the reservoir. The planning team focused on the lower regions of the reservoir for potential commercial sites. Four tracts were allocated (Tract Nos. 21, 67, 88, and 91) to meet plan objectives. The limiting factor to boat access for commercial and public boat ramp facilities is “vehicle and trailer” parking spaces. Unfortunately the area boat ramps represent only about 300 vehicle and trailer parking spaces in a service area covering about 12 river miles on the Elk and Tennessee Rivers (roughly half of the 300 spaces are at one ramp (First Creek, Joe Wheeler State Park). In addition, commercially available wet slips total an estimated 324 with waiting lists reported for area marinas. In recent years, most of the campgrounds in the area have been at nearly full occupancy during the summer months. At area TVA campgrounds, managers have turned away a couple of hundred each summer. Trends include escalating land prices around reservoirs that continue to put pressure on private land owners to convert commercially available campsites and marina slips to private development in support of residential communities, thus resulting in loss of publicly available commercial recreation facilities to private exclusive use areas. The Elk River proposal would accommodate a portion of the anticipated ten year growth in area demand for developed camping and boating on land suitable and capable of supporting such development (boat ramp and one-hundred campsites in phase one). With boat slips and dry storage nearing capacity for small craft on Wheeler Reservoir, the market now appears to be strong for covered wet slips to accommodate large boats. Many of the marinas on Wheeler Reservoir, such as Decatur Harbor, Ditto Landing, Madison County, and Joe Wheeler State Park currently have long waiting lists for owners seeking space for large boats.

- And, why even consider giving away more of our land in an area that is so full of human activity, that it almost does not fill the need of the folk who go into that area for the wildness, freedom from cars and boats, and crowds as it is.. (**Comment by: Loli Howard**)

**TVA Response:** The comment has been reviewed and noted.

- For example, the marina and restaurant on nearby Town Creek is now bankrupt. Fisherman’s Resort below Wheeler Dam has been opened and closed numerous times. It recently changed hands again. The marina and restaurant in McFarland Park in the City of Florence has been in financial trouble every since it was developed. The restaurant has changed hands numerous times. Just recently, the latest "owner" of this marina left town in debt to many of his creditors. You should also know that he didn’t pay the City of Florence any of the percentage of income that he promised. Don’t take my word for it. You can find the detailed story in the Times Daily of Florence, Alabama, dated December 27, 2005. The story is on Page One of Section B and Titled "Troubled Water: Marina has Closed - financial woes, bad blood with boaters were factors" The boat slips were full, with numerous very large boats. Now I ask you, how in the world can Bubba Doss make any money on Elk River when a marina, full with boats, within a mile of Downtown Florence can’t

make it? The marina in Decatur has been in financial difficulty for years. (**Comment by: Robert Freeman**)

- Now to the success of these Marinas. The Florence Harbor marina has changed hands a number of times. This marina is located at McFarland Bottom and is in a largely populated area. It has currently closed, failed, again. I am not sure if the marina at Lucy's Branch is operating. Double Head Resort recently sold. The new owners are selling the cabins rather than trying to rent them. In the short run at least, this must have been more lucrative than rental income. The gas service area at the bridge in Elk River is closed. (**Comment by: Helen Ball**)

**TVA Response:** There is no marina across Elk River in Limestone County, just community facilities for a private subdivision (The Pointe community slips). The original owner of Florence Harbor Marina did sell it but the buyer defaulted to the original owner for issues unrelated to the Florence Marina. As far as TVA is aware, the current owner is not interested in selling. There is no longer gas service at Elk River bridge. There is no marina at Doublehead Resort.

- The Joe Wheeler State Park recently (and possibly still) was running in the red. According to an employee who had attending staff meetings and seen the figures, there was money for new construction, but no money for improvements on existing property. (Currently, ten cabins and  $\frac{3}{4}$  miles long access road are being constructed at the park at a cost of approximately \$3,260,000.00). (**Comment by: Helen Ball**)

**TVA Response:** Comment has been review and noted.

### **Marina/Facilities are Needed**

- Marina facilities are needed on Elk River to provide dock slips, fuel service, restaurant, pump out facilities, supplies, camping, cabins, and better public recreation access to water resources. Other marinas in the area are fully utilized and have waiting lists. A new marina would be something the general boating public would appreciate. The facilities would benefit people in North Alabama and boaters and recreational vehicle owners all over the country. The facilities would reflect progress for our area. (**Comment by: Ron Boyd, Anne L. Atkinson, Claude P. Williams, Bob Khym, Tamara Teeples., William Crowson, Marcia Huffman, Joe Benson, Ty McConnell**)
- .... fuel service would be profitable and welcome in this area. (**Comment by: Atkinson, Anne L.**)
- National and regional organizations like the Family Motor Coach Association, Airstream, Escapees, etc. ,and fishing tournaments would like to hold rallies in the area which would bring revenue to the area. They need facilities like those proposed by Mr. Doss. (**Comment by: W. L. Crowson, Tamara Teeples, William Crowson**)
- I spend most of my boating time at Joe Wheeler because of the lack of other facilities. There is no restaurant on Wilson Lake to go to by boat except Doublehead Resort and that is limited to Sunday Brunch. (**Comment by: W. L. Crowson.**)

Proposed Elk River Resort

- It would not only benefit this area financially but boat owners and RV owners throughout the states. (**Comment by:** *W. L. Crowson*)
- The Elk is one of the few places where the water is always calm which would attract skiers. It has unrestricted access to the open and deeper waters of Wheeler/Tennessee River which would attract sail boaters. And, I understand, the fishing in this area is good, too. The recreational opportunities of these areas should be made available to more people, and this marina would help do that. (**Comment by:** *Bob Khym*)
- When the Tennessee River is rough and choppy you can always come into Elk River and fish without fear of the boat turning over like you would on the Big River. Even the people that will not be using the boat dock and ramp will enjoy the restaurant and will come and check out the things that will be at marina. I think this will be a PLUS to the community. (**Comment by:** *Tamara Teeples*)
- Mr. Doss has a reputation of building first class facilities that would be a tremendous asset to this area. (**Comment by:** *William Crowson, Ty McConnell*)
- The proposed marina would open the opportunity for other regional residents to enjoy the natural resources and recreational opportunities afforded by Wheeler Reservoir and the Elk River. Such as bank-fishing, hiking, observing flora and fauna, horseback riding, canoeing, boating of all types, bass fishing, and personal water craft. (**Comment by:** *Anne L. Atkinson*)
- I do not believe subdivisions and condominiums (The Pointe, Bay Hill, Brigadoon) would be building private docks if there were enough quality commercial dockage available. (**Comment by:** *Joe Benson*)
- We need and do build school facilities to meet student needs, we encourage industry to build here to provide jobs for our citizens, and we need recreational facilities, such as Mr. Doss is proposing, for everyone that desires, to enjoy their leisure time. (**Comment by:** *William Crowson*)
- I would hope that the silent majority will become vocal and support this project and see it as a Major Asset to our area. I strongly recommend approval of this project that is proposed by Mr. Doss. (**Comment by:** *William Crowson*)

**TVA Response:** Comments have been reviewed and noted.

- I feel there is a need to further assess this project based on facts and not projections, expectations or statistics. Rogersville has not grown in population since I moved here in 1988. Why do you think there will be a big increase in population? (**Comment by:** *Robin Burchfield*)

**TVA Response:** The market area for facilities such as the proposed resort is larger than the immediate vicinity of the project. In this case, the market area is anticipated to be not only Lauderdale County, but also seven additional surrounding Alabama counties, plus four nearby Tennessee counties. The population of these counties is estimated to be 881,568 as of 2004, an increase of about 2.8 percent, or almost 25,000, since 2000. From 1990 to 2000, the

increase was about 103,000, or 13.6 percent. Projections by the University of Alabama and by the University of Tennessee show an increase to almost 984,000 by the year 2015. The projected market demand for recreational activities, including camping and motor boating, is based not only on projected population increases but also on projected increases in participation in these activities, as discussed in Section 3.7 of the Environmental Assessment.

## 5. Boating Safety/Congestion

- When this is approved and Mr. Doss leases this land for a small amount and all the piers and boat launches are built, then all the boat slips are rented, then these boats will be turned loose on the peaceful Elk River which is the last piece of land and peaceful river. Then these boats will flood Elk River because its water is smooth, not like the Tennessee River, when it gets rough all these boats will use Elk River. No more peaceful times will be left. They will come toward the bridge and further up the river. Why would TVA lease this land for this? (**Comment by:** *Paul Hargrove*)

**TVA Response:** The Wheeler Reservoir Lands Plan, as adopted by the TVA Board, identified this parcel for developed recreation and the proposal meets those criteria. Since the primary market for the proposed development would be approximately a 50-mile radius around the site, the following counties were included in this analysis: Colbert, Cullman, Franklin, Lauderdale, Lawrence, Limestone, Madison, and Morgan in Alabama, and Giles, Lawrence, Lincoln, and Wayne in Tennessee. The population in these counties over the next ten-years is projected to grow by 9 percent or 81,633 persons. Alabama has recreation participation rates of 20.8 percent for “developed camping” and 25.4 percent for motorboating. These participation rates when applied to the population growth would reflect a ten-year increase in demand for developed camping of approximately 16,980 individuals participating in camping and 20,735 individuals participating in motor boating. Although not all of these individuals would own their own campers or motorboats, this increase in demand should be sufficient to support the additional facilities such as those proposed for Elk River Resort.

- The proposed plan has no accommodations for the increase river traffic. (**Comment by:** *Susan Roessel*)
- The marina will increase the traffic and pollution. (**Comment by:** *Bob Blanks*)
- The marina would increase boat traffic on the Elk River and Wheeler Reservoir and impact the enjoyment by the public. (**Comment by:** *Sharon Bridges, unknown, Frank Noojin*)
- Your watercraft traffic is minimal impact statement is total fabrication and pure spin. Two hundred more boat slips from two more marina added to two marina with hundreds of boats already near the mouth of Elk River, will not only add two hundred more boats, but will also add the hundreds of jet skis that the two hundred new boat owners will also own. Your assessment justifies nothing. On the contrary, your environmental report makes the case for the default option --do nothing. (**Comment by:** *Thomas Gary Wicks*)

- The marina would increase boat traffic on the Elk River and Wheeler Reservoir which is already crowded and impact the safety of everyone on the water, there is little marine police protection. (**Comment by:** unsigned from Feb 9 2006 open house, *Sharon Bridges, Bob Blanks, Joseph and Valerie Miles, unknown, Frank Noojin*)
- I have .... seen a steady increase in water enthusiasts especially since the Lucy's Branch development. We already have safety issues on the *holidays* of spring and summer and I believe another development would make especially the Elk very hazardous. With the growing popularity of jet skis and a lack of navigating education I believe we would be creating accident after accident. (**Comment by:** unsigned from Feb 9 2006 open house)

**TVA Response:** Recreational vessel use of this section of the Elk River is relatively sporadic. Summer holidays and weekends are the busiest periods. The additional watercraft would be dispersed throughout the day and throughout the different areas of Elk River as well as Wheeler Reservoir, and would be considered a minor increase. Due to the relative width of the water bodies and the lack of development on the eastern shore, conflicts between boaters are sporadic and short-term. Alabama has initiated statewide boater operator licensing to address boater safety concerns. As always, if you see someone boating in an unsafe or irresponsible manner, get the boater registration number if you can and please report the activity to the TVA Police (256-386-2444). Marine law enforcement personnel do patrol the Elk River and Wheeler Reservoir, but rely on residents and other boaters to assist them.

- The projected increase in boat traffic will have a significant impact on the shoreline. At this point, I must object to the data TVA used to count boats and assess the traffic on Elk River. TVA counted boats on a weekend when gas topped \$3.00 a gallon. A lot of people were protesting gas prices and stayed home. I live on Elk River and it was an extremely low turnout. It was so unusually quiet. The jet skis were silent for a change. The entire river traffic report should be disregarded because it is totally unreliable. (**Comment by:** *Bob Freeman*)
- Boat traffic study performed on one weekend does not tell the story, especially when everyone was protesting high gas prices. The marina will attract larger boats which will have a significant impact on everything and everybody. (**Comment by:** *Robin Burchfield*)

**TVA Response:** The boat traffic findings are similar to findings by the US Army Corps of Engineers in that about one third of boats from marinas are used at any given week end or holiday time. This would result in about seventeen additional boats being on water dispersed throughout the day from the proposed project. In addition, the Alabama Marine Police District Office has reviewed this proposal and find it to be consistent with the boating safety requirements for the area. At full occupancy, the proposed marina can only accommodate 40 large boats, greater than 25 feet in length.

- I know and love the Elk River. The last thing it needs are any "improvements", especially any that will increase powerboat traffic. (**Comment by:** *Bruce Morgan*)

- I find it ironic that one of the protest activities of the Shoals Environmental Alliance - Rogersville Special Interest Group was a multi-boat flotilla held on 16-October-2005. Such an activity in protest of the marina development and 'increased boat traffic' smacks of elitism; what makes this group's boating activities more acceptable and desirable than the boating activities that would occur in conjunction with the marina? **(Comment by: Anne L. Atkinson )**

**TVA Response:** The comment has been reviewed and noted.

## 6. Navigation

- Another issue is the extension of the docks out into the water. This is in addition to another private marina almost directly across from the proposed marina, and I saw no consideration of this traffic included in the assessment. I understand that the harbor limits have been reduced to 550 feet from the shoreline. With the curve in the Elk River at this point, visibility of other watercraft becomes a problem with speed, safety and congestion. There are many days that water recreation safety already becomes a problem, and watercraft owners will not launch their boats because of the congestion and speed of the watercrafts. Just a little personal note, I spoke to a jet ski owner the other day who couldn't wait to get his new jet ski out on the Elk River because it goes "80 miles and hour!" **(Comment by: H. Genne Johnston)**
- The traffic that the proposed Marina will create at such a narrow area will be dangerous to everyone in that area. That section of the Elk, with the POINTE directly across the river, is far too narrow for a marina. If Mr. Doss wants to build a marina, he needs to go out onto the Tennessee River where there is plenty of room and traffic will not create a dangerous situation. **(Comment by: Catherine Tackett)**
- Navigation will become a very serious problem. This is a narrow area on the river and with concrete trash breaks or wave breaks (they are called both in EA) in the path, it will restrict traffic flow. Restrict access into the slough. **(Comment by: Robin Burchfield)**
- As I am sure you are aware there is very little open space left on this portion of the river. **(Comment by: James Rich - City of Athens)**
- Due to wind shelter, the lower end of Elk River and up past the 72 bridge has long been used by pleasure and fishing boats when the wind is up on the Wheeler Lake. In addition, in recent years personal watercraft in this area have become so numerous as to be dangerous at times, particularly since there is no enforced speed limit and apparently no enforcement of the licensing requirements. Even when the wind is not up on the Lake area, residential construction and ready public access points have made the channel on Elk River congested during the primary use months. This proposed development would add significantly to the congestion in this narrow river. **(Comment by: J. Thomas Noojin)**
- It is a little noisy and dangerous when the fishermen take off from the Elk River Bridge area headed out to the Tennessee River for fishing tournaments now, but once they begin fishing there is no problem. The Elk is not very wide, but with a resort like Mr. Doss is wanting that 550 foot pier or harbor area is really going to take

up to much of an area out into the water, especially when you are out there skiing or basically going closer to the Lauderdale County side to be in deeper water for your safety and the safety of your boat and motor. How would you feel if you were there at the resort and you trying to get out into the river on a nice summer day but you had to be very careful not to cause an accident in the narrow Elk compared to the wide Tennessee? **(Comment by: Sharon Bridges)**

- River is not that wide; it could possibly become too congested with resort harbors extending 550 feet out into the water plus people going in and out by boat buying items, gas, etc. The river does not need to become more crowded, let the local people enjoy water skiing, boat riding, and fishing. Most of all we need to enjoy our privacy and safety. **(Comment by: Charles & Maude Ezell)**
- Adding any type of water traffic to this area will be so dangerous. The area is not wide enough to accommodate any extra water traffic. **(Comment by: Catherine Tackett)**
- A marina that is projected to extend out into the Elk River 550 feet from the shoreline is outrageous. That should not be allowed. **(Comment by: John L. Dumbacher)**

**TVA Response:** TVA has determined that under most circumstances across the Tennessee Valley, docks and marinas extending one-third of the way across an embayment or river impose no impediment to through boaters. TVA measured the distance across the Elk River by boat using GPS coordinates and found the river to be approximately 2,000 feet wide just downstream of mile marker 2 (see aerial photo). With a maximum lakeward extent of 550 feet, the proposed marina development will extend less than one-third of the width of the waterway and would be 450 feet away from the marked navigation channel providing plenty of room for recreational traffic utilizing or passing through this section of the river. While the location of the facility would be on a bend, it would actually be on the outside bank of the bend and should not obstruct visibility on the water. The private, community dock facility associated with The Pointe residential development is located within a small embayment opposite the proposed marina, just downstream of the Limestone Daybeacon (see aerial photo), and is a facility permitted for a maximum capacity of 89 slips. To date, only one dock structure has been built. Boats entering and leaving the proposed marina would be on the opposite side of the river some 1,500 feet away and would not interfere with boat traffic at The Pointe community facility. If someone is seen boating in an unsafe or irresponsible manner, try to record the boater registration number and report the activity to the TVA Police (256-386-2444). Marine law enforcement personnel patrol the Elk River and Wheeler Reservoir, but rely on residents and other boaters to assist them.

- Please also note that the Tennessee River channel for commercial boat travel and other boats traveling through our area is closer to the opposite shore from these marinas. There are no marinas on that shoreline. Three marinas so close together, all on the same side of the reservoir, and all on the opposite side of the river from boat travel would not appear to be prudent. **(Comment by: Bob Freeman)**

**TVA Response:** The channel line (see Tennessee River Navigation Chart No. 42) does indeed hug the southern shoreline of Wheeler Reservoir. Channel lines

typically follow the pre-impoundment course of the Tennessee River and show mile markers. However, in this stretch of the Tennessee River the navigable channel is the full width of the reservoir, because the reservoir is of sufficient depth to accommodate a commercial towboat and its barges (tow) at any point between the banks in the vicinity of the Elk River. Also, the actual sailing line for commercial traffic is about mid-river at the location where the Elk River enters the Tennessee River. Commercial tows use the sailing line as they move up- and downstream, because straight-line distances are the most fuel efficient. Recreational vessels may use any portion of the reservoir, and may or may not choose to use the sailing line or channel line at their discretion. The Tennessee River is over a mile wide at this location and there is sufficient room to accommodate both commercial and recreational traffic.

- That stretch of Elk River is located in a direct current flow and would become an immediate intrusion into a very quaint stretch of the lake. Silting would be a very real problem, as well as flood damage in the spring flooding season. There is no valid reason to construct this marina at this specific site. (**Comment by:** *Mike Kelley*)

**TVA Response:** TVA would require all buildings and facilities subject to flood damage to be located on ground outside of the 100-year floodplain and above the 500-year flood elevation. In addition, all floating facilities would be required to be anchored so they could not break loose during a major flood. We believe these requirements would significantly reduce the possibility of flood damages.

## 7. Water Quality

### Increased erosion, sediment, and turbidity from wave action from boats.

- The projected increase in boat traffic will have a significant impact on the shoreline. To keep the shoreline from being completely destroyed, the entirety of the TVA property must be lined with "rip-rap". In addition, the applicant should be required to place "rip-rap" on the shoreline for Barnett landing, and for all homes that do not have shoreline protection between Highway 72 bridge and the mouth of Elk River. (**Comment by:** *Bob Freeman*)
- The marina will attract larger boats which will have a significant impact on everything and everybody. Bank erosion from these waves will be a bigger problem. I told him there was already an erosion problem from big boats. I have a new seawall that was installed in 2003 by a professional wall builder and due to large waves the footer is becoming exposed. Everyone up and down the Elk will experience erosion if the marina comes. (**Comment by:** *Robin Burchfield*)
- Increased Erosion Due to Increased Boat Traffic - This area receives a fair amount of boat traffic at present. Boat Traffic would likely increase somewhat in this specific area with a marina. Increased boat traffic is likely to occur with increased population and recreational use of the river whether or not a marina is developed in this area. This argument, therefore, is not germane to the proposed marina. (**Comment by:** *Anne L. Atkinson.*)

**TVA Response:** Construction of the proposed action marina would concentrate boat traffic, which could increase local wave energy levels. Shoreline

stabilization would protect the immediate harbor area from erosion. The higher concentration of watercraft around the proposed marina would likely contribute to an insignificant acceleration of erosion of surrounding areas of unprotected shoreline. Any such potential for erosion would diminish with increasing distance from the marina. The erosion effect of increased boating associated with the proposed project is small relative to the natural effects of wind driven waves and existing boating traffic in the project area. The Clean Marina program which the applicant has agreed to participate in requires the protection of the shoreline from erosion and provides several methods for protecting and maintaining shoreline. These protection measures have been listed in Appendix G and include the use of construction BMPs, post construction ground maintenance (including maintenance of buffers), and native vegetation protection and enhancement. Further, the design of the resort includes an approximate 150-foot retaining wall, approximately 800 feet of rip rap revetments, and shoreline, stream, and wetland buffers within the project area.

### **Impact from Stormwater Runoff, Construction Activities, and Dredging**

- ADEM and TVA need to evaluate the effects storm water runoff will have on construction activity that disturbs one acre or more and make public the findings. Corps of Eng. needs to insure the public proper requirements for dredging are met. **(Comment by: Robin Burchfield)**
- ...this marina is environmentally unsound for such various reasons as storm water runoff from construction activities, **(Comment by: Woodfin and Carla Gregg)**
- Now is the time to be in the field. Maybe TVA needs to clear one area the size of one campsite and evaluate the effects on erosion, runoff, and water quality. **(Comment by: Robin Burchfield)**
- Negative impact/increased turbidity due to dredging - it seems ironic to me that the Shoals Environmental Alliance - Rogersville Special Interest Group is focusing on this point for the relatively small amount of dredging proposed for the marina development as compared to that conducted during the development of The Pointe just across the river. The dredging for that development seemed much more extensive. The limited amount of dredging for the proposed marina should not have much effect on the area. I don't have great objection to the dredging at either project. I just question why the group has raised opposition to the dredging associated with the proposed marina but did not raise such objections when the dredging was done at The Pointe. **(Comment by: Atkinson, Anne L.)**
- In addition, it is stated that this area has highly erodible soils. This much dredging will have a destructive impact on the entire area and will change the natural beauty of the site. **(Comment by: H. Genne Johnston)**

**TVA Response:** Please see Section 3.6 for a description of how water quality would be impacted by the marina and its operation. TVA will require BMPs and participation in the Clean Marina Initiative (CMI) program as part of the Section 26a permit and easement agreement. (See Section 3.15 for a complete list of conditions). Buffer areas will be maintained along the shoreline, streams, and wetland areas. Erosion, sediment, and turbidity effects associated with dredging

and construction activities are also regulated by the state and the U. S. Army Corps of Engineers (USACE). Construction activities that disturb more than one acre require a permit from the Alabama Department of Environmental Management (ADEM). ADEM requires development and implementation of extensive construction BMPs, technical standards/guidelines and operational requirements for the transport, treatment and discharge of stormwater and other wastewater (e.g., National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating, USEPA). Regular comprehensive inspections of the site and affected receiving waters are required under the construction stormwater National Pollutant Discharge Elimination System (NPDES) permit to assure that effective BMPs are implemented and maintained. (see ADEM website for more information: <http://www.adem.state.al.us/FieldOps/Permitting/Construction/Construction.htm>)

ADEM personnel also perform regular routine inspections and follow-up inspections as necessary to ensure compliance. The CMI includes annual inspections as a requirement to maintain the marina's Clean Marina certification. In addition, USACE's Section 404 Permit for dredge and fill activities will also include measures to minimize the adverse water quality impacts from erosion and sedimentation. Finally, the section 401 certification requires erosion control measures which are listed in Appendix F.

#### **Potential reservoir and groundwater pollution from sewage disposal**

- Water quality is already very poor on the Elk. The public needs to help to improve the quality of the water. What about sewage and the underground waters. Are you ignoring this fact? Has the developer been required to answer this concern? I have one question, when the river becomes so polluted that it cannot be used for fishing, water activities, shoreline trails and use by the public, what do you propose when the area is condemned because of health issues? The river cannot survive this abuse from excessive development. The health of the river is at stake. Is TVA willing to take this responsibility? (**Comment by:** *Harriet Johnston*)
- And what about the sewage??? (**Comment by:** *Catherine Tackett*)
  - TVA Response:** Section 3.6 on Water Quality addresses water quality and groundwater issues. The developer will be required to operate the septic systems in accordance with ADEM guidelines. Preliminary testing of the site soils by the applicant indicates that the soils are adequate for septic systems. Domestic wastewater from the proposed facilities must be collected, treated, and disposed in accordance with ADEM requirements. TVA, USACE, and ADEM will all work with the applicant on this and other environmental issues through their respective permitting processes.
- Sanitary Waste Disposal is mentioned without specifics of how this would be handled or data detailing anticipated impacts. TVA representatives at the meeting only commented that data could be available in Knoxville and that issues arising would be addressed during construction. What should citizens who avail themselves of Elk River recreational opportunities anticipate? (**Comment by:** *Joe Serocki*)
- There is no mention of how many septic systems are involved. How many field lines will have to be dug? I know that destroying our forests is having an effect on global warming. (**Comment by:** *Robin Burchfield*)

- It stands to reason with a significant increase in gas-powered watercraft over and above the already crowded situation would promote further pollution of the water. There is no sewer system in this area so septic tanks would have to be used with the concomitant pollution issues. **(Comment by: J. Thomas Noojin)**
- Take another quote, "Proper design, construction, and operation of the proposed marina development are not expected to result in significant increases in reservoir pollutant, nutrient, or fecal coliform bacteria levels." This statement certainly doesn't relieve the worries of pollution! How many perk tests have been performed? What about sewage leakage? None of these questions/concerns have been answered with any detail to ensure the pristine forested and river area will be safe guarded. **(Comment by: H. Genne Johnston)**
- Your environmental assessment, ironically, insufficiently addresses the natural environment impact. my assessment of your assessment's consideration of natural environment - You exist to protect the natural environment and preserve native land in its pristine condition. I follow county health rules for disposing of my waste, and I follow county health rules for my well water usage. But, you let a private developer build a marina with not even a plan for disposing of the marina's waste, nor maintaining the marina's water quality. Resultantly, my property will absorb the waste from the private developer's property and my water will become polluted from the private developer's water pollution. In other words, TVA land becomes a hazard to others' personal health and safety, and becomes a nuisance to other's properties. This outcome is assured, when an environmental assessment doesn't even address the environmental impact. **(Comment by: Thomas Gary Wicks)**
- To place all these buildings on land that most likely does not perk is totally beyond belief. We had to build an alternative septic system where we are and we plan to follow-up on this issue. It is only fair in addition to being health problematic. **(Comment by: Mrs. R. Freeman)**
- It is a detailed review of soil conditions but fails to address the effect of runoff caused by clearing vegetation from the site or leaching of *E. coli* from the proposed septic system for waste treatment. 3. Waste treatment by a septic system is proposed. If the business expands to the extent described in the proposal this treatment method is inadequate. **(Comment by: Jimmy Wayne Cosby)**
- Health effects of a septic system of this scale will have. **(Comment by: unsigned from Feb 9 2006 open house)**
- There's Big Springs located just off the shoreline, which means they'll be sewage and septic tanks. The ground is very porous. I'm an engineer, I know the difference. Water runs out along the shoreline, when the lake is down in the summertime, so it's proving that the water is coming down and out. So it will pollute all of the springs and the wells that people have -- most of them have wells that have been bypassed since then. It's just been a quiet nature preserve, and this concrete shoreline will destroy all of that. They deny it, but it's a fact. When you put boat slips and docks and things for over a mile of shoreline, it will destroy it. It's the only natural part left south of the river bridge, the 72 Highway Bridge; all of the rest of it is developed. With this being the only natural place for the wildlife to nest; wood ducks and beaver, and you name it, even alligators. **(Comment by: Bill Wright, court reporter comments)**

**TVA Response:** Domestic wastewater from the proposed facilities would be collected, treated, and disposed in accordance with ADEM requirements. The regulations and required permits are designed to prevent adverse impact to reservoir and groundwater water quality, including any water supply wells in the vicinity. Any adverse impacts from violation of ADEM requirements are subject to enforcement actions.

Preliminary testing of the soil by the applicant indicates that the soils are adequate for septic systems. Further, soil tests will be required by ADEM before any permits for septic system can be granted. Ability of the property to handle septic wastes will be determined by ADEM. Permits would only be granted if the department determines the septic systems will have no impact on ground and surface waters in the vicinity. The current residential developments along the shores of the Elk River are served by septic systems.

The entire eastern shoreline of the Elk River embayment, from Hwy. 72 south to The Point is undeveloped and protected as a TVA Habitat Protection Area.

- I am talking about The Pointe Subd., Bay-hill marina and condo after condo after condo(which has turned into an eyesore). Where does all the sewage end up?  
(**Comment by:** Robin Burchfield)

**TVA Response:** Limestone County Water and Sewer Board provides sewer services to these areas.

#### **Pollution from Boats, Fuel Spills, and other Marina Activities**

- What will happen to the resort when and if the water is declared too polluted for swimmers and water recreation? The quality of the river water is in jeopardy even at this point. It is dirty and murky. I know, I have a home on the Elk. I have even seen a refrigerator floating down the river. How is that view of the river going to look at the resort? The water quality has already been impacted. The resort will further contaminate the water with even more runoff, leakage of fuel, untreated waste and just plain trash. (**Comment by:** *H. Genne Johnston*)
- Common sense alone should be enough to show that a project of this size cannot but have a tremendous impact. The waters surrounding this marina will become fouled and polluted by the concentration of emissions of those who use its facilities. (**Comment by:** *Steve Copeland*)
- I used to be a boater years ago. But think that I would rather see the wildlife stay like it is than to see more boats pollution, and people that trash the land, erosion of the banks close to the site and people pumping their waste water in the river, Oh yea that happens all the time. (**Comment by:** *Guy Shipp*)
- Pollution and environmental issues top our list of concerns along with increased traffic and pollution both on the roadways and in the Elk River. (**Comment by:** *Chris Hamilton - Athens City Schools*)
- Our organization, Wild South, is also committed to environmental stewardship and working for and upholding the greatest public good. ..It is hard to see how this proposal can pass the “committed to environmental stewardship” test. Such an operation (at least 50 boat slips on 4 docks, concrete wave and trash breaks, a fuel dock, dredging, road construction, RV park, parking lots, etc.) is inherently

environmentally destructive. How can such a business so dependent on gasoline and oil not have detrimental impacts on the immediate and down-stream environs? **(Comment by: Wild South - Lamar Marshall)**

- Fuel leakage will destroy the wetlands; contaminate our swimming and fishing areas. I have never been to a marina where there was not fuel spilled daily. What are the requirements for swimming close to a marina? I know there is usually no swimming in the fuel area. TVA teaches Water Quality Protection and how land use impacts water quality from nonpoint source pollution. Maybe this is not practicing what they teach. **(Comment by: Robin Burchfield)**

**TVA Response:** Pollution from boats and fuel spills is regulated by the Environmental Protection Agency (EPA) and the state. For example, any oil sheen must be reported to the state or EPA. In addition, as a participant in the Tennessee Valley Clean Marina Initiative (TVCMI), the project owner has agreed to follow specific measures intended to protect water quality. The TVCMI includes seven management measures that were identified by marina operators as priorities: sewage management; fuel management; solid waste and petroleum recycling and disposal; vessel operation, maintenance, and repair; marina siting, design, and maintenance; stormwater management and erosion control; and public education. Listed below are a few of the many examples of measures limiting potential for pollution, erosion, sedimentation, and effects on wildlife that can be found in the TVCMI guidebook on TVA's website:  
<http://www.tva.com/environment/pdf/cleanmarina.pdf>.

#### **Lack of specific details for erosion controls, shoreline stabilization, sewage disposal**

- The proposed plan has no accommodations for the increase use of sewage disposal and ravaging the land in order to make it flat enough for parking, camping, boating, a restaurant and other buildings. **(Comment by: Susan Roessel)**
- It is already polluted and unsafe to swim in. The marina will increase the traffic and make it more unsafe than it is now, both in traffic and pollution. **(Comment by: Bob Blanks)**
- Currently there is not data that identifies the handling of sewage. At a meeting in August it was suggested all facilities on the property will be on septic tanks/field lines. No studies have been done that include the impact on the Wetlands and surrounding areas from sewage disposal via septic tank systems. When the final phase is completed and there will be over 200 campsites, 100 boat slips, cabins, marinas, restaurant, and camp stores. This is a lot of toilets depositing sewage into septic systems. Joe Wheeler State Park, which lies a few miles from the proposed development, is on a sewer system. The Elk River development will have as many bathroom facilities as Wheeler when phase 5 is completed. Wheeler is spread out over several miles, Elk River will be concentrated in a small area. The developer is also advertising that they will offer a sewage pump out station for the public to use. This is additional sewage that will be deposited into the septic system. This volume could be unlimited depending on the number of boats that request the service. • Have there been any studies regarding raw sewage disposal via septic/field line system? • Was Joe Wheeler State Park required to install a sewer system for waste disposal? **(Comment by: Sharon Tidwell)**

- After reading the environmental assessment on the proposed project for an Elk River Marina there are several issues that seemed significant to me that were continuously labeled or deemed to be “insignificant” in the environmental draft. The first issue is the lack of detail in the construction development. Take the quote from the assessment, “shoreline stabilization if properly implemented should protect the immediate harbor area from excessive erosion.” What does properly implemented include, why isn’t that spelled out in more detail? Who will supervise/monitor to make sure that approved methods to stop soil erosion will be performed? (**Comment by:** *H. Genne Johnston*)
- The developer should be required, as a continuing condition of the easement, to establish and maintain an approved water quality monitoring plan. (**Comment by:** *Bob Freeman*)

**TVA Response:** Prior to construction, specific plans must be submitted to state and federal agencies as a basis for obtaining the required permits. The plans, and subsequent permits, will identify construction and operational measures to prevent adverse impacts to water quality. Key permitting processes are subject to public review and will allow the public to view and comment proposed plans. Permits involving construction, dredge and fill, and wastewater discharge activities routinely specify monitoring and inspection requirements to ensure compliance and successful performance of the measures intended to protect water quality. In the event of unanticipated adverse impacts, regulatory procedures exist to impose corrective actions. Preliminary testing of the soil by the applicant indicates that the soils are adequate for septic systems. Further, soil tests will be required by ADEM before any permits for septic system can be granted. Ability of the property to handle septic wastes will be determined by ADEM. Permits would only be granted if the department determines the septic systems will have no impact on ground and surface waters in the vicinity. The Clean Marina program which the applicant has agreed to participate in requires the protection of the shoreline from erosion and provides several methods for protecting and maintaining shoreline. These protection measures have been listed in Appendix H and include the use of construction BMPs, post construction ground maintenance (including maintenance of buffers), and native vegetation protection and enhancement. Further, the design of the resort includes an approximate 150-foot retaining wall, approximately 800 feet of rip rap revetments, and shoreline, stream, and wetland buffers within the project area.

- ADEM reports that there is a high level of phosphorus in the river at this area which sediment are large contributors. (**Comment by:** *James Rich, City of Athens*).

**TVA Response:** Elk River from the mouth of Anderson Creek to Wheeler Reservoir is listed by ADEM as impaired due to pH and nutrients (a 6-mile segment from Anderson Creek to Wheeler Reservoir); ADEM lists the sources as pasture grazing and nonirrigated crop production. Anderson Creek also is listed by ADEM as impaired, but it is the upper end of the creek from Snake Road bridge to the creek’s source and it is listed for siltation from pasture grazing and nonirrigated crop production. These types of activities, pasture grazing and nonirrigated crop production, will not occur under the proposed action. Additionally, BMPs used during construction and maintenance of buffers will reduce nutrients and siltation from impacting water quality. Also, under the

TVCMI, the applicant will use environmentally friendly lawn and garden products or avoid chemicals altogether.

- I believe that the land in question should be preserved as it is - a valuable biological link in the Tennessee River corridor. As the Tennessee River and the creeks and rivers that flow into it are continually eaten alive by all kinds of development, TVA is in a position to do the right thing for the greatest good of the majority of people - that is, keeping intact the riparian forests for which it is responsible. Protecting our rivers from the inevitable pollution that such a fuel-based business would release into the Elk and Tennessee Rivers should be the main goal of TVA. Denying this lease would be the ultimate way to do that. Common sense tells us there is no way that a project of this magnitude cannot cause pollution, regardless of what the EA says. **(Comment by: Janice Barrett)**

**TVA Response:** As proposed, this development would alter the forest community in the immediate vicinity. The amount of land that would be impacted, however, is insignificant in relation to the total forest lands in the lower Elk River watershed. The wildlife that inhabits this tract consists of species which readily adapt to human activities. Mitigation includes a 50 foot buffer along the shoreline and streams, and additional buffers around the wetlands. These buffers would allow the riparian vegetation to remain intact. Protection from fuel-based contamination would be required by state permits for fuel distribution and fire safety laws. Adherence to state regulations would allow protection for the water, and be required for operation of the marina. Participating in the TVCMI would provide measures for sewage management; fuel management; solid waste and petroleum recycling and disposal; vessel operation, maintenance, and repair; marina siting, design, and maintenance; stormwater management and erosion control; and public education.

- **Direct and Indirect Impacts on the Environment**

"NEPA imposes procedural requirements designed to force agencies to take a 'hard look' at [the] environmental consequences" of their actions. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9<sup>th</sup> Cir. 2003). "This includes considering all foreseeable direct and indirect impacts. *Id.* See also 40 C.F.R. § 1508.25 (c).

This EA fails to consider a wide range of foreseeable direct and indirect impacts on the area's resources. In addition, many of your discussions on direct and indirect impacts are contradictory and inconsistent with past findings. You must correct these and other deficiencies and provide a thorough and well-reasoned discussion of all direct, indirect and reasonably foreseeable environmental impacts.

The Elk River embayment downstream of Anderson Creek is listed as a Section 303(d) impaired waterway under the Clean Water Act because it does not fully support its designated uses (public water supply, swimming and fishing) due to low pH and organic enrichment/ dissolved oxygen. In view of these impairments, it is particularly important that you provide a thorough discussion of the project's impacts to the water quality of the Elk River. Your discussion of these impacts is inadequate for several reasons.

You fail to thoroughly analyze and address all reasonably foreseeable direct and indirect impacts to water quality

Your discussion of potential water quality impacts consists primarily of a general listing of impacts typically associated with development projects. However, you fail to discuss how this project will impact the Elk River.

For instance, you devote a third of your discussion on erosion and sedimentation as a result of construction activities. EA at 22. However, the entire discussion is an abstract account of the potential environmental impacts of construction activities. At no point in the entire discussion do you reference the impacts this project will pose. You then follow this recitation of generalized facts with a listing of BMPs that could mitigate impacts to the Elk River's water quality, without ever identifying which impacts require these mitigation measures. Id. You then go on to note that these BMPs are only intended as "guidance" and the applicant is in no way "required" to adopt them. Id. This is not the type of discussion and analysis NEPA demands. **(Comments by: Jason Totoiu and Sandra S. Nichols, WildLaw)**

**TVA Response:** The Elk River is listed by ADEM as impaired from the mouth of Anderson Creek to the confluence of with the Tennessee River. The cause of the impairment is pH and organic enrichment/low dissolved oxygen. The pH impairment is due to high, not low pH readings. The source of impairment is listed as nutrient enrichment from pasture grazing and non-irrigated crop production. The Elk River watershed is a large, mostly agricultural landscape with soils derived primarily from limestone formations. The run-off from this landscape would be naturally high in nutrients from the soil materials, and is augmented by run-off from the agricultural land use. This high nutrient load is the reason for high productivity, and thus high biological diversity, for this watershed. When the lower Elk River was impounded by Wheeler Reservoir, its waters flowed more slowly, allowing for higher growth rates for phytoplankton. This higher growth rate, combined with organic run-off from pasture lands, has led to increased organic enrichment in the embayment. During summer months, the photosynthetic activities of phytoplankton remove carbon dioxide from the water column, shifting the equilibrium from carbonic acid. Therefore, during daytime hours, especially mid-afternoon, the pH of the water column spikes upward. Increased biomass production of phytoplankton increases the organic load in the water. Respiration, particularly at night, of the phytoplankton will return the equilibrium toward carbonic acid, thus lowering the pH to near normal levels. Higher levels of calcium and magnesium ions from the limestone derived soils also help buffer the water to prevent low pH readings and can increase the likelihood of higher natural pH levels. Respiration of live phytoplankton and decay of the increased organic materials in the deeper waters of the embayment lead to extremely low DO reading during summer stratification. Low flow rates of the impounded waters prevent flushing of this deep water, and continued stratification will lead to oxygen depletion. Lack of oxygen in the deeper waters will also reduce survival of benthic organisms. The operations as proposed by the applicant will result in little run-off of nutrient rich chemicals that could contribute to an exacerbation of this problem. Since the plans call for a forested, park-like setting in the campground and around the marina, little sod maintenance (fertilizer use) will be needed. Leaving large trees throughout the landscape and a 50' buffer along the shoreline will greatly minimize nutrient run-

off into the reservoir. The levels would be tremendously insignificant, compared to the run-off from the agricultural areas upstream. The BMP's identified in the EA and TVA's Clean Marina program, and required by future TVA, Corps of Engineers and ADEM permits, will protect the waters from nutrient, sediment and other non-point source pollutants.

In addition, you fail to identify a wide array of impacts marinas have on the environment. You must address the following impacts before you proceed any further with the NEPA process:

(1) The impacts fuels, lubricants and petroleum products will have on water quality

Marinas are inherently fuel-dependent. Marinas serve as fueling stations, repair shops and storage facilities. The public's use of these services and facilities increases the risk of accidental spills and leaks in and around the marina. An increase in boat traffic also results as more people rely on the marina for their boating needs. The increase in the number of boats in the area increases the risk of spills and releases into other areas of the river. All these impacts must be discussed.

(2) The impacts cleaning solvents and other toxic chemicals will have on water quality

Many marinas provide cleaning, resurfacing, refinishing and painting services. Many marinas use solvents and other chemicals to clean and resurface boat hulls and other marine equipment. Many of these solvents and cleaning agents contain toxic chemicals, which in sufficient concentrations, contribute to water quality degradation. You must address the use of these substances and their impacts on the environment.

(3) The impacts users will have on water quality

The construction of this marina may result in a dramatic increase in the public's use of the Elk River. This will lead to an increase in gasoline emissions, improper solid waste disposal, littering, noise levels, and impacts on riparian zones from boat wakes. All these impacts need to be discussed and you cannot write off the significance of these impacts by citing to the applicant's expected compliance with the agency's "Clean Marina Initiative." EA at 23.

(4) The impacts sewage and domestic wastewater will have on water quality

You need to discuss the potential direct and indirect impacts sewage and domestic wastewater will have on water quality. You must provide the public with some details on the proposed sewage and domestic wastewater systems planned for this project as well applicable controls. You must also analyze the geological composition of the proposed site and discuss its ability to support the type of large scale septic system that is needed for a development of its size. As in the case with user impacts, you also cannot write off the significance of these

and other impacts by citing to the applicant's expected compliance with the agency's "Clean Marina Initiative." EA at 23.

(5) The impacts non-point sources will have on water quality

The Elk River has been plagued over the years by organic enrichment as a result of pasture grazing and non-irrigated crop production in the region. EA at 21. However, in view of these non-point sources of water pollution, you fail to identify the non-point source impacts this marina will have on water quality, let alone address what cumulative impact all non-point sources will have on water quality. A development of this size and scale may have a host of non-point sources of pollution, including stormwater runoff from impermeable surfaces and runoff from fertilizer and pest control practices. You must discuss these and other non-point sources in your EA and their potential impact on the Elk River. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, WildLaw*)

**TVA Response:** The proposal for this marina includes only storage and supply functions of a marina. Issues such as cleaning, resurfacing, refinishing and painting services, boat maintenance and repair services have not been addressed in this EA because the applicant has made no indications in his plans for offering such activities. Protection from fuel/petroleum products contamination has been addressed by noting the requirements of state and federal permits for fuel handling and distribution. Protective measures are set forth by state (ADEM) and federal (EPA) agencies to address such issues. As proposed, the operations at this marina must receive and maintain proper permits and operate under their guidance. Since these permits are designed to prevent environmental and safety hazards associated with the use of various petroleum products, such operations as reviewed in this EA will have no significant effect on water quality and wildlife. As a commitment, the applicant will be required to participate in the TVA Clean Marina program. The protective measures in the program, including those for protecting water quality, then become requirements for certification.

You Fail To Adequately Discuss Shoreline Stabilization and Erosion Concerns

Your discussion on impacts to the surrounding shoreline is inadequate and contradictory. On page nine of the EA you note that "soil interpretation indicates that the site has highly erodible soils." However, in your discussion on impacts to the shoreline you state that "the higher concentration of watercraft around the proposed marina would likely contribute to an insignificant acceleration of erosion of surrounding areas of unprotected shoreline." EA at 23. How can you make such a conclusory finding in light of the highly erodible nature of the site's soils?

Furthermore, you leave it up to the applicant to dictate how much shoreline stabilization and erosion control will occur. On page 23 of the EA you state:

"Participation of the planned marina in TVA's Clean Marina Initiative in part of the applicant's proposal and would require proper BMP's to address potential impacts from shoreline erosion, fuel spills, on-site septic systems and marina sewage disposal."

Thus, shoreline stabilization and erosion control is entirely contingent on the applicant's compliance with BMPs and the "Clean Marina Initiative." EA at 23. However, you do not identify these BMPs or any other prescribed methods to control soil erosion. You then go on to discuss the benefits of the "Clean Marina Initiative" without ever once addressing exactly what the applicant must do to control soil erosion. All the public is left with is broad descriptions of what is in this initiative and no clear indication of what is required from the applicant. You must go back and provide a thorough analysis of possible mitigation measures and develop a clear plan on how you intend to stabilize the shoreline and mitigate the impacts of erosion. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, WildLaw*)

**TVA Response:** The soils at this site are classified as highly erodible, as noted in the comments. The commenter's inference of contradictory statements in reference to shoreline erosion is, however, not valid. Since the reservoir has been in place since 1936, and the topography at the proposed site is relatively steep, any highly erodible soils along the shoreline have been previously removed. Soils along the shoreline now consist of chert/limestone derived materials and are less erodible. The presence of a maintained facility will dictate the need to protect the existing shoreline through biological and/or physical control mechanisms. Also, the elimination of uncontrolled ATV use on the property will reduce erosion of the erodible soils along the slopes and hillsides on the property.

The applicant will be required to maintain a 50-foot buffer along stream banks to reduce erosion along the shoreline. Further, the General and Standard conditions of the Section 26a permit would require excavated areas to be sowed with seed to stabilize the banks, and also require other BMPs to be properly implemented as part of its for the permit approval (see Appendix H for TVA's General and Standard Conditions). Additionally, since the applicant will be required to participate in the TVA Clean Marina program, the protective measures will become requirements for certification. Moreover, the stormwater pollution prevention plan that is required under the state-issued general stormwater permits for construction activities will further reduce erosion. See the ADEM website <http://www.adem.state.al.us/FieldOps/Permitting/Construction/Construction.htm>.

## 8. Aquatic Ecology

- The development would destroy a gravel - bottomed fish spawning area crucial to such species as shellcrackers. These areas and the species that require them are declining in number. (**Comment by:** *Chris Otto*)
- Has TVA made any attempt to determine what aquatic species are found in the river adjacent to this site and how they will be affected by the proposed dredging? (**Comment by:** *Charles Rose*)
- The dredging in this project will be another prime spawning area. (**Comment by:** *Bob Freeman*)
- Fourth, the marina and it's seawalls will be located on top of one of the last undisturbed spawning area for bass, crepe, bluegill, and white bass in the lower Elk River System. This 'resort' is going to negatively affect the fishing in the entire lower river system. (**Comment by:** *Grant Posey*)

- In the assessment it is stated that 2,700 cubic yards of material will have to be dredged for the dry storage forklift. This also will destroy the spawning area of the shoreline. (**Comment by:** *H. Genne Johnston*)
- The information provided in the TVA assessment booklet does not support findings of recent studies specifically related to the proposed development. The biologist present during the public comment period at LCHS stated the findings were from an earlier study, possibly done in 2003. The location of the study was unknown; he only knew it was near or in the mouth of Elk River. (**Comment by:** *Sharon Tidwell*)
- [To Mr. Grout (FWS)] Please see my most recent letter to TVA concerning the spawning areas being destroyed, mussel beds being destroyed, and general devastation to the wildlife in our area. (**Comment by:** *Bob Freeman*)
- this marina is environmentally unsound for such various reasons as the depletion of mussel beds and fish spawning grounds, (**Comment by:** *Woodfin and Carla Gregg*)
- The shoreline destruction, pressure on fish habitats, and general abuse by over-population by humans has almost destroyed one of the best areas for fishing in the Southeastern US. (**Comment by:** *Bob Freeman*)

**TVA Response:** Please refer to Section 3.2.3. of the Environmental Assessment - ***Aquatic Ecology and Aquatic Threatened and Endangered Species*** - for a discussion of fish habitat and fish spawning area concerns. The waters adjacent to the proposed site provide spawning habitat for several species of cyprinids (minnows) and centrarchids (sunfish and bass). Although some habitat would be lost in the immediate vicinity of the marina, most of the cove would remain adequate for continued spawning. The structures at the marina would provide cover for young fish, and larger fish would be attracted to these structures as well. The lower portion of the Elk River provides many areas of gravel bottom coves and submerged islands capable of providing spawning habitat for these fishes. Historic development for private water-use structures throughout the Elk River embayment has not inhibited spawning and survival of these species. Anglers and commercial fishermen continue to use the waters in the lower Elk River with success. Additionally, the dredge area has been reduced to an area approximately 40-foot wide by 60-foot long.

- MUSSELS WERE FOUND IN THE DREDGING AREA - Divers discovered five species of mussels in the area proposed for dredging. Why are we planning to once again endanger the mussel population after spending so much time and effort to allow them to flourish? (**Comment by:** *Susan Roessel*)
- There needs to be a more extensive assessment done in the area of the proposed marina for spawning areas and mussel beds and Indian artifacts. On Oct. 30, I took divers out and they located 5 different species of mussels in the area to be dredged. One was approx 10 years old. Dredging will destroy our mussel beds and spawning areas. (**Comment by:** *Robin Burchfield*)
- On October 16 [2005] divers found five species of mussel in the immediate vicinity of the proposed dredging. Has TVA ascertained what mussels might be affected by this dredging? I know that Alabama's State Malocologist, Jeff Garner, was not consulted. Why not? A talk I had recently with a professional biologist confirmed what local fishermen have been saying: (**Comment by:** *Charles Rose*)
- A third issue that came up recently is the fact that the vicinity of the proposed marina is habitat and home for so many Mussels. Local divers did an underwater survey in

the proposed dredging area. The operation was supervised by a microbiologist from Athens State University. They found at least five species of Mussels. They found living mussels up to 9 years old. They were huge. Again, these were found in the exact place that dredging is planned and shells were found all up and down the shoreline. We found numerous shells just walking the shoreline. A local resident who has experience diving in this area for many years indicated that in past years there have been thousands of pounds of Mussels located in that area. (**Comment by:** *Bob Freeman*)

- [To Mr. Grout (FWS)] Please see my most recent letter to TVA concerning the spawning areas being destroyed, mussel beds being destroyed, and general devastation to the wildlife in our area. (**Comment by:** *Bob Freeman*)
- this marina is environmentally unsound for such various reasons as the depletion of mussel beds and fish spawning grounds, (**Comment by:** *Woodfin and Carla Gregg*)
- They also said there has not been any type of study on the mussels in the area for the marina. I personally took out a group of divers to the area that will be dredged and we found 5 different species of mussels. Some were very old. TVA needs to do a study on the underwater creatures. I did not see any recent fish counts, mussel counts. (**Comment by:** *Robin Burchfield*)

**TVA Response:** A TVA survey of Wheeler Reservoir (TVA, 1991) was conducted in 1991 to assess commercial mussel resources in the reservoir. This survey included main channel areas, overbank areas, and embayments (including the Elk River embayment). Five common mussel species were reported from tributary embayments on the lower reservoir. No state- or federal-listed mussel species were found in lower tributary embayments. The mussel community in these areas is dominated by three mussel species; floater (*Pyganodon grandis*), washboard (*Megalonias nervosa*), and pistolgrip (*Tritogonia verrucosa*) that are tolerant of reservoir conditions. The number of individuals estimated to occur in these lower tributary embayments was more than 15 million. Two of these species (washboard and pistolgrip) are commercially harvested in Wheeler Reservoir. Some areas occupied by mussels in the Elk River embayment of Wheeler Reservoir could be directly affected (i.e. disturbed or destroyed) by dredging activities. However, dredging would cover a relatively small area, approximately 40-foot by 60-foot. These species are common in Wheeler Reservoir, and impacts to these localized populations of mussels as a result of dredging would not significantly affect the viability of these species in Wheeler Reservoir. (TVA 1992). TVA also sent a copy of the draft EA for review and comment to the Commissioner of the Alabama Department of Conservation and Natural Resources in Montgomery, Alabama.

- This section of the Elk River is one of the richest fisheries in the area and spawning beds in the immediate vicinity of the dredging could be adversely affected. Has TVA done a survey in the vicinity of the proposed dredging to determine what types of fish spawn there and whether the dredging or the daily operations of the marina might adversely affect them? (**Comment by:** *Charles Rose*)

- Will TVA accept these old findings, or will a new assessment, specifically related to impact on aquatic life by the proposed Elk River development be required?  
(**Comment by:** *Sharon Tidwell*)

**TVA Response:** TVA sees no need to conduct additional surveys in these areas. The waters adjacent to the proposed site provide spawning habitat for several species of cyprinids (minnows) and centrarchids (sunfish and bass). Although some habitat would be lost in the immediate vicinity of the marina, most of the cove would remain adequate for continued spawning. The structures at the marina would provide cover for young fish, and larger fish would be attracted to these structures as well. The lower portion of the Elk River provides many areas of gravel bottom coves and submerged islands capable of providing spawning habitat for these fishes. Additionally, the dredge area has been reduced to an area approximately 40-foot wide by 60-foot long.

- What is going to happen to the fish and natural habitat for animals in this area. When did you lose your commitment to this cause? Why should a commercial project with wet slips, dry storage, RV park, camping areas, cabins, and a restaurant get preference over the fish and animals when they haven't in the past. Why not turn it into a nature preserve with nature trails, birding, etc., instead of giving it to someone just to make more money and ruin our shores and waterways. (Comment by: Paul Hargrove)
- Fishermen in the area say that the slough which will have to be dredged for the marina is home to shell fish that provide excellent sports fishing fun. (Just across the river at the site of the Limestone County development, a shell cracker bed has already been affected by development). Frequently, a group will come through on horseback. The trails through the area are excellent for walking and riding.  
(**Comment by:** *Helen Ball*)

**TVA Response:** As indicated in the draft EA, the impacts to fish species will be insignificant. Since the vegetated wetlands will be protected from disturbance, nursery areas for young-of-the-year fish will not be affected. The lacustrine species that currently inhabit this area will be able to live in and around the marina. Sport fish such as sunfish, bass and catfish are readily caught around docks and piers in the area. Additional structures will increase cover for these species.

- **Direct and Indirect Impacts on the Environment**

"NEPA imposes procedural requirements designed to force agencies to take a 'hard look' at [the] environmental consequences" of their actions. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9<sup>th</sup> Cir. 2003). "This includes considering all foreseeable direct and indirect impacts. *Id.* See also 40 C.F.R. § 1508.25 (c).

This EA fails to consider a wide range of foreseeable direct and indirect impacts on the area's resources. In addition, many of your discussions on direct and indirect impacts are contradictory and inconsistent with past findings. You must correct these and other deficiencies and provide a thorough and well-reasoned discussion of all direct, indirect and reasonably foreseeable environmental impacts.

### **Aquatic Threatened and Endangered Species**

As in your discussion on impacts to endangered and threatened plant and animal species, you fail to support your conclusion that no endangered, threatened or sensitive aquatic species are found within the project area. You fail to reference a single study or survey supporting your statements that no snail or boulder darters are located in the area. You also fail to reference any data in support of your conclusion that no cracking pearlymussels or pink muckets will be affected by this project. You must provide further documentation to support these assertions as well as consult with the Fish and Wildlife Service before you make a final determination that these and other species will not be impacted by the proposed action. **(Comments by: Jason Totoiu and Sandra S. Nichols, Wild Law)**

**TVA Response:** TVA has informally consulted with the FWS on its effect determinations. Data from the TVA Natural Heritage database indicated that several state- or federally listed aquatic animal species potentially occur in the riverine portions of the Elk River upstream of the project area (Table 3-2). On-site examination of the area by TVA aquatic biologists has revealed that no suitable habitat for any of these is present in the area potentially affected by development of the recreation and resort areas. This portion of the Elk River is affected by the impoundment of Wheeler Reservoir, the embayment is heavily impacted by silt, and the overbank area flooded by Wheeler Reservoir does not contain habitat suitable for any of the species. Public comments also raised concerns that the lower Elk River is habitat for the federally protected snail darter (*Percina tanasi*) and boulder darter (*Etheostoma wapiti*). These species occur in large, free-flowing rivers and have been recorded in the Elk River. A number of snail darters were released into the lower Elk River in 1980 as part of this species' recovery plan. No evidence for a surviving population has been found in this system since the transplant. The boulder darter has been recorded in large rivers and streams from the Elk River to Shoal Creek in northwest Alabama and southern middle Tennessee. Since these species require free-flowing waters, they do not occur in the impounded waters of the lowest portions of the Elk River, including the portion in the vicinity of proposed marina. No effects to state-listed or federally listed aquatic animals would result from this proposed development. The USFWS has concurred with TVA's findings.

### **9. Roads/Traffic**

- The boaters who use the boat landing at the end of the Barnett Road are now, and always have been too dangerous driving on this road. They go way too fast and show no respect for the residential area. Usage of the landing increased when it was improved several years ago. When the road was widened some, not near enough, the speed of these trucks pulling boats increased also. Thankfully there has yet to be any major accidents. Extreme caution has to be used when pulling out of driveways. I will soon have 2 teenage drivers. I have a 17 year old daughter who is already driving, and a son who just turned 15. There are a lot of others who use this road that are teenagers also. **(Comment by: Melita Hicks or North American Indian Name is "Runnin Late")**
- The road to the TVA site is too narrow and using it for the entrance to a huge marina and campsites will make it too dangerous for the homes on Barnett Road (There are about 50 of them). **(Comment by: Bob Blanks)**

- Traffic is another issue that has not been assessed. Car traffic on Barnett Rd. will have a tremendous affect on this area. Children play in the street, the road is not wide enough for two vehicles with boats to pass much less a boat and an RV. The road will have to be widen, water lines put in, electric lines installed. The people on Barnett Rd. will lose their yards and houses will be sitting on ROW when road is widen. Taxpayers will have to foot the bill for a development they don't want. No traffic count has been performed on this road, no survey done with the people who live on this road (for or against marina.)
- The widening of the road would take up more of my property and other family member's properties. The widening of the road would put it too close to my front porch I am not only looking out for lose of property, but the safety of my grandchildren. **(Comment by: Charles & Maude Ezell, Sharon Bridges )**

**TVA Response:** A TVA civil engineer with expertise in highway field engineering and inspection conducted a site visit on September 9, 2005, to evaluate the transportation network near the proposed development. The methodology, analysis, and conclusions were reviewed by a senior professional engineer with 27 years experience in Civil/Site, Highway, and Railroad Engineering. According to the Highway Capacity Manual, (Transportation Research Board, 2000), the potential capacity of the rural, two-lane road is more than the projected traffic that would be using the roads even after the proposed development is constructed. Even though there would be a traffic increase, the projected traffic levels are still well below the capacity that the Highway Capacity Manual (Transportation Research Board, 2000) recognizes as a maximum capacity for two-lane, rural highways (3,200 vehicles per hour). Since traffic counts were not available, traffic projections were used to assess the impact. As per these projections, the traffic levels would range from twenty to thirty times less than the maximum capacity of the road (135 vehicles per peak hour on weekdays, 101 vehicles per peak hour on Saturdays, and 158 vehicles per peak hour on Sundays versus 3,200 vehicles per hour). There is only one portion of the road that would need improvement, and the applicant has agreed to upgrade the deficient culvert area by paving the grassy shoulders (see mitigation under Alternative C).

Lauderdale County is ultimately responsible for enforcing posted speed limits to ensure accidents do not increase in number. There is only one portion that would need improvement and the applicant would upgrade the deficient culvert area. County officials are also responsible for approving and implementing road upgrades to support traffic volumes and minimize accidents. If additional right of way is necessary, the required property would be purchased from the landowner. The applicant has agreed to work with Lauderdale County to post more speed road signs. If additional measures are desired, Lauderdale County would need to perform additional traffic studies.

- The proposed entrance road will be a two - lane road through residential areas. Trash and abuse to the area between Hwy 72 and the site in question will increase. **(Comment by: Chris Otto)**
- I also feel that privacy of people living on Hooie Lane and the Elk River will be greatly intruded upon should the resort be built. **(Comment by: Charles & Maude Ezell)**

**TVA Response:** Comment noted.

- I believe that we need some time without traffic on the river and the roads. (**Comment by:** *unknown*)
- Mr. Doss (who does not live in this community) has no right to disturb our or our neighbors' right to a peaceful existence by creating traffic and noise congestion in our neighborhood which is the direct path to the proposed site. (**Comment by:** *Mabel, Rodney, and Emily Smartt*) As a resident of Co Rd 77. I am strongly opposed to the traffic this will generate. No one has a right to disturb another person's peaceful existence. Mr. Doss doesn't live in this community. He needs to keep this "dream" in his own backyard and leave our peace and quiet alone. I'm sure Mr. Doss wouldn't like this in his neighborhood. Please do not allow this! Don't let this person tear up paradise to build a parking lot. I'm sure any members/employee of TVA would appreciate helping keeping something from disrupting something they consider special as I have this land that I live on. (**Comment by:** *Emily Smartt*)

- The traffic will be lots worse than now. (**Comment by:** *Mabel Smartt*)

**TVA Response:** These comments have been reviewed and noted.

- Who will patrol/enforce the added roadways/traffic? (**Comment by:** *Barnett, Kerri*)

**TVA Response:** Patrol of County Roads fall under the jurisdiction of the Lauderdale County Sheriff Department.

- I am opposed to the proposed marina. I live at 1193 Barnett Road and I am concerned about the traffic increase on this already narrow road. It is already dangerous when you meet a large boat coming over the hills and a marina would increase this danger. (**Comment by:** *unknown*)
- The access roads are not large enough to accommodate large boat trailers and campers are the same time. (**Comment by:** *unknown*)
- First of all the road (Barnett Road) is very narrow and has many steep hills that are hidden until you top them. Vehicles with large boats and campers have met and cannot [proceed] without taking half of the ditch. (**Comment by:** *Troy Barnett*)

**TVA Response:** These comments have been reviewed, and additional analysis was added in the FEA to address these comments.

- The EA many times states that there will be no "impact" to the 91 acres of wilderness and wetlands. The proposed 50 boat slips and 200 campsites will completely stress the current local resources available and the proposed plan has no accommodations for the increase use of the county road. (**Comment by:** *Susan Roessel*)

**TVA Response:** According to the *Highway Capacity Manual*, the potential capacity of a rural, two-lane road is more than the projected traffic that would be using the roads even after the proposed development is constructed.

- Hooie Lane and Barnett road will serve as the main entrance into the development. The assessment findings were that the current roads were acceptable. This is definitely an error in the assessment. Hooie Lane, in its current state, can manage the extra traffic. However, Barnett Road has several dangerous areas that need to be addressed prior to any development. The first issue that needs to be addressed is fixing a culvert that lies approximately 75 feet from the stop sign at the north end of Barnett road. Two cars cannot pass over this culvert. The northbound lane ends suddenly, if two cars meet at the culvert, one will have to stop while the other passes over. This is easily identified as a problem area. I do not know how anyone doing an assessment could have missed this. (**Comment by:** *Sharon Tidwell*)

**TVA Response:** Additional information has been added to the Final EA to address this comment. The applicant will to pave the grassy shoulders to widen the road at this point.

- A second problem is that Barnett Road contains two hills where sight of oncoming traffic is limited. Meeting RV's, vehicles pulling boats/trailers, heavy equipment, etc, will prove to be dangerous. These areas of the road need to be widened, adjacent mail boxes, some of which are brick structures need to be moved back away from the road edge. These problems need to be addressed before motor vehicle crashes occur. • Who will take responsibility for fixing the problems on Barnett Road before the development is started? • b. Why were these problems areas not identified in the original assessment, specifically the culvert issue on Barnett Road? (**Comment by:** *Sharon Tidwell*)

**TVA Response:** This comment has been reviewed, and additional analysis was added in the FEA to address this comment. The developer would be responsible for correcting the problem near the culvert on Barnett Road.

- Barnett Road -Find another access road that does not go through a residential area. If not, then the applicant and/or the City of Rogersville should have to pay for Barnett Road to be widened, with a turn lane added. A Traffic Light must be installed at the corner of Highway 70 and Barnett Road (There is only a four-way stop there now). A Traffic Light must be installed at Barnett Road and Highway 72. (**Comment by:** *Bob Freeman*)

**TVA Response:** There are no existing access roads that avoid residential areas. The developer would upgrade the deficient culvert area. Traffic studies are performed to determine whether traffic lights are warranted. However, TVA believes they would not be warranted since the volumes using Barnett would be so low. The county could do a study to make an official determination.

- Roads and Traffic chapter # 3 page 36 of the Draft Environmental Assessment. - This document states that CR 77 capacity is 3,200 vehicles per hour. 3,200 vehicles per hour equates to a vehicle passing any given point on the road every 1.125 seconds. I do not believe that this is a safe environment for this type thoroughfare; possibly this was intended to be 3,200 vehicles per day or one vehicle every 27 seconds. However, if the true number is 3,200 vehicles per day the projected traffic levels (page 36) exceed capacity every day except Saturday. This issue is being submitted per our discussion at the October 18th meeting. How was this issue resolved? (**Comment by:** *Joe Serocki*)

**TVA Response:** The design capacity standard listed in the *Highway Capacity Manual* is not 3,200 vehicles per day but is 3,200 total vehicles per peak hour. A total of 3,200 vehicles per hour for both lanes is a standard used by the highway capacity design manual, which also states that two lane-rural roads rarely operate at volumes approaching capacity. This results in a total of 0.89 vehicles per second for both lanes or directions or as noted in the comment, one vehicle every 1.12 seconds. However, since this is a total for the both lanes, the number of vehicles per lane or direction would be 0.45 vehicles per second or 1 vehicle every 2.22 seconds in each direction, if the road were to be operated at capacity. Additional information has been added to the Final EA to address to help clarify this issue.

- Your assessment unconditionally fails to address the accessibility of the public land you are giving to a private developer for personal gain. My assessment of your Assessment's consideration of accessibility - Barnett road is a two lane black-top country road for access by a few local residents and a few weekend cabin owners, and for access by a few local fishermen and occasional local small boaters to that local part of Elk River, as a convenient alternate location boat launch to at least five other boat launches near by. Barnett Road doesn't get a lot of traffic because it is narrow, - low-shoulder road, which traverses residential areas, industrial areas, and a stop sign. While negotiating Barnett Road one must carefully watch for children, dogs, other vehicles, and pedestrians. I only use it occasionally for these reasons, and prefer the numerous other boat launches which are only a little further distance. The notion that Barnett Road will service a one hundred boat marina is inconceivable. I can't imagine a string of RV's sailboats, mobile homes, SUVs, Off Road vehicles, yachts, bass boats, autos, campers, etc, up and down Barnett Road at all hours of the day and night. Similarly, and equally preposterous, is the idea of an alternate connecting access road from Jennifer Circle, in Pinedale Home Estates- - the location of my cabin--to the proposed property usage as a marina. The property's continuing existence as a surviving natural preserve is explained by the property's isolation and inaccessibility. You publish an environmental assessment that doesn't address the acute lack of accessibility for a marina project you are proposing, nor any practical solutions, while leaving the unsolved accessibility issues for others. (**Comment by:** *Thomas Gary Wicks*)

**TVA Response:** TVA's conclusions were based on the HCM's potential capacity of a rural, two-lane road, and this was addressed in revisions to the EA. TVA did not evaluate the possibility of connecting an access road from Jennifer Circle, as there is no legal access to the TVA property from Jennifer Circle. Barnett road might require improvements, which was addressed in revisions to the EA.

- **Direct and Indirect Impacts on the Environment**

"NEPA imposes procedural requirements designed to force agencies to take a 'hard look' at [the] environmental consequences" of their actions. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9<sup>th</sup> Cir. 2003). "This includes considering all foreseeable direct and indirect impacts. *Id.* See also 40 C.F.R. § 1508.25 (c).

This EA fails to consider a wide range of foreseeable direct and indirect impacts on the area's resources. In addition, many of your discussions on direct and indirect

impacts are contradictory and inconsistent with past findings. You must correct these and other deficiencies and provide a thorough and well-reasoned discussion of all direct, indirect and reasonably foreseeable environmental impacts.

Your analysis of impacts to roads and traffic is inadequate. You have yet to perform an independent traffic study for any of the roads within the project area. You cannot rely on “estimates” and “TVA assumptions” (EA at 36) as the methodology supporting your analysis. As you clearly recognize, the “most direct and most probable route” to access the proposed site is via CR 77. EA at 35. You further point out that this road “is a 100 percent no-passing, two-lane, rural road.” EA at 36. However, you fail to adequately explain how this unimproved, two lane road that by all indications is comprised of “steep hills and sharp curves” (Appendix B at 96) is able to support the huge influx in traffic associated with the construction and operation of this development. This is particularly problematic in view of the types of vehicles that will be using this road to access the marina. As many as 200 RVs and campers may be using this road to access the marina’s facilities at any given time. In addition to these large, unwieldy vehicles, an equal if not greater number of boats, personal watercraft and off-road vehicles may be transported (by trailer) to and from the site on any given day. Without a traffic study and engineering assessment to determine whether this road is capable of safely supporting all these vehicles, you cannot conclude that the development “would not create any significant changes or overloading to the network.” EA at 36. **(Comments by: Jason Totoiu and Sandra S. Nichols, Wild Law)**

**TVA Response:** A TVA civil engineer with expertise in highway field engineering and inspection conducted a site visit on September 9, 2005, to evaluate the transportation network near the proposed development. The methodology, analysis, and conclusions were reviewed by a senior professional engineer with 27 years experience in Civil/Site, Highway, and Railroad Engineering. According to the Highway Capacity Manual, (Transportation Research Board, 2000), the potential capacity of the rural, two-lane road is more than the projected traffic that would be using the roads even after the proposed development is constructed. Even though there would be a traffic increase, the projected traffic levels are still well below the capacity that the Highway Capacity Manual (Transportation Research Board, 2000) recognizes as a maximum capacity for two-lane, rural highways (3,200 vehicles per hour). Since traffic counts were not available, traffic projections were used to assess the impact. As per these projections, the traffic levels would range from twenty to thirty times less than the maximum capacity of the road (135 vehicles per peak hour on weekdays, 101 vehicles per peak hour on Saturdays, and 158 vehicles per peak hour on Sundays versus 3,200 vehicles per hour. There is only one portion of the road that would need improvement, and the applicant has agreed to upgrade the deficient culvert area by paving the grassy shoulders (see mitigation under Alternative C).

In addition, you fail to discuss the impacts associated with the access road. For instance, you state that the construction of this access road will involve “crossing five streams” but you do not identify these streams or address the potential impacts. EA at 5. You must identify these streams and discuss these impacts. Once you have adequately assessed these impacts, you must then discuss whether appropriate mitigation measures will be in place to ensure that these stream-crossings will not impair local water quality.

Third, you fail to discuss the applicant's plans to construct additional secondary roads upon completion of the access road. See Appendix A at 16. You must address the impacts these additional roads will have on the environment.

Lastly, you fail to discuss the impacts associated with parking lots, RV slabs and other impermeable surfaces. You must address these impacts. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** The scope of the EA includes the access road and the area where any internal roads would be located. Five streams crossings were also included in the analysis. The stream crossings and roads are shown in Figure 2-1.

## 10. Wetlands

- Although the DEA states that the two wetlands will not be developed, I feel there will be negative impacts to them as a result of this project. The various resort facilities in close proximity to these wetlands (dry storage building, RV campsites, cabins, chalet/restaurant, roads) will all entail the clearing of forest. How will the associated "edge effect," (increased sun, wind & drying of flora) impact the wetlands? How will the noise pollution from boat traffic, cabin and RV air conditioners, etc., affect the wildlife therein? (**Comment by:** *Charles Rose*)

**TVA Response:** TVA is aware of the potential effects of development on wetlands present on the project site. To better protect these areas, an upland buffer around these areas will be established, and as part of the project commitments the applicant will be required to maintain the vegetation in the buffer zone and avoid the wetland areas. The buffer will be 125-feet wide at a minimum, and will in some areas extend 200-feet. Establishment of this buffer is consistent with recent research regarding minimum buffer zone sizes for maintenance of biological diversity for wetland and riparian habitats.

- There have been two areas identified on the property as protected wetlands. Issues related to protection of these areas during property development have been mentioned. Nothing specific has been documented. Long term management and protection of these areas after property development has not been set forth. No party has taken responsibility for protecting these areas. In the Draft Environmental Assessment booklet provided by TVA, section 3.3 recommends avoidance and minimization of these areas. It also recognizes that the area has already been impacted by all-terrain vehicle traffic that has disturbed stream beds on the property. These same stream beds will be altered when road development/construction is initiated. Are there any plans to protect against disturbance of these streams that feed into the wetlands. Another issue identified in the TVA assessment is potential damage to the Wetlands from dredging, shoreline improvements, sewage leaks, fuel leaks and runoff from impermeable surfaces. The assessment suggests these areas are not included in the dredging or development, but nearby campsites, adjacent marinas, fuel leaks, human traffic will all impact the Wetlands areas over a period of time. It has been suggested that orange mesh fencing will protect the Wetland area during construction. This is a direct contradiction to evidence already identified by TVA related to impact of all-terrain vehicles on stream beds that feed into the Wetlands. I don't believe this issue has been addressed. In regards to the wetlands.

- Who will take responsibility for long-term management and protection of the wetland areas? • Will there be an assessment of potential Wetland damage created by stream bed disturbance during road/property construction and development, similar to the problems created by the all-terrain vehicles. • Who will be responsible for monitoring the Wetland areas for campsite/human encroachment, fuel leaks, chemical spills, etc? • Will individuals and developer be held accountable, fined and required to restore Wetlands if the areas are distressed/damaged by the proposed development? (**Comment by:** *Sharon Tidwell*)

**TVA Response:** See previous response regarding establishment of an upland buffer surrounding wetlands. Orange fencing and wetland flagging will clearly identify the wetland area and upland buffer zones, and project commitments will require these areas be avoided by construction activities. This commitment will be monitored by TVA staff, and onsite meetings with the applicant prior to construction will occur to ensure these commitments are met. ATV impacts to wetlands are indirect impacts associated with limited amounts of sediment input in streams feeding these wetlands. There was no evidence of direct ATV impacts to wetlands. BMPs and proper management of storm water runoff from construction activities, as well as permit requirements by both state and federal agencies would minimize sediment impacts to wetlands. An easement would be granted to the applicant, but the fee-ownership would still be retained by TVA, and long-term monitoring of the wetlands would be the responsibility of the TVA Watershed Team office.

- The wildlife and wetlands will be significantly impacted. (**Comment by:** *Bob Freeman*)
- All of the displays at the meeting are different than what were presented at the last meeting. The wetland area has changed but still shows some will be destroyed by Bubba with dry storage. This is unacceptable. (**Comment by:** *Robin Burchfield*)

**TVA Response:** Wetlands present on the project site will be avoided by all construction and development activities, and an upland buffer zone will be established to further protect these areas from any additional impacts. As a result of these commitments, wetland impacts will be insignificant.

- I do not think orange mesh fencing will protect wetlands from anything much less any construction and what about after construction is over? What will protect the wetlands from people, fuel, runoff and sewage? I have found an article in the Vermont Journal of Environmental Law Vol 6 which states one reason to save our wetlands: "The profiles of isolated wetlands show that many of the functions and benefits (e.g., water storage, nutrient retention and cycling, sediment retention, and wildlife habitat) ascribed to non-isolated wetlands are performed by isolated wetlands. Moreover, their geographic isolation and local and regional distribution place isolated wetlands in a rather unique position to provide habitats crucial for the survival of many plant and animal species (e.g., endemism and breeding grounds for numerous amphibian and bird species). Isolated wetlands are vital natural resources, important for maintaining the Nation's biodiversity and wetland-dependent wildlife and for providing a host of other functions." R. W. Tiner, H. C. Bergquist, G. P. DeAlessio, and M. J. Starr, U.S. Dept. of the Interior, Fish & Wildlife Service, Geographically Isolated Wetlands: A Preliminary Assessment of their Characteristics

and Status in Selected Areas of the United States (June 2002), (**Comment by:** *Robin Burchfield*)

**TVA Response:** Orange fencing and wetland flagging will clearly identify the wetland area and upland buffer zones, and project commitments will require these areas be avoided by construction activities. This commitment will be monitored by TVA staff, and onsite meetings with the applicant prior to construction will occur to ensure these commitments are met. TVA staff does not feel that signage is necessary to warn people to stay out of the wetlands present on the site. Typically wetlands are not very hospitable to the general public, being somewhat difficult to both access and walk through. Any impacts to wetlands associated with public access are minor and temporary. Public access in some cases increases public awareness of the value of wetland areas – some educational signage may be beneficial. TVA is aware of the potential effects of development on wetlands present on the project site. To better protect these areas, a an upland buffer around these areas will be established, and as part of the project commitments the applicant will be required to maintain the vegetation in the buffer zone and avoid the wetland areas. The buffer will be 125-foot wide at a minimum, and will in some areas extend 200 feet. Establishment of this buffer is consistent with recent research regarding minimum buffer zone sizes for maintenance of biological diversity for wetland and riparian habitats.

- The aerial photograph, showing the desired easement along with the wetlands and the buffer zone for those wetlands, shows the easement boundary going through the wetlands buffer, and in many cases the easement boundary goes right to the edge of the wetlands. If the buffer zone is included in the easement, and potentially developed along with the rest of the easement, then it isn't much of a buffer is it? Shouldn't the easement boundary go around the wetlands buffer zone, and not through the wetlands buffer zone? Isn't that why there is a buffer zone? (**Comment by:** *Todd Smith*)

**TVA Response:** The easement boundary is the legal description of the property to the maximum shoreline contour on Wheeler Reservoir. Commitments for the buffer areas identified in the EA will be included in the easement document.

- **Direct and Indirect Impacts on the Environment**

"NEPA imposes procedural requirements designed to force agencies to take a 'hard look' at [the] environmental consequences" of their actions. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9<sup>th</sup> Cir. 2003). "This includes considering all foreseeable direct and indirect impacts. *Id.* See also 40 C.F.R. § 1508.25 (c).

This EA fails to consider a wide range of foreseeable direct and indirect impacts on the area's resources. In addition, many of your discussions on direct and indirect impacts are contradictory and inconsistent with past findings. You must correct these and other deficiencies and provide a thorough and well-reasoned discussion of all direct, indirect and reasonably foreseeable environmental impacts.

## **Wetlands**

Your discussion on impacts to wetlands fails to alleviate the concern that wetlands will be indirectly impacted by the proposed action. In your analysis you state:

“Development of Wetlands A and B and the surrounding upland buffers may result in the complete or partial loss of the resources and its functions due to direct and/or indirect impacts. Direct impacts could potentially include introduction of fill material or the dredging of wetlands and adjacent waters for shoreline improvements. Indirect impacts may include sedimentation from highly erodible uplands and possible contaminant input from adjoining infrastructure. Examples include sewage leaks, fuel leaks, and runoff from impermeable surfaces. Impacts to forested wetlands are of special concern because of the historic high rate of loss, and continuing losses, of this type of wetland and the long time period necessary to replace forested wetlands and their functions...It is unlikely that these impacts could be avoided if either of these two areas were developed. However, under the proposed action, the wetland areas would not be developed nor include any fill or dredging thereby avoiding these impacts.” EA at 18 (emphasis added).

In this statement, you conclude that under the proposed action, wetlands would not be developed nor include any fill or dredging “thereby avoiding all direct and indirect impacts.” *Id.* While it may be true that no fill or dredging would occur under the proposed action, thereby eliminating all direct impacts, indirect impacts may still result from sedimentation and contamination including sewage leaks, fuel leaks, and runoff. Regardless of whether these wetlands are developed, dredged or filled, sedimentation and contamination occurring on and off-site could still indirectly impact these wetlands.

For example, a fuel leak or sewage leak from a nearby property that results in groundwater contamination could ultimately impact these wetlands. However, based on your analysis it is unclear whether the potential for these and other indirect impacts exist and to what extent these impacts could be avoided. Therefore, you must go back and address these indirect impacts as well as discuss possible mitigation measures. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** TVA assessed the potential effects, direct and indirect, of development on wetlands present on the project site. Wetlands on the site would be avoided. Further, to better protect these areas from indirect effects, an upland buffer around these areas will be established, and as part of the project commitments the applicant will be required to limit development and construction activities outside of both the buffer zone and the wetland areas. The buffer will be 125-feet wide at a minimum, and will in some areas extend 200 feet. Establishment of this buffer is consistent with recent research regarding minimum buffer zone sizes for maintenance of biological diversity for wetland and riparian habitats. Furthermore, to reduce the potential for loss of streambank vegetation which could result in erosion, a 50-foot managed buffer will be maintained along drainages located within the parcel and along the shoreline.

## 11. ***Terrestrial Ecology/Natural Resources***

### **Adequacy of Review**

- Dr Thomas Haggerty, a noted terrestrial and behavioral ecologist whose publications are studied for their factual content by his peers and college students, states in a November 6, 2005, letter to Ms Rucker that he is dismayed by the methods used by your EA teams and their findings. He innumerates in his letter the lack of effort by the EA team again and again. He points out the ineptness and lack of knowledge of these alleged experts. **(Comment by: Steve Copeland)**
- I am asking that TVA protect the environment (soil, plants, and animals), plus the people that live by the river and those living on County Road 77. **(Comment by: Sharon Bridges)**
- The current use of the land provides horseback riding and hiking trails that allow access to the area without endangering plants and wildlife. **(Comment by: Atkinson, Anne L.)**
- I also have enclosed a picture of the beautiful foliage that Mr. Doss plans to destroy with his marina. **(Comment by: Catherine Tackett)**
- Was any kind of serious survey conducted to determine what animals inhabit this property? In section 3.1.3. [Terrestrial Ecology (Animals)] of the DEA, much of the description is of the generic, boilerplate type, not actual observations of the site. For example, on page 11, after noting that there is oak/hickory forest habitat on site, a long list of birds and other wildlife that can be typically found in this type forest is recited. Only a few species are mentioned as actually being seen on the site, about what you might expect to see on a one-time, casual walk through the property of a few hours duration. Were there any serious, attempts to assess what animals inhabit this site, using established scientific methods? If so, why are they not described? If no methodical assessments were conducted, how can the public possibly make meaningful comment in this regard? Concerning Indiana Bats, the DEA, on page 14, states, "Although some potential roost trees of moderate quality exist on the site, the overall habitat ranks as poor for Indiana bats. Considering that 5 acres of forested habitat would be disturbed, the project is not expected to result in adverse impacts to Indiana bats." The five acres figure, as we have already seen, is quite incorrect. I also take exception to the assertion that "the overall habitat ranks as poor for Indiana bats." In contrast to this statement, on page 13 the DEA states that Indiana bats "form summer roosts under the bark of living and dead trees. Their summer roosts are found in forests with an open understory, usually near water." Much of this site **does** have an open understory and it is obviously near water. Additionally, the plant list in Appendix C of the DEA confirms that there are seven tree species on this site that Indiana bats use for summer maternity roosts. They are Green ash, Northern red oak, Sassafras, Shagbark hickory, Silver maple, Slippery elm and White oak. The Shagbark hickory, a particular favorite of Indiana bats, is quite bountiful on this site. Bearing all this in mind, the assertion that "the overall habitat ranks as poor for Indiana bats" is curious to me. I would like to ask TVA this: **Have you actually done a survey, using approved scientific methods, to determine whether Indiana bats, an endangered species, use this site or not, or are you content to just make subjective statements, despite evidence to the contrary, about "overall habitat" ranking poor?** On page 14 the DEA states, "Habitat for green salamanders...is nonexistent on the property." I guess this refers to the fact that these salamanders are generally found in sandstone ledge crevices, which aren't on site, but they also use rocks, rotting trees, and stumps as habitat. This site has plenty

of these elements. **Again, has TVA done a methodical survey to assess whether green salamanders are present or is their finding of “habitat...nonexistent” based on a “guess-timate” by someone after a cursory walk across the property?** Concerning Alligator snapping turtles, on page 14 the DEA states, “Alligator snapping turtle habitat does occur in the Elk and Tennessee Rivers.” Nevertheless, it finds that “The proposed project is not likely to result in adverse impacts to this species.” **Once more, a finding of no adverse impact (although it is qualified with the phrase “not likely”) without any evidence to back it up and no mention of any attempt to actually look for this protected species.** (Comment by: *Charles Rose*)

- I could find no description of the methods used by TVA personnel to assess the vertebrates located on the proposed project area. For example, how many pit traps, drift fences, cover boards, PVC pipes, etc. were used on the proposed area to sample for amphibians and reptiles? How many man-hours were used to turn over logs and litter looking for amphibians and reptiles? How many hours were used to walk transects through the study area listening for birds? What methods were used to sample for bats and other mammals? When was the sampling done for the terrestrial vertebrates? Was it done during the spring, middle of summer, late in the summer? The only time period that I could find in the assessment was August, which a completely inappropriate time to sample for terrestrial vertebrates. Methods used in the study are of course needed so the reader can make the appropriate inferences about the findings of the survey work. For example, did a TVA worker go into the proposed area for an afternoon in August, wander around, turn over a few logs, listen for a few hours and come to the conclusion published in the assessment, or were many hours spent in the appropriate habitats, using appropriate surveying methodology for a particular terrestrial group? It is not clear what methods were used in your assessment and it calls into question the kind of science TVA uses to manage the public's land. (Comment by: *Thomas Haggerty*)
- The property includes ginseng plants and perhaps other rare/endangered species. I understand that the "Draft Environmental Assessment of TVA on the Elk River Proposed Recreational Easement and Marina Facilities, Wheeler Reservoir, Lauderdale County, Alabama" is flawed with regard to its methods and findings (November 6, 2005 letter from Thomas M. Haggerty, Ph.D. ecologist, Professor of Biology, University of North Alabama). (Comment by: *Chris Otto*)
- I also do not want to see the habitat of the wildlife in the area destroyed. There are eagles which live in the area that would leave if not be destroyed. Please help protect our peaceful community and wildlife. (Comment by: *Rodney Smartt*)
- I realize that plant and wildlife biologists have surveyed the area, but I must question the thoroughness of those surveys when the ginseng growing in the area was not found by those surveys? What else did they miss? (Comment by: *Victor Dura*)
- Eagle weekend at Joe Wheeler was advertised as a time to observe eagles - how can the scientists at TVA underplay the importance of keeping this proposed development site undisturbed for future eagle nesting? Fragmentation of habitat cannot continue if we want to sell eco-tourism (which will bring more tourists than this marina) Fragmentation of habitat is a known cause of species extinction. (Comment by: unsigned from Feb 9 2006 open house)

- The TVA Wildlife & Wetland group said at the meeting they spent another day at the sight and did not see any unusual water fowl or migratory birds. I did not see any birds in the area the day they were out either. There were duck hunters all around. One day in Aug and one day in Dec does not constitute a thorough survey. If the closest Eagle nest is 30 miles away, why do we see one every other day on the Elk? Why do they have an Eagle watch at Joe Wheeler Resort? (**Comment by:** *Robin Burchfield*)

**TVA Response:** In preparing a NEPA document for a project, each project is reviewed by technical specialists in the TVA Regional Natural Heritage Project to identify natural resource issues that may occur in the vicinity of the proposed project site. Intensity of field investigations varies based upon the absence or presence of protected species or their habitat and habitat quality.

To begin a review, TVA biologists review our Regional Natural Heritage Program databases to identify state and federal listed animals or natural areas known to occur within the counties of the proposed project site and surrounding areas. These databases are part of the Natureserve Network ([www.Natureserve.org](http://www.Natureserve.org)), comprised of state natural heritage programs throughout North America. The TVA Natural Heritage Program is one of three regional natural heritage programs in this network. The database contains over 35,000 records (as of November 2005) for protected plants, animals, caves, heronries, eagle nests, and natural areas known from within the 201 county TVA Power Service Area.

The TVA Heritage database is dynamic, with updates and additions taking place throughout the year. Only credible records are included in the database, and sources include results of field surveys by TVA biologists, research publications, museum and herbarium specimens, unpublished reports from biologists outside TVA, data exchanges with the seven state heritage programs overlapped by TVA's coverage area (AL, GA, KY, MS, NC, TN, and VA), and data exchanges with five offices of U.S. Fish & Wildlife Service (Cookeville, TN, Asheville, NC, Athens, GA, Daphne, AL, and Jackson, MS). These databases are invaluable tools used at all levels of TVA's environmental reviews.

Once the database is reviewed and a potential species list is developed, Land Use/Land Cover products and/or aerial photographs are examined to identify suitable habitat for listed species on the project site. Examining these products may also assist TVA biologists in identifying additional species and habitat that may exist on site but may not have been identified by the database review. Field investigations are initiated after these preliminary reviews are completed.

Multiple TVA biologists (botanists, terrestrial and aquatic ecologists, wetland scientists) or contractors visit the proposed project site to characterize habitat conditions and wildlife communities within the project area. Specific habitat features such as caves, bluffs, glades and wetlands as well as overall habitat composition are noted. If rare species or their habitats are identified, further field investigations would be performed and mitigation to protect local populations of rare species would be proposed.

Regarding the review of terrestrial resources on the project site, a local TVA biologist and regional biological contractor were used to characterize habitats on

the site. A regional botanist also visited the site. Because no cave, bluff communities, or other uncommon habitat types were observed, no further surveys were needed to assess impacts to protected species that use these habitats.

Because the project site is forested there is suitable habitat on the proposed project site for Indiana bats and bald eagles. Indiana bats have been reported from the vicinity based upon historical records. An Indiana Bat Habitat Suitability Index Model (Romme et al., 1995) was used to better determine the potential of Indiana bats roosting on the site. Although a few suitable trees were observed on the site, the overall ranking of the habitat was poor. Therefore the likelihood of Indiana bats being present on the site was determined to be low. Had the model ranked the habitat at mid or high, surveys using computerized bat detectors (ANABAT) and mist nets would have been performed. Bald eagles nest in northwest Alabama and have been observed foraging and roosting along the Elk River. TVA biologists examined the project site and saw no evidence of this species nesting on the project site. As a precaution, TVA would require that the applicant only harvest suitable roost trees (live trees and snags with > 10 percent exfoliating bark and hollow trees) between October 15 - March 15. TVA will work closely with the applicant in determining which trees can be removed. At that time, any suitable roost trees would be marked. Further, the applicant could remove suitable roost trees within this period of time if the site is surveyed by a bat biologist and no Indiana bats are located on the property. Therefore based upon these findings, TVA determined that the proposed project is not likely to result in adverse impacts to Indiana bats or bald eagles. The USFWS has concurred with these findings.

- **EAGLE NESTS:** On page 13 the DEA states: “Eagles are known to winter near the project area. The closest nest record is approximately 30 miles west of the project site.” I believe that is statement is out-of-date. It must have been cut & pasted, like much of the DEA seems to be, from earlier reports. I believe there is now a nest just off of 2nd Street near Town Creek in Colbert County, one on a farm off of Highway 101 in Colbert County near wheeler Dam, and another one at Doublehead Resort. TVA’s Damien Simbeck will know for sure about all this. (Comment by: Charles Rose)
- I live at Freeman Acres. I know eagles live in this vicinity. Trees are being cut everywhere. How do we expect to maintain a birding trail if we destroy their habitat. Please let no TVA land go to developers. I want my grandchildren to see eagles too! (Comment by: Jackie Tipper)

**TVA Response:** Additional information has been added to the Final EA regarding recent discoveries of nesting birds on Pickwick and Wilson Reservoirs. The closest active nests are approximately 4 and 5 miles from the project site.

- **INDIANA BATS** As I mentioned in my comments last fall, the DEA, on page 14, states: “Although some potential roost trees of moderate quality exist on the site, the overall habitat ranks as poor for Indiana bats. Considering that 5 acres of forested habitat would be disturbed, the project is not expected to result in adverse impacts to Indiana bats.” The five acres figure, as everybody knows by now, is quite incorrect.

The handout I was given at the 2/9/06 Rogersville meeting states: “The applicant estimates approximately 40 acres of openings within the proposal area.” I have my doubts, considering how nebulous Mr. Doss’ plans are and how little TVA has required of Mr. Doss in the way of detail, if even that figure is close. Regardless, at the 2/8/96 meeting I mentioned to TVA’s Jon Loney and Helen Rucker that the DEA seems to be drawing a conclusion, “the project is not expected to result in adverse impacts to Indiana bats,” based on an erroneous “fact,” that being the “Considering that 5 acres of forested habitat would be disturbed” part. Mr. Loney told me that the person who used the 5 acre figure in regard to the impacts to Indiana bats, would be asked to reconsider the situation using the updated 40 acre figure. I don’t usually try to predict the future, but I’m going to take a stab at this one: I predict that the TVA Indiana bat “expert” will decide that even with basing his calculations on the new “approximately 40 acres of openings within the proposal area” figure he will conclude that, just as before, “the project is not expected to result in adverse the project is not expected to result in adverse impacts to Indiana bats.” (Comment by: Charles Rose)

**TVA Response:** Additional information has been added to the Final EA to address the potential for impacts on Indiana Bats.

- My question to TVA is: If the 5 acre figure wasn’t meaningful in the original decision regarding “impacts to Indiana bats,” why was it trotted out and used to justify the conclusion that “the project is not expected to result in adverse the project is not expected to result in adverse impacts to Indiana bats”? After all, that was one of the few conclusions regarding impacts to species that even stated a reason for the finding of “no significant impact.” Most of the “no impact” conclusions were just blanket statements, with no details. (**Comment by:** Charles Rose)
- At the Rogersville meeting, TVA’s Damien Simbeck and Jack Paul were very helpful in regard to supplying me with detail about a lot of this that was not found in the DEA. Damien explained to me, that although Shagbark hickories, a favorite of the Indiana bat in regard to summer maternity roosts, were indeed plentiful on the site, that trees of the right maturity needed to be a certain distance from the water with a relatively open understory. I can understand that, but I’m pretty sure the bats don’t fly around with a tape measure. And if the site contains trees that are potential roost trees for this endangered species, but for the fact that the understory is too abundant, why doesn’t TVA remove the understory and start actively trying to provide them with habitat instead of destroying the potential habitat this site could afford them and other species in the future. After all, the incomplete August 3, plant list contains seven tree species that the Indiana bat uses for summer roosts. Why doesn’t TVA become proactive and improve this site’s habitat characteristics instead of letting Mr. Doss destroy it with this ill-conceived development? (**Comment by:** Charles Rose)
- Shagbark Hickories - Endangered Bat Habitat Will be Destroyed: An on-site inspection shows that there are many shagbark hickories scattered across the property. These trees are good habitat for both Indiana and Grey bats. Many of these trees would be cut down in the development. (**Comment by:** Lamar Marshall, Wild South)

**TVA Response:** Indiana bats will roost under the bark of Shagbark Hickory and several other species of trees that have exfoliating bark. However, Indiana bats tend to form maternity roosts in dead snags with exfoliating bark. They prefer areas having a variety of roosting sources. Characteristics of ideal Indiana bat

habitat include an open mid-story, with relatively sparse vegetation in the understory. Results of the Indiana Bat Habitat Suitability Index Model indicate that the habitat on the Elk River Property is of low quality for Indiana bats. The only known populations of Indiana bats in Alabama are from Bankhead National Forest and a few caves near Scottsboro, Alabama. Except for the winter roost west of Scottsboro, the remaining populations are extremely small. Lastly, Indiana bat habitat is abundant in north Alabama. Considering these facts, TVA has determined that the proposed project would not result in adverse impacts to Indiana Bats. As a precaution, TVA would require that the applicant only harvest suitable roost trees (live trees and snags with > 10 percent exfoliating bark and hollow trees) between October 15 - March 15. To recover timber revenues if the proposal is approved, TVA will work closely with the applicant in determining which trees can be removed. At that time, any suitable roost trees would be marked. Further, the applicant could remove suitable roost trees within this period of time if the site is surveyed by a bat biologist and no Indiana bats are located on the property.

Gray bats do not roost in trees. They form summer roosts in warm caves and winter roosts in colder caves, but there are no caves on the project site. The proposed project would not result in adverse impacts to either species. The USFWS has concurred with these findings.

- It is sad to see how wildlife struggle more and more with astounding habitat fragmentation. (**Comment by:** *Nancy Muse*)
- The wildlife will be significantly impacted. (**Comment by:** *Bob Freeman*)
- There is much wildlife in the area which would be disturbed if this becomes a reality. (**Comment by:** *Mabel Smartt*)
- Natural resources will be lost. (**Comment by:** *Sharon Robinson*)
- I hate to see the wildlife rooted from their home. (**Comment by:** *Mabel Smartt*)
- this marina is environmentally unsound for such various reasons as the decrease of our wild-bird population, (**Comment by:** *Woodfin and Carla Gregg*)
- Finally, we must protect our spaceship, Earth by paying attention to wildlife habitat, forest areas, and wetlands, permitting their destruction only to satisfy a compelling need to support human existence. (**Comment by:** *Jimmy Wayne Cosby*)

**TVA Response:** These comments have been reviewed and noted.

- We live on the newly designated "Birding Trail". How long will that last as our woodlands are destroyed. The woodland behind me is being logged. There are logging trucks in the edges of the woods all the way to Decatur right now. (**Comment by:** *Jackie Tipper*)
- The assessment that the site would reduce habitat for herons, turtles, snakes and "other" animals and is "considered minimal" since those animals can just move a few miles down the river to similar habitat is patently absurd and any Agency employee

that said that should be considered highly suspect when it comes to stewardship of the public lands and wildlife habitat. (**Comment by:** *J. Thomas Noojin*)

- This proposal is devastating sprawl that will destroy the quality of the natural resources. TVA has abandoned its stewardship if it approves the proposed resort. This is apparent in the term used in the assessment that on environmental issues state “no significant impact.” Birds, trees, aquatic life, flowers will not survive in this sprawl. And all of the environment is in delicate balance now! This resort is massive - the size of the resort can’t help but destroy all of the delicate balances of nature in what is a beautiful area. The size of the proposal is nothing short of amazing destruction. (**Comment by:** *Harriet Johnston*)
- Habitat for wildlife and recreation would be lost forever and as I have said earlier in this writing, precious few acres remain. Let’s keep the property in question exactly the way it is, undisturbed and in its natural state. (**Comment by:** *Michael - mrekb@bellsouth.net*)
- My house is just 1/8 mile south from your proposed marina, we enjoy deer, eagles and many other forms of wild life. When you factor in all the clearing to be done to build much of this will be lost. (**Comment by:** *Joseph and Valerie Miles*)
- We see this erroneous five acres figure used again on page 14 of the DEA with this statement: **“Considering that 5 acres of forested habitat would be disturbed, the project is not expected to result in adverse impacts to Indiana Bats.”** The forest habitat is not the only thing disturbed here. It’s disturbing to me that those in charge of preparing this DEA accepted this kind of slip-shod reportage. (**Comment by:** *Charles Rose*)
- ... why we are still trying to protect the beauty of our area when Big government has not cared about it for at least the past 30 years that we have lived here. The answer is found in the story--our grandchildren. Should they not have the opportunity to know the river as we know it without extreme congestion and poorly conceived, poorly planned development that will threaten wildlife, destroy natural habitats and wetlands? (**Comment by:** *Carol Copeland*)
- A second general area of concern is the cavalier manner in which the EA understates the value of the mature forest resource of the 91-acre tract via the rationale that “...there should be no significant impacts to terrestrial plant communities since there are “no uncommon terrestrial plant communities associated with the development.” (Page 10) Here, TVA, already having failed to describe the areal extent of mature forest habitat that would be destroyed by construction of this proposed project, seems to be saying that it does not, after all, matter how much of the forest is cleared, since it does not sustain “uncommon terrestrial plant communities. Since when is that which is not “uncommon” thus to be relegated to environmental insignificance? Has TVA now decided that its terrestrial forest lands are not of environmental significance unless there are some “uncommon terrestrial plant communities” associated with such lands? Are all of the thousands of acres of mature terrestrial forest lands in the TVA inventory to be regarded as environmentally insignificant unless they are possessed of some “uncommon terrestrial plant communities?” It is, of course, appropriate to provide a higher degree of consideration to those elements of the environment that are uncommonly

encountered, such as endangered wildlife and plants, or species associations of uncommon beauty or rarity. But the absence of the uncommon does not reduce to a state of worthlessness that which is not “uncommon.” CONCLUSION: The EA fails not only to quantify the areal extent of the mature terrestrial forest land that would be destroyed with construction of the “preferred alternative,” but also, without proffering any justification, denigrates the environmental importance of such forest land by concluding that its loss would constitute “no significant impacts to terrestrial plant communities.” If, indeed, the loss of this as-yet-undetermined quantity of terrestrial forest habitat is to be adjudged insignificant, TVA should, at minimum, establish some rational quantitative and qualitative threshold values by which the loss of such forest lands would be found to be significant. Absent some such standards, TVA’s conclusion of insignificance is speculative and subjective. **(Comment by: John Crowder, Robin Burchfield)**

- One question I have is for the wildlife. Where will they go? The land surrounding, this once protected land, is all developed. And to not forget the Plant Life. The food plants and the medicine Herbs. As far as the eye can see the plants grow, working many wonders. They sustain many life forms. “Onkwehonweh” gives thanks and looks forward to seeing Plant Life for many generations to come. Many living things draw strength from the Food Plants. And from the beginning, the Medicine Herbs were instructed to take away sickness. The plant life is very important. **(Comment by: Melita Hicks or North American Indian Name is “Runnin Late”)**
- The project will destroy the habitats of animals, birds, regardless of what your Environmental Assessment says. There is just no way around that. Just because the animals and plants that have lived there for eons may not be on the Endangered or Threatened Species list, they are of no less value. In a time when shorelines and forests and wetlands are being eaten alive by any number of exploitative endeavors for financial gain, TVA should stand strong as a defender of these places. **(Comment by: Janice Barrett)**
- The intense growth and subsequent increase in human population and shoreline development will no doubt put increased pressure and demands on the remaining wildlife habitat wetland and riverside vegetation. If shoreline development continues then riparian habitat destruction will negatively impact wood duck populations. This development will also affect the migrant and wintering waterfowl and will reduce or eliminate habitats for the loss wildlife turtles, mussels herons, I personally have seen Eagles, Osprey, Pileated Woodpeckers, Herons, Wood Ducks, Mallards, Loons, Grebes, Coots, Beaver, Otters, Turtles, Snakes, Raccoons, Deer, Kingfishers, Gulls and several other wildlife that are truly common to this area but how long will they be common if they have no place to go? The destruction of any habitat will have a significant impact on our environment. **(Comment by: Robin Burchfield)**
- The third issue is the deforestation. As stated in the assessment, “the project area is 100 percent forested.” The assessment mentions that 5 acres will be impacted by the conversion of woodlands into the sites for the resort camps, roads, and RV sites. What about the additional proposed phases of the development. What is the estimate/count of the numbers of trees that will be eliminated? The loss of the trees and the herbaceous layer will lead greatly to further pollutants and erosion. **(Comment by: H. Genne Johnston)**

- The DEA does give some vague and minimal information about the initial and smallest of the construction phases, i.e., the 5 acres closest to the shore. However, no significant details are provided for subsequent construction of roads, buildings and parking areas. As I mentioned in my previous letter, the site is very hilly and a lot of grading, cutting and filling will be required. Without details how it is possible to assume that anything other than massive clear-cutting and leveling of the site will occur? (**Comment by:** *Victor Dura*)
- On page 9 the DEA states, "The project area is 100 percent forested." I found this to be true. On page 11 the DEA states, "The construction of the marina would create approximately 5 acres of openings within the forest." **This statement is grossly inaccurate and appears to be the result of sloppiness, negligence, and a lack of attention by the preparers of this DEA.** Where did this 5 acres figure come from? On page 6 the DEA states that "The applicant's proposed action includes the following environmental measures: Initial land clearing and excavation for access road right-of-way, location of maintenance building, and marina parking areas would directly affect approximately 5 acres on Tract XWR-21PT." **Why did the preparers of this DEA rely on this estimate of initial clearing and excavation by the applicant, instead of working up their own? And why did they then decide that this five acres figure was the full extent of forest clearing?** (**Comment by:** *Charles Rose*)
- So, this five acres estimate comes from Mr. Doss, not TVA, and it only covers his access road, maintenance building and marina parking areas. This five acres sounds like a reasonable estimate for those features, but since the whole tract is forested, additional land will have to be cleared for the rest of the development. This additional development will include 200 RV campsites, four bathhouses ("A modern bathhouse with hot showers will service each 50 campsites."), an office/maintenance building (3,750 square feet), access to fishing piers, boat ramp, boat slips, and other marina facilities, a large dry storage building, play grounds, hiking trails, a chalet/restaurant, an unknown number of cabins, clearance for power lines & water lines, and clearings for septic tanks with drain fields to accommodate all of this. Mr. Doss' proposal also states, regarding the RV parks, "Most sites will have river views." Will this entail even more tree clearing? Two things seem glaringly apparent to me: **No one at TVA has any idea how many acres of forest will be cleared in order to develop the Elk River Resort. No one at TVA has even tried to ascertain how many acres of forest will be cleared.** (**Comment by:** *Charles Rose*)
- In our youthful innocence we were not aware that "our river" had been poisoned by cropland runoff of DDT. We didn't notice that there was hardly any waterfowl. About the only wild land animal we ever spotted were squirrels and rabbits. In the intervening years and as we matured, we began to notice these strange water fowl that in their migratory flight were visiting our river. As time marched on, the number of different species of waterfowl increased. Then we began to notice that more and more of these beautiful creatures were using the Elk as their summer home. Some had even taken up permanent residence on this river. There were rumors that a Bald Eagle had been spotted; another said he had seen a two river otters playing; others spoke of beavers, no, not on Elk River? Now there are an abundance of these wonderful wild creatures. While DDT no longer poses a threat to the waterfowl and water animals, the water that they make their home is becoming more and more polluted by the emissions from the ever increasing river traffic. How much longer will

these water creatures hang on as their home becomes less health and more invaded? (**Comment by:** *Steve Copeland*)

- I've watched as more and more undisturbed forest land is bulldozed away and home after home is built. Land animals are being displaced in the name of progress from the only home they have ever known. They are becoming surrounded by progress with no avenue of escape available to them. (**Comment by:** *Steve Copeland*)
- With this in mind, a reasonable person might have cause to doubt other findings in the DEA concerning environmental impacts of the proposed development. For instance, consider this statement, concerning potential bald eagle nesting trees, "Some of these trees may have to be cut during the construction of the marina and associated facilities, though many suitable nesting trees would remain on the project site." **Really? How can that be determined with any certitude, since no one at TVA knows or made any attempt to estimate the total amount of forest to be cleared?** (**Comment by:** *Charles Rose*)
- TVA appears to have erroneously assumed that the 5 acres of initial clearing and excavation--in the first of the proposed 5 phases--is the totality of land clearing and excavation that would be involved in this project. This error is plainly exemplified on page 14 of the EA where, in considering potential impacts on Indiana bats, the EA states that, "Considering that 5 acres of forested habitat would be disturbed, the project is not expected to result in adverse impacts to Indiana bats." This conclusion clearly rests on the incorrect premise that the 5 acres associated with the "initial land clearing and excavation" (page 6, first "bullet" item) constitute the totality of forested land to be cleared. (**Comment by:** *John Crowder, Robin Burchfield*)
- The sheet said that the "40 acres of openings" was the applicant's estimate, but Mr. Doss told me at the meeting that the estimate was arrived at as the result of his consultations with a group of folks from TVA. If TVA participated in the estimate, shouldn't that be stated? If TVA did participate in working up the estimate, is it possible for TVA to send me a break-down of this estimate in time for me to make comment? For instance, how many acres for roads, parking lots, RV pads, how many structures, etc. The illustration on display at the meeting had no detail, no roads indicated, etc. (**Comment by:** *Charles Rose*)

**TVA Response:** TVA and the applicant have established estimates for the amount of clearing for the proposed foreseeable phases of the project. These estimates were provided to the technical staff and the appropriate sections of the Final EA have been revised accordingly. Most clearing for this proposal would be the result of site work to develop the roads, campsites, bathhouse(s), campstore/office and support utilities. The developer has stated that this project will be an environmentally sensitive development that would retain many natural features that are important to campers and if campsites are limited to 10 per acre that would leave much of the natural vegetation. Vegetation between the campsites would be managed. Both of these actions would help to preserve a natural setting. Initial land clearing and excavation for Phases 1 through 4 including the access road right-of-way, location of maintenance building, campsites, and marina parking areas would directly affect approximately 60 acres on Tract XWR-21PT being partially cleared, resulting in approximately 30 of the 60 acres being cleared. Design standards would suggest developing not

more than ten campsites per acre which would total 10-acres for 100 campsites with about 25 percent disturbed for campsites, bathhouses, campstore/office and support utilities. Phase 5 would affect 20 acres, resulting in approximately 10 of the 20 acres being cleared. In total, 80 of the 91 acres would be impacted, with approximately 40 acres being cleared. TVA owns approximately 1,760 acres of property along the Elk River on Wheeler Reservoir. The Elk River Resort proposal "footprint" and anticipated clearing for recreational purposes are approximately 80 and 40 acres, respectively. The proposal occupies less than five percent of the TVA property along Elk River. The proposal occupies less than one percent of the TVA property along Wheeler Reservoir. Based upon land use/land cover estimates derived from aerial photography obtained in 2005, approximately 121,300 acres of forested habitat exists within the Elk River Watershed within north Alabama. The estimated 40 acres that would be modified by the proposed project is less than 0.1 percent of the total amount of forested habitat within the watershed. The overall reduction in forested habitat on this parcel is not expected to result in adverse impacts to wildlife in the region.

- After the developer "clear cuts" broad swaths of trees (a necessity in building the various resort amenities), what effect will these "clear cuts" have on the remaining forest? This "clear cutting" will significantly increase the "edge effect," i.e. edge species of flora & fauna will flourish while forest species will decline, sun loving exotics will flourish, an increase in light and wind conditions will have a drying effect on the adjacent forest, adversely affecting many species, trees will become more susceptible to damage from strong winds, etc. This subject is not mentioned in the DEA, possibly owing to the fact that the full extent of deforestation is not known. (**Comment by:** *Charles Rose*)
- On page 11 of the DEA we find the following statement: "**There is no potential for this project, as described, to contribute to the spread of exotic or invasive terrestrial plant species.**" I beg to differ. There is a certain amount of Chinese Privet, an exotic invasive, on this property. It is on the DEA's plant list in Appendix C. I, along with many others, have observed the exponential growth of this species when forestland is opened up and more sunlight is let in. Has TVA considered this problem and will appropriate measures be taken to control the privet and other exotics when the deforestation occurs? Apparently not, hence the DEA's finding of "no potential" in this regard. Is this finding a result of the mistaken belief that "the marina development would [only] create approximately 5 acres of openings within the forest"? (**Comment by:** *Charles Rose*)
- These are not the only impacts that would be caused by the proposed development yet are not analyzed or considered by the draft EA. Other impacts include, but are not limited to: (2) Spreading of invasive species, which the draft EA erroneously dismisses as an impact; (4) Edge effects and fragmentation (**Comment by:** *Cynthia Elkins, Center for Biological Diversity*)
- It is unfortunate that this proposed marina will destroy - yes destroy such tender wildlife of this area. This will not be easy to recover wildlife and other plant life in such a pristine location. This is an unfortunate event of progress that destroys everything in its path even when the destruction is slow. (**Comment by:** unsigned from Feb 9 2006 open house)

**TVA Response:** This project will be an environmentally sensitive development that would retain many natural features that are important to campers and if campsites are limited to 10 per acre that would leave much of the natural vegetation. While site development may create “edge effects”, the vegetation between the campsites will be managed. Both of these actions will help to preserve a natural setting. Research has shown that some vegetational changes can be detected for at least 10 to 30 meters (or approximately 30 to 100 feet) from the forest edge. This change could be in the form of increase in the species diversity of the herbaceous layer or understory from seedling growth of native vegetation or from encroachment of invasive species. Edge is often talked about in relation to invasive species (corridors for them to get into a forest) and cowbirds getting access to forest interior breeding bird populations. Most research concerning the edge effect has been done on how breeding bird populations are affected. These studies also show that species diversity is greater along the edge of the forest in terms of birds, mammals, insects and vegetation. Edge creates browse and is considered beneficial for deer management. For example, deer tend to be edge species, they can feed in the open, then quickly retreat to the forest if need be. Due to the methods involved in clearing small portions of land throughout the project site for construction, there would not be “large” expanses of forest cleared and therefore would not show similar adverse impacts from the “edge effect” as seen in areas where hundreds of acres were clear-cut for agriculture or timber production. In this case, the tract is not large enough to be an interior forest tract and private backlying land is already fragmented. Since land clearing and excavation activities would be dispersed throughout the tract in order to achieve a desired “park-like” setting which includes substantial tree cover for shade, the “edge effect” would not be a significant problem for the remaining forest. Therefore, the edge effect problem would not be worsened by this action. It would be the responsibility of the land owner to insure that the spread of exotic weedy species (i.e. Chinese privet, Japanese honeysuckle) be controlled and not allowed to spread. TVA does have Management practices to control exotic and invasive species such as Chinese Privet and a discussion about these practices have been added in the Terrestrial Ecology subsection 3.1 Plants.

- All we get in the DEA concerning impact to plants is this statement, “**Under the Action Alternative, there should be no significant impacts to terrestrial plant communities since there is no uncommon terrestrial plant communities associated with the development.**” This makes no sense to me. Does TVA mean to say that as long as a forest contains no uncommon plants, developers can have their way with it? That viable wildlife habitat is not important unless rare or endangered flora is involved? (**Comment by:** *Charles Rose*)
- Clearing for road building, campgrounds, rv parks, the restaurant, dry docks, store and all the rest of it is a horrible waste of a perfectly good forest, a natural and diverse forest that is doing it’s job of providing habitat, protection and food supply for an abundance of wildlife, cleaning our air, and holding the river bank in place. Undisturbed forest is a vital part of a healthy riparian system. There is no way this marina project will not destroy forest, and therefore be detrimental to the health of the rivers(s). (**Comment by:** *Janice Barrett*)

- I felt from my conversations with TVA representatives at the public scoping an attitude of resignation as if they were aware that the deal was done and that the scoping was just a necessary formality. It is ridiculous that the TVA scientists must lower their standards to please higher ups that perhaps have an already "done deal." Just because there are no known endangered species found on this site does not mean that this site is "insignificant" as several TVA scientists kept referring to this piece of land during the public meetings. (**Comment by:** *Nancy Muse*)
- This site is home to quite a number of wild life. Deer, birds, squirrel, raccoon, coyote, etc, frequent the area. The bald eagle really does fly over the area. I know that TVA says there are plenty of other areas around that are similar to serve as the habitat for animals such as these. But, as more and more land is developed, there will be less and less. There is already less directly across the river from this proposed site at the site that is being developed on the Limestone County side of Elk River. (**Comment by:** *Helen Ball*)
- In 1959, my late husband and I purchased a 14-acre plot on the Tennessee, which at the time was true wilderness. We cleared a spot and built a little hideway cabin that I still own. At the time, we agreed that we would not sell the adjacent property, and through the years, we have resisted many lucrative offers. When we began going there, much of the wildlife that had formerly been in the area, was no where in evidence. But we were patient, and slowly we began to see birds and animals that we had not seen before, racoons, blue herons,foxes, deer,etc. Last year, twice I saw a bald eagle. (**Comment by:** *Milly Caudle*)

**TVA Response:** The amount of disturbance is minimal, and the communities being disturbed are common in the region, suggesting to TVA that these impacts are insignificant in both context and intensity. Uncommon or globally rare community types are determined by a specific set of criteria developed by NatureServe. These communities are comprised of an assemblage of specific populations that are unique to a given region. A list of rare plant communities (G1, G2, G3) for Alabama can be obtained from the NatureServe website (<http://www.natureserve.org> ). Of the 231 globally rare plant communities found in Alabama, none were found to occur on the proposed Elk River Marina site. On this tract of land the plants and the plant communities are typical for this region of Alabama.

The Wheeler Reservoir Land Management Plan (Plan) has allocated approximately 9,140 acres of TVA property to Recreation and Resource Management. TVA has allocated approximately 380 acres of Recreation, Resource Management and Environmental Protection near the immediate vicinity of the proposal area. Land Use / Land Cover data was derived from color infrared aerial photography taken at a scale of 1:24,000, in February and March 2005. The Elk River Watershed within the State of Alabama contains approximately 121,300 forested acres of TVA and private property. The sub-watershed encompassing the proposal area contains approximately 1,420 forested acres of TVA and private property. As proposed, this development would alter the forest community in the immediate vicinity. The amount of land that would be impacted, however, is insignificant in relation to the total forest lands in the lower Elk River watershed. The wildlife that inhabits this tract consists of species which readily adapt to human activities. The EA would

require a 50-foot buffer along the shoreline and streams and additional buffers around the wetlands. These buffers would allow the riparian vegetation to remain intact.

- North Alabama's worth as a scenic area with ecological integrity far overvalues this project which will degrade the beauty of the Elk River and produce another struggling marina. (**Comment by:** *Chris Otto*)
- As a permanent resident of Elk River for approx. 20 years, I am amazed at the lack of environmental respect that TVA holds for our delicate waterway. The sudden abandonment of TVA's lifelong role as "Father Protector of the Water & Land" is shocking. The future of our ecology is at stake and the urgency is apparent. (**Comment by:** *Alice Johnson*)
- I do not agree with most of the Shoals Environmental Alliance - Rogersville Special Interest Group points of opposition to this project. To address a few points: - Negative impact to Wildlife/Bird Habitat - while development of an undeveloped area will have some effect on riparian habitat; the development of this small tract will not have a large impact compared to other recent development in this region. The land development and associated dredging of the cove just across the river (The Pointe) from the proposed marina site posed just as great an environmental impact, if not more so, than what is proposed for the marina development. The Bald Eagles that winter in this area have been observed in areas other than this site; it is not logical to assert that development similar to much of the surrounding area would drive them away. The wooded areas of this region do support a great variety of wildlife which the development at this site should not greatly affect. We regularly observe blue heron, kingfisher, wood ducks, mallard ducks, owl, woodpeckers, hawks, buzzards, a great variety of song birds and occasionally bald eagles in winter. We often observe deer, fox, coyote, raccoon, rabbits, squirrels, chipmunks, opossum, armadillo, a variety of different types of turtles, snakes, frogs, blue tailed skinks, and other reptiles, amphibians, and small mammals. Most of these observations are made on and around our property about 5 miles upriver from the proposed marina site. I love the beauty of this area and the variety of wildlife it supports; if I thought the development of the proposed marina would have a great negative impact on all of this, I would stand in firm opposition. I do not believe it will have a heavy negative impact on the beauty or flora and fauna of the area. (**Comment by:** *Atkinson, Anne L.*)
- I have enclosed a picture of my dog who was fascinated by a blue heron. I told my husband to start looking for a statue of a blue heron and some ducks because the birds will be gone in the Marina comes. (**Comment by:** *Catherine Tackett*)

**TVA Response:** Comment noted.

- A few Alabama facts to consider: Al. by many estimates contains 10% of America's natural resources. There are over 4000 species of plants, 850 species of vertebrate animals, and nearly 250 species of fresh water mussels in Al (Nature Conservancy of Al) Only Hawaii has lost more native species to extinction than Al.(Nature Conservancy of Al) 31 species of Al. fishes (10%); 119 species of Al. mussels (69%); 97 species of Al. gillbreathing snails (65%); 10 species of Al fresh water turtles(43%); are recognized as being either extinct, endangered, threatened, or of special

concern( Al. Issues/Lydeard and Mayden,1995) Al is ranked 50th in the nation in environmental protection by Green Index. Most of Al. environmental laws and protection policies have not been updated since the late 70's and early 80's leaving Al. natural resources policies obsolete. Has all these been taken into consideration that this marina might add to these percentages? (**Comment by:** *Robin Burchfield*)

**TVA Response:** As part of the NatureServe Network of Natural Heritage Programs ([www.NatureServe.org](http://www.NatureServe.org)), TVA recognizes the State of Alabama's contribution of species diversity to the region. The TVA Natural Heritage Program considers impacts of TVA's projects to terrestrial ecology and listed aquatic and terrestrial resources throughout the Valley.

- How is TVA going to ensure the public there are no fish, mussels, snails, turtles, birds, plants on the special concern list, no destruction of our wetlands, no more runoff, no more pollution? Not by studies done 10 years ago in this area or from the office. Not by observing for 5 days in the field. Migratory birds are arriving daily. Now is the time to be in the field. Maybe TVA needs to clear one area the size of one campsite and evaluate the effects on erosion, runoff, and water quality. (**Comment by:** *Robin Burchfield*)

**TVA Response:** TVA would ensure that the applicant implements approved Best Management Practice's to reduce impacts to terrestrial and aquatic resources. The project is estimated to remove approximately 40 acres of forested habitat to from the project site. Remaining forested habitat within the project site and in surrounding areas would continue to be used by wildlife.

- No help wildlife or fishing (**Comment by:** *unknown*)

**TVA Response:** Comment noted.

- The TVA Biologist said that had surveyed the area and looked at the habitat and made the conclusion that no endangered species were on this site based on suitable habitat. I request that they return and do a precise accounting of the species found on this land and water area. For example, set up mist nets to do a bird species count. No survey was done on the aquatic species in this area. Data was used that was several years old and was not specific to this particular location. I request that an expert be brought in to conduct a survey of this location. (**Comment by:** *Johnny Tidwell*)

**TVA Response:** Field visits were conducted to characterize habitat and species present on the site. The species listed in the EA were provided to generally describe wildlife communities that occur in the project area. The use of current data from similar habitats from other sites (such as Muscle Shoals Reservation) allows TVA biologists to determine what species may occur on site.

- For just one example of the obstinate wish to approve this project, look at page 11 of the EA: "Five heron colonies exist in the project area. None of these colonies are within a mile of the project site. No impacts are anticipated to these resources." How can the five colonies that exist in the project area also be more than a mile from the project? (**Comment by:** *Susan Roessel*)

**TVA Response:** The environmental impact assessment included habitat beyond the boundaries of the project site. The text within the Final EA has been modified to identify habitat within a general area that goes well beyond the project site.

- In 3.1.3, it is reported that "wood frogs" were seen on the property. I assume that the authors are referring to *Rana sylvatica*, which is not found in this area of Alabama, and which is rare and local in the state. Is the "eastern tufted titmouse" the same species as the Tufted Titmouse (*Baeolophus bicolor*) or have TVA personnel discovered a new species? These errors and the very short list of terrestrial vertebrates that were noted as being on the proposed site indicates to me that no serious survey work was done on the site and calls into question the qualifications of the people doing the survey work. Also, why is there relatively thorough plant list but not a thorough vertebrate list? Is it because no serious survey work was done? (**Comment by:** *Thomas Haggerty*)

**TVA Response:** The inclusion of Wood Frogs was an oversight and it has been removed from the text. Eastern Tufted Titmouse is currently used by the American Ornithological Union (AOU) as a banding code. However the current official common name used by the AOU is Tufted Titmouse. The name has been changed in the text.

- The birds listed in the assessment are primarily those that are year-round residents. Since the property is wooded, I am sure that the area serves as an important breeding and stop-over site for numerous migrant species. Apparently, very little survey work was done during the migratory or breeding period and therefore we can only assume what bird species will be affected by the proposed project. Is this good science? (**Comment by:** *Thomas Haggerty*)

**TVA Response:** Migratory birds that use this habitat would be similar to those observed in similar habitats on the Muscle Shoals Reservation and Wheeler National Wildlife Refuge. Birding experts have examined these sites and compiled a thorough list of birds known to use these areas. A local TVA biologist with extensive birding experience throughout the region made multiple visits to the site and determined that extensive surveys were not warranted.

- It is not clear what documents TVA personnel used to create Table 3-1. It appears that TVA biologists are not familiar with some of the new publications concerning wildlife and conservation in Alabama (i.e., "Alabama Wildlife Vol 2, A Checklist of Vertebrates and Selected Invertebrates: Aquatic Mollusks, Fishes, Amphibians, Reptiles, Birds, and Mammals" edited R. E. Mirarchi; "Alabama Wildlife Vol 2, Imperiled Aquatic Mollusks and Fishes" edited by R.E. Mirarchi, et al., "Alabama Wildlife Vol. 3, Imperiled Amphibians, Reptiles, Birds, and Mammals" Recommendations for Imperiled Wildlife", edited and written by Mirarchi, et al). This is especially disturbing to me since I volunteered many hours to research, to write, and to edit these publications. Many wildlife experts were involved in the preparation of these publications and it was hoped that they would help organizations like TVA make good management decisions. Again, this calls into question the kind of science TVA does to manage the public land that it is responsible for. (**Comment by:** *Thomas Haggerty*)

**TVA Response:** TVA uses current state and federal lists as well as State Heritage Program state ranks to develop species lists for projects. TVA biologists are aware of the Alabama Wildlife publications as they contributed sections to Volumes 2 and 3 of these documents and participated in group discussions held at Auburn University.

- The Tennessee River riparian zone is one of the last buffers of public lands in Alabama that protects the natural forests and connectivity of streams as biological corridors that wildlife use for gene pool exchange and to access the river. Although it is stated in the environmental assessment that no “uncommon” plant communities were found, we believe that even the most common plant and animal species have value. They have value simply because they exist and are interwoven with all other life-forms on this earth. Every species that is now “endangered” or has become extinct was once common, and habitat destruction and pollution are most frequently the culprits. It is not possible to avoid habitat destruction and pollution in the process of such a construction project as the one proposed for the Elk River. (**Comment by:** *Wild South - Lamar Marshall*)

**TVA Response:** While TVA agrees that commonly found natural habitats have value, there is nothing unique about this tract. Given the abundance of similar habitat in the general area, the proposed development would have a negligible effect on these riparian values. Furthermore, the shoreline buffers would preserve the riparian zone fronting the tract.

- The Plant List in Appendix C is labeled, “Plant List of Species Observed on August 3, 2005.” How is it possible to come to the conclusion that “there should be no significant impact to terrestrial plant communities”, if the plant survey was done on August 3? What about spring ephemerals? I urge TVA to do additional plant surveys this spring before making a final decision about this project. (**Comment by:** *Charles Rose*)
- It is my firm position that the EIS be performed in the months of March and April, when many ephemeral spring plants are visible. (**Comment by:** *Kathleen Marshall*)

**TVA Response:** The TVA heritage database of Threatened and Endangered Species has data accumulated from the seven state heritage programs in the TVA power service area as well as US Fish and Wildlife. These data exchanges occur yearly and to our knowledge, the data is current. In searching the database for possible rare spring ephemerals that are known from that region of Alabama, the closest state listed plant populations occur along Town Creek approximately 10-14 miles away from the project area. White Trout Lily was found on alluvial bluffs and Prairie Trillium and Southern meadow rue occurred in silty clay of creek bottoms. These species have not been reported from these localities within the last 25 years and are considered to be historical occurrences. There is a historical record from Lauderdale County for *Arabis georgiana*, which is a federal candidate species. Personal communication with Al Shotz, Alabama Heritage State Botanist, revealed that this historical record was a misidentification, making it unlikely that any federally-listed as threatened and endangered plant species would occur on the tract of land for the proposed marina. The commonly encountered spring wildflowers found in this area are an important component to this ecosystem, but are not considered to be rare or

sensitive plant species. Because it is unlikely that any rare spring ephemerals are present on the project site, no spring survey is needed.

- Wildlife and Plant protection -The applicant should have all cabin areas, campsite areas, and nature trails roped off, as in many parks across the country. Warning signs should be installed for people to stay on cabin sites, on nature trails, and out of the woods and wetlands. In addition, ample signs should be posted to prohibit people digging anywhere, cutting firewood, riding four-wheelers and dirt-bikes, or taking anything from the forest. No roads, tree cutting, or any other digging should be allowed where Ginseng has been located. These plants are protected by Federal Law which does not allow it to be harvested on Federal Land or harvested if less than 10 years old. If it is disturbed, TVA will be allowing the applicant to destroy a protected plant. He will be getting special treatment. I know it's not on the Botanist's list, but it is protected. (**Comment by:** *Bob Freeman*)

**TVA Response:** The distinction should be made that the harvesting of ginseng is regulated (not protected) by the government. Permits are required before harvesting and that harvesting is governed by specific rules and regulations as set forth by CITES (Convention on International Trade in Endangered Species of Wild Fauna and flora). Each state is responsible for setting up the season for harvesting, issuing permits, and for monitoring the harvesting and sale of ginseng. Since a majority of the public cannot recognize ginseng in the field, it would be detrimental to the population if its exact location became known to the public. Signage and/or site maps should be used to make the public aware of buffers and vegetation management areas, to limit disturbance of vegetation.

- I would like to say that there will be a big environmental impact on the wildlife. The wetlands will be destroyed that are needed by ducks and other marine creatures. This is one of the few sites around there that have marshy areas for ducks. I've seen many wood ducks raising in the mature hardwoods that will now be destroyed for public use. The habitat is going to be destroyed making it harder for the animals to survive. I would also like to say that these trees have been here for a hundred years and taking them up will cause soil erosion. Mother nature cannot replenish its soil because of the lack of trees holding the soil in place. Mother nature only makes a inch of soil in several years meaning that it will never be able to make more of it will keep being eroded. Soil is very valuable to plant life and also animals and without it we would not be here. I would just like to say to give it a second thought before destroying the habitat and there is less and less land for wildlife. This is my thought for the marina. . (**Comment by:** unsigned from Feb 9 2006 open house)

**TVA Response:** The animal species currently found on the site are those species common in small woodlands of northwest Alabama. The wildlife species currently inhabiting the property will continue to do so after the planned development is in place. These species inhabit the residential areas nearby, as well as the similarly developed Joe Wheeler State Park. Mammals such as white-tailed deer, gray squirrel, beaver, and raccoon are common on this site and readily adapt to human activities. Bird species such as woodpeckers, migrant warblers, tanagers and orioles likewise have shown a positive response to human activities. Since the wetlands will remain intact, wood duck may continue to use the area. This species has shown an ability to adapt to human presence, particularly if nest structures are added near the shoreline. Addition of nest

boxes would be allowed in the area, even after the development is in place, of an interested party is willing to install and maintain them. In addition, based on tree age on the site, this area has been a forested community only for the past 60-75 years. Prior to purchase by TVA, this site was likely used for residential or agricultural uses. The site may have also been used for timber harvest, as no old trees (greater than 100 year) are present on the site. Organically derived soils are thin on most of the site due to soil loss during historic human use. Since many of the larger trees will remain on the site, efforts will be made to control erosion during construction activities and shoreline/wetland buffers will be maintained, soil loss from the site will be minimal.

- **Direct and Indirect Impacts on the Environment**

“NEPA imposes procedural requirements designed to force agencies to take a ‘hard look’ at [the] environmental consequences” of their actions. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9<sup>th</sup> Cir. 2003). “This includes considering all foreseeable direct and indirect impacts. *Id.* See also 40 C.F.R. § 1508.25 (c).

This EA fails to consider a wide range of foreseeable direct and indirect impacts on the area’s resources. In addition, many of your discussions on direct and indirect impacts are contradictory and inconsistent with past findings. You must correct these and other deficiencies and provide a thorough and well-reasoned discussion of all direct, indirect and reasonably foreseeable environmental impacts.

**Plants** In your section on the impacts to terrestrial plant communities (EA at 10), you provide absolutely no analysis of the potential impacts this project will have on these communities. In one conclusory sentence you state “there should be no significant impacts to terrestrial plant communities since there is no uncommon terrestrial plant communities associated with the development.” *Id.* This statement is not only illogical, since it does not necessarily follow that because there are no uncommon plants in the area there must be no significant impacts on all terrestrial plant communities, but it forecloses any opportunity to further analyze the impacts this project will have on these resources. This is unacceptable.

You also fail to address what impacts the proposed operation will have on trees. What types of trees are located on the property? How old are these trees? Is there old growth in this area? What measures will be taken to mitigate the impacts to these tree communities?

This analysis is entirely insufficient under NEPA and you must go back and consider what impact this project will have on all terrestrial plant communities. **(Comments by: Jason Totoiu and Sandra S. Nichols, Wild Law)**

**TVA Response:** The EA has been changed to respond to this comment.

**Natural Areas** You fail to address the indirect impacts to several ecological significant sites that are within 3 miles of the proposed action. These sites include Long Forest TVA Small Wild Area, Joe Wheeler State Park, Limestone County State Park and Elk River Lodge State Park.

While you conclude that the proposed action will not have a “direct” impact on these sites, you not discuss whether the project will have an “indirect” impact on these sites. As you recognize, some of these sites are only a half a mile away from the project area. EA at 11. Therefore, even the slightest increase in visitor use resulting from this project could have a significant, indirect impact on these other areas.

For example, the anticipated increase in boat traffic as a result of this project could lead to an increase in boat traffic in and around Long Forest, Joe Wheeler, Limestone County and Elk River Lodge as visitors using the proposed marina’s facilities venture out to visit these areas. Also, the expected increase in RV and campground use as a result of this project will likely impact these other areas. An increase in the number of visitors using the proposed marina’s RV and camping facilities will likely lead to an increase in vehicle traffic, in and around, these state parks and scenic areas.

Therefore, you must address the indirect impacts this project will have on all four of these areas. Failure to do so will render your analysis of the environmental impacts of this project insufficient under NEPA. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** This proposed action is not anticipated to result in direct, indirect, or cumulative effects on natural areas because the distance is sufficient (0.5–3.0 miles). The closest natural area (approximately one-half mile) is Long Oak Forest TVA Small Wild Area, which is across the river from the proposed action. The proposed action would not adversely impact the small wild area’s natural quality, i.e., its forested area would be disturbed. The three additional natural areas are county or state parks that have been developed for high-impact recreational uses of Elk River and Wheeler Lake and have complementary functions to the proposed action.

**Animals** In your section on impacts to terrestrial ecology (animals) you recognize that the project area encompasses approximately 91 acres of timber woodlands. Yet, for some unexplainable reason, you limit your analysis of the impacts to 5 acres, or roughly seven percent of the entire area. You state that “the construction of the marina would create approximately five acres of openings within the forest. These openings would be converted to parking lots, RV sites, roads, and other man-made structures.” EA at 11. You then go on to analyze the impacts on animals in this 5-acre vacuum.

This is unacceptable for several reasons. First, is it entirely unclear if this figure is even accurate or if it represents the entire extent of the land clearing on this site. There are no blueprints or diagrams that provide support for this figure and the information that is provided in the EA and developer’s application is inconsistent. The EA states that five acres must be cleared to make room for the marina, roads, parking lots, RV sites, and other man-made structures. The term “man-made structures” is vague and could include the restaurant, bathhouses, ship’s store, storage buildings or all four of these structures. Yet, on page 16 of the application, the five-acre figure refers only to the amount of land clearing needed to construct the access road. See Appendix A at 16. Still, in another

section, the applicant states that the five acres includes not only the access road, but marina parking areas and a maintenance building. Appendix A at 7. It appears that neither the agency nor the applicant has a clear idea what is planned for these five acres.

Even if the marina, roads, parking areas, and a maintenance building can be constructed on only 5 acres of land, how much land must be cleared to make room for the 200 campsites, bathhouses, dry storage facility, playgrounds, hiking trails, ship's store, and restaurant? Are we to assume that all of these facilities and amenities will occupy the same five acres of land? If not, how does the applicant intend to accommodate these structures? The EA does not say.

However, based on the statements contained in the EA and those made by the applicant, it appears that the five acres of initial land-clearing is limited to the first two phases of construction. Compare EA at 11 and Appendix A at 7, 16. If this is indeed the case, you have unlawfully limited the scope of your analysis.

NEPA requires that you analyze the impacts of all phases of construction as "connected actions." 40 C.F.R. § 1508.25. Connected Actions are actions which:

- (i) automatically trigger other actions which may require environmental impact statements
- (ii) cannot or will not proceed unless other actions are taken previously or simultaneously

and are independent parts of a larger action and depend on the larger action for their justification. *Id.*

All five phases of this project are "connected actions." The construction of the marina under phase two cannot proceed unless roads and other infrastructure are first constructed. In addition, the construction of additional campsites and wet slips under phase three are independent parts of the larger action and depend on the construction of the marina and campground for their justification. Lastly, the construction of a dry storage building (presumably for boats) and restaurant under phases four and five are dependent upon the construction of roads, infrastructure and the marina under phases one and two. All five phases are intertwined and can be viewed as "links in the same bit of chain." *Northwest Resource Info. Ctr. v. NMFS*, 56 F.3d 1060, 1068 (9<sup>th</sup> Cir. 1995).

Therefore, you are required to discuss the impacts these connected or "closely related" actions have on the area's resources in the same environmental assessment. See *Wetlands Action Network v. United States Army Corps of Engrs.*, 222 F.3d 1105, 1118 (9<sup>th</sup> Cir. 2000). Accordingly, you must identify the total acreage required for all five phases of construction and analyze the impact all this land clearing will have on the area's wildlife.

However, your analysis does not end there. Assuming for the sake of argument that you are analyzing the impacts of all five phases of construction and that all these structures can be built within a contiguous five acre parcel of land, an

improbable if not impossible feat of engineering, this is an easement for 91-acres not five. As such, you are giving the applicant the permission to do whatever it wishes with the land to accommodate its plans for a multi-phase development. As the applicant points out, the inherent nature of this multi-phase development provides great flexibility in planning future construction. Appendix A at 4. Once the easement is granted, the applicant may choose to significantly modify its plans. The applicant recognizes this possibility and suggests that, if needed, the entire 91-acre tract could be developed to accommodate some 1,000 campsites and 500 boat slips. Appendix A at 4. In view of the potential for additional land-clearing and development in the future, you are required to analyze the impacts these activities will have on the region and its wildlife.

Lastly, it would certainly be disingenuous to imply that any and all impacts on animal communities would occur as a result of the applicant's initial and future land clearing activities. Long after the last bulldozer clears the last tree, animals and their habitats will be directly and indirectly impacted by a variety of human activities associated with the day to day activities and operations of a marina, RV park and campground. You must examine the impacts these operations and activities may have on animals in the area. (**Comments by:** Jason Totoiu and Sandra S. Nichols, *Wild Law*)

**TVA Response to C. Animals:** Information has been added to the EA to clarify the amount of clearing associated with each proposed phase of construction. Please note that the impacts of all 5 phases of the project are assessed in this EA. After accounting for all 5 phases, TVA is proposing to approve only 200 campsites and 100 wet slips. Further expansion would require additional TVA review and approval.

**Endangered, Threatened and Sensitive Species** The CEQ regulations mandate that an agency evaluate "[t]he degree to which the action may adversely affect an endangered or threatened species" when determining whether an action will significantly affect the environment. 40 C.F.R. § 1508.27(b)(9). You have not adequately evaluated the project's impacts on threatened and endangered species.

#### Endangered and Threatened Plants

You provide little empirical and quantifiable evidence supporting your conclusion that no endangered and threatened plant species occur within the project area. You base your conclusion on "field inspections" performed on a single day in August, 2005. The EA contains no discussion of these "field inspections" nor does it provide any information on how the public can access the results of these inspections. Also, the fact that this "inspection" was performed in the fall, prohibits you from concluding that endangered and threatened spring ephemerals are not found within the project area. The EA also provides no plant surveys or other inventory data to support the agency's conclusions. Finally, you fail to mention whether you consulted with the United States Fish and Wildlife Service as required by the Endangered Species Act to confirm your findings (see discussion on compliance with Endangered Species Act).

Your failure to provide any references to any material in support of your conclusions raises substantial questions about the presence of these species within the project area. You must provide adequate support for your conclusions or you will be in violation of NEPA. See *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213-14 (9th Cir. 1998) (invalidating an EA after determining that the agency failed to provide any references in support of its conclusions that the proposed project would have no impact on the environment). (Comments by: Jason Totoiu and Sandra S. Nichols, *Wild Law*)

**TVA Response:** The methodology of TVA's assessment of terrestrial and aquatic ecology, including threatened and endangered species has been added to the FEA in Section 3.1. In preparing a NEPA document for a project, each project is reviewed by technical specialists in the TVA Regional Natural Heritage Project to identify natural resource issues that may occur in the vicinity of the proposed project site. Intensity of field investigations varies based upon the absence or presence of protected species or their habitat and habitat quality. To begin a review, TVA biologists review TVA's Regional Natural Heritage Program databases to identify state and federal listed animals or natural areas known to occur within the counties of the proposed project site and surrounding areas. Once the database is reviewed and a potential species list is developed, Land Use/Land Cover products and/or aerial photographs are examined to identify suitable habitat for listed species on the project site. Examining these products may also assist TVA biologists in identifying additional species and habitat that may exist on site but may not have been identified by the database review. Field investigations are initiated after these preliminary reviews are completed. If rare species or their habitats are identified, further field investigations would be performed and mitigation to protect local populations of rare species would be proposed. On August 3, 2005, field inspections conducted on the project area revealed that there are no rare plants on the tract. Under Alternatives B and C, there should be no impacts to threatened and endangered plant species, since there are no known sensitive species occurring within 5 miles of the project area. The USFWS has concurred with these findings. This information is presented in the FEA.

There is a historical record from Lauderdale County for *Arabis georgiana*, which is a federal candidate species. Personal communication with Al Shotz, Alabama Heritage State Botanist, revealed that this historical record was a misidentification, making it unlikely that any federally-listed as threatened and endangered plant species would occur on the tract of land for the proposed marina. During a field survey, the habitat of the project area was determined to be dominated by three basic community types, upland mixed hardwood forest, eastern broadleaf deciduous forest, and palustrine forest along the creek beds. This habitat is suitable for common spring ephemerals but not for threatened and endangered spring ephemerals; therefore, it is not necessary to conduct a spring survey of the project site.

- **Endangered and Threatened Animals** As in your discussion on impacts to animals, your discussion on the impacts to endangered and threatened animal

species is limited to the impacts resulting from the clearing of five acres of forested habitat. For example, you conclude that the project would not result in adverse impacts to Indiana bats “considering that 5 acres of forested habitat would be disturbed.” EA at 14.

This is an inadequate discussion of the impacts on these endangered species. As discussed earlier, you cannot limit your analysis to these initial impacts. Factors such as noise, waste management practices, vehicle traffic, artificial lighting and other human activities resulting from the daily operation of a marina could all have an effect on these and other species. These and other user created impacts need to be addressed in your EA.

In addition, your analysis of the impacts to bald eagles and ospreys is flawed. You conclude that “given the amount of habitat in the vicinity and the low numbers of bald eagles (federally listed) and ospreys (state listed) reported from Northwest Alabama, the proposed project would not result in adverse impacts to these species.” EA at 14. Just because bald eagles and ospreys are not common in other parts of Northwest Alabama (a statement you fail to support with any data) does not mean that this project will not impact discrete, local populations of this species. There very well may be a concentrated community of bald eagles living in and around the project area but the public has no way of knowing this from your EA.

Moreover, it is unclear what you mean by “given the amount of habitat in the vicinity.” EA at 14. If this means that the amount of bald eagle habitat in project area is relatively sparse, any amount of habitat degradation or modification as a result of this project could have a significant impact on bald eagles and their habitat. This needs to be addressed.

Finally, as in your discussion on impacts to endangered and threatened plant species, you fail to reference a single survey or any population data in support of your findings. You must provide substantially more information as well as consult with the Fish and Wildlife Service before taking any further action with respect to this project. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** TVA has consulted with the FWS on its effect determinations. As stated in the previous response, TVA used the same methodology to assess the potential for presence of threatened and endangered animal species as well as their respective habitats. Regarding the review of terrestrial resources on the project site, a local TVA biologist and regional biological contractor were used to characterize habitats on the site. A regional botanist also visited the site. Because no cave, bluff communities, or other uncommon habitat types were observed, it was determined that no further surveys were needed to assess impacts to protected species that use these habitats. Because the project site is forested, there is suitable habitat on the proposed project site for Indiana bats and bald eagles. Indiana bats have been reported from the vicinity based upon historical records. An Indiana Bat Habitat Suitability Index Model (Romme et al., 1995) was used to better determine the potential of Indiana bats roosting on the site. Although a few suitable trees were observed on the site, the overall ranking of the habitat was poor. Therefore the likelihood of

Indiana bats being present on the site was determined to be low. Had the model ranked the habitat at mid or high, surveys using computerized bat detectors (ANABAT) and mist nets would have been performed. Bald eagles nest in northwest Alabama and have been observed foraging and roosting along the Elk River. TVA biologists examined the project site and saw no evidence of this species nesting on the project site. All this information has been added to the Final EA. The project would not likely adversely affect the Indiana bat and bald eagle. The USFWS has concurred with TVA's findings.

- **The Endangered Species Act:** The Endangered Species Act (16 U.S.C. §§ 1531 et seq.) helps ensure that federal actions will not adversely impact endangered or threatened species and their habitat. The Act contains both substantive and procedural provisions. Substantively, the Act prohibits the taking of endangered species. See 16 U.S.C. § 1538. Procedurally, the Act requires federal agencies to take certain steps to ensure that their actions are not "likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of critical habitat of such species. See 16 U.S.C. § 1536 (a)(2).

Specifically, the Act prescribes a three-step process to ensure compliance with its substantive provisions. First, an agency proposing to take an action must inquire of the United States Fish & Wildlife Service ("Service") whether any threatened or endangered species "may be present" in the area of the proposed action. 16 U.S.C. § 1536(c)(1).

If the answer to the first question is "yes," the agency must prepare a "biological assessment" to determine whether such species "is likely to be affected" by the action. *Id.* The biological assessment may be part of an environmental impact statement or environmental assessment. *Id.*

If the assessment determines that a threatened or endangered species "is likely to be affected," the agency must formally consult with the Service. 16 U.S.C. § 1536(a)(2). The formal consultation results in a "biological opinion" issued by the Service. 16 U.S.C. § 1536(b). If the biological opinion concludes that the proposed action would jeopardize the species or destroy or adversely modify critical habitat, then the action may not go forward unless the Service can suggest an alternative that avoids jeopardy, destruction, or adverse modification. 16 U.S.C. §. 1536(b)(3)(A). If the opinion concludes that the action will not violate the Act, the Service may still require measures to minimize its impact. 16 U.S.C. § 1536(b)(4)(ii)-(iii).

In your discussion on the impacts to endangered and threatened species, you note that 4 federally listed animals "are reported from the project area." EA at 12. These federal species include the bald eagle, red-cockaded woodpecker, gray bat and Indiana bat. You further state that bald eagles are known to winter near the project area and are observed all along the Elk River. EA at 13-14. You also note that Indiana bats are known to have once lived within the project area. EA at 13.

In addition to endangered and threatened animals, you state that four endangered and threatened species of fish and mussels are known to occur in

the lower Elk River. These species include the Boulder darter, Snail darter, Cracking Pearlymussel and Pink Mucket.

Despite the strong possibility that these and other endangered and threatened species live within the project area, the EA fails to mention whether or not TVA initiated an informal consultation with the Fish and Wildlife Service as required by the Endangered Species Act. See 16 U.S.C. § 1536(c)(1). You must initiate an informal consultation or you will be in violation of the Endangered Species Act. The fact that bald eagles and Indiana bats are known to reside within or near the project area, and that four endangered and aquatic species are found in the Elk River, is more than enough to require you to initiate an informal consultation and prepare a biological assessment to determine whether these and other species will be affected by the proposed action. While TVA staff may believe that no endangered or threatened species are present within the project area, the Endangered Species Act requires you to contact the Service before determining that the proposed action will not affect listed species.

Furthermore, if this biological assessment reveals that bald eagles, red-cockaded woodpeckers, gray bats, Indiana bats or any other endangered and threatened species will likely be affected by this project, the Service must prepare a biological opinion for this project. If this biological opinion concludes that the project would jeopardize any one of these species, this project cannot go forward unless the Service suggests an alternative that will avoid these impacts. Moreover, even if the opinion concludes that the project will not jeopardize these species, the Service may still require measures to minimize the project's impacts.

Courts have long held that once an agency is aware that an endangered species "may be present in the area of its proposed action, the ESA requires it to prepare a biological assessment." *Thomas v. Peterson*, 753 F.2d 754, 763 (9<sup>th</sup> Cir. 1985)(emphasis added). The agency's "failure to prepare a biological assessment for a project in an area in which it has been determined that an endangered species may be present" is a "substantial procedural violation" of the Act. *Id.* at 763-64. Your failure to comply with this requirement could result in an injunction of the project pending compliance with the Act. *Id.* at 764.

Therefore, in view of the strong likelihood that several endangered and threatened species live within the project area it is imperative that you initiate an informal consultation with the Service and prepare a biological assessment for this project. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** TVA informally consulted on its effect determinations. On October 6, 2005, TVA provided the DEA to the US Fish and Wildlife Service, in Daphne, Alabama for review and comment and requested concurrence with TVA's findings under the Endangered Species Act. Information provided specifically included that there are no known threatened and endangered plant species occurring within 5 miles of the project area. No adverse impacts are anticipated to federal protected animals or their habitat. Little suitable habitat for Indiana bats was found on the project site and forested habitat is abundant in the vicinity. Gray bats forage over the reservoir adjacent to the project site. The project is not expected to result in loss of gray bat foraging habitat as gray bats readily forage around marina areas.

Also, gray bat foraging habitat is abundant in the vicinity. No caves were found on the project site during field investigations; therefore, the project would not result in impacts to cave habitat used by Indiana or gray bats. Bald eagles have been observed in the area, which was confirmed by the public comments received. The closest known nests (2) are located approximately 5-8 miles SW of the project site. Eagle nests were not observed on the project site during field investigations. Potential nesting trees do exist within the project site; however, given the amount of habitat in the vicinity and the low numbers of eagles known from northwest Alabama, the proposed project would not result in adverse impacts to this species. Boulder darters are known from flowing portions of the Elk River upstream of the proposed project locality and pink mucklets and cracking pearlymussels are known from the mainstem Tennessee River in the vicinity of the Elk River embayment. Snail darters have been transplanted into the lower portion of the Elk River, but there is no evidence to indicate that a snail darter population is presently in existence there. There is no suitable habitat for any of these aquatic species present in the area potentially affected by development of the recreation and resort areas. TVA determined that the proposed project would not result in adverse impacts to threatened and endangered species. FWS concurred, finding that the requirements under Section 7 of the ESA had been fulfilled.

## 12. Cultural Resources

- **Cultural Comment # 1:** It seems unlikely that low-water inspection of the current shoreline would be adequate to do ---- of presence/absence of archeological material. Surely a more adequate survey of the offshore area to be affected by dredging and other construction activity is needed. (**Comment by:** *unknown*)
- **Cultural Comment # 2:** TVA needs to do a study on the underwater Archeological artifacts... I did not see where any dives were performed in area for artifacts in the DEA. Just info based on someone elses facts. (**Comment by:** *Robin Burchfield*)

**TVA Response to # 1 and 2:** TVA determined, in consultation with the Alabama State Historic Preservation Officer, that because of the limited amount of excavation that is to occur, an archaeological survey of the exposed shoreline surface will be adequate for identifying any archaeological resources that may be present. A shoreline inspection was conducted on December 21, 2005. No evidence of archaeological deposits were identified as a result of this survey. Further, TVA confirmed this finding in a shoreline survey conducted on March 14, 2006

- **Cultural Comment # 3:** I am a citizen of the Southern Cherokee Nation of Oklahoma, and a lifelong citizen of Alabama. I feel that the Elk River should remain as it now is, in the interest of the wildlife and historical values. The perceived profit would in reality be a devastating loss to the ecosystem. (**Comment by:** *Michael Baggett*)
- **Cultural Comment # 4:** Protection of Indian Artifacts and Sacred Grounds -The stakeholders opposing this project have provided you with ample evidence that the site was a significant dwelling place for Native Americans. There were Burial

Grounds at the Island within a mile of the site and artifacts have been found all around the site. The applicant should be required to do an "Under Water Survey" in any area where there will be dredging. Dredging should not occur at all, especially in the area shown on the applicants "drawings" If the "Underwater Survey" indicates that the applicant can proceed, the dredging area must be moved out of the slough onto the main river. TVA should make sure that he gets further away from the wetlands. There are two maps (Exhibit A and Exhibit B) attached that shows where the applicant could do any necessary dredging, provided of course if an "Underwater Survey" is completed. Signs should be posted throughout the park that no digging is allowed for any purpose. (**Comment by:** *Bob Freeman*)

**TVA Response to comment # 3 and 4:** Significant archaeological resources (including many with Native American burials) may be located at certain sites on the Wheeler Reservoir properties. However, a systematic Phase I archaeological survey of Tract 21 failed to identify any evidence (artifacts, archaeological features) relating to a Native American occupation of this tract. A shoreline survey was conducted to identify any archaeological resources that may be present in the proposed dredge location and none were found.

- **Cultural Comment # 5:** I am a member of the Echota Cherokee Tribe and a member of the Tribal council and governing body. It has been brought to my attention the issue of a private Marina at Elk River. I am highly opposed to this project for the following reasons: Historical and cultural resources will be lost. Native American and pioneer settlements alike will be lost, along with historic ferries and landings. (**Comment by:** *Sharon Robinson*)
- **Cultural Comment # 6:** this marina is environmentally unsound for such various reasons as and protection of Indian artifacts and sacred grounds. (**Comment by:** *Woodfin and Carla Gregg*)
- **Cultural Comment # 7:** Like our National Forests and Parks, TVA lands are reserves of historical and cultural resources. The proposed marina will also impact the proposed National Park Service "National Heritage Area". The island at the mouth of the Elk River is known to be an Indian burial ground, and the entire area in question is part of the Doublehead Reserve. *Indian Trails of the Warrior Mountains* by Butch Walker and Lamar Marshall clearly documents the Native American cultural significance of the Elk River and Tennessee River confluence. It is our opinion that this area warrants a full-scale archeological survey, including test pits, before any activity takes place. (**Comment by:** *Wild South - Lamar Marshall*)
- **Cultural Comment # 8:** as well as a full-scale archeological survey with test-pits, before any further proceedings in its proposed lease of 91 acres for an RV park and marina on the Elk River. I am very upset that you are considering any development so close to an Indian burial ground. The dead always deserve respect, regardless of their race or their distance from us in time. (**Comment by:** *Kathleen Marshall*)

**TVA Response:** TVA completed a Phase I archaeological identification survey on the entire tract. As a part of this survey, shovel test probes were placed at 30 meter intervals to identify archaeological deposits that may have been present. Areas with greater than 50 percent surface visibility were shovel-tested at 60 meter intervals. In addition, a careful pedestrian survey was conducted to

identify any archaeological or historical features that were present above the ground. Only two archaeological sites were identified as a result of this testing. These sites were determined ineligible for listing in the National Register of Historic Places due to their lack of historic significance and archaeological integrity. No Native American artifacts were identified on the tract. TVA has consulted with fourteen Federally recognized Indian tribes with an interest in the Tennessee Valley regarding this project and its potential impacts to sites that may have religious, cultural or traditional significance to these Indian tribes. TVA has received responses from the Alabama-Coushatta Tribe of Texas, the United Keetoowah Band, and the Choctaw Nation of Oklahoma. No sites of religious, cultural or traditional significance have been identified by these tribes.

- **Cultural Comment # 9:** The Elk and Tennessee River area was rich in Native American life. In fact, bones from the near-by burial ground frequently wash up on the bank of the river. Very little attention was given to the cultural significance of this area in the EA. It certainly warrants a much more thorough look (or dig). Then it needs to be left as it is. (**Comment by:** *Janice Barrett*)

**TVA Response:** There are many significant archaeological sites located in and adjacent to the Wheeler reservation. Many of these sites contain Native American burials. TVA has surveyed and recorded many significant sites in this region. However, the archaeological survey failed to identify any evidence of Native American occupation on the proposed recreation easement tract.

- **Cultural Comment # 10:** At the public meeting, the lady at the Culture resource table informed me there was no assessment done on shoreline or below water line of any Cultural Resources except from the desk in text books. How can TVA say there will be no impact if they do the assessment from a desk? (**Comment by:** *Robin Burchfield*)

**TVA Response:** A shoreline survey was not completed at the time of the Phase I Archaeological survey due to the reservoir levels at that time. TVA reservoir levels fluctuate on a regulated schedule. Assessment of the shoreline was completed on December 21, 2005, when optimum surface exposure was present. At that time a TVA archaeologist conducted a shoreline survey along the entire proposed easement tract and no resources were found. TVA confirmed this finding in a shoreline survey conducted on March 14, 2006.

**Cultural Comment # 11:** The hand-out sheet mentioned the Dec. 21, 2005, shoreline survey and said, "No evidence of archaeological deposits was identified as a result of this survey." This seems to contradict what you told me at last night's meeting in Rogersville. When I told that I and others found flint nappings, Feb. 8, 2006, on the shoreline near the dredging area, you told me the TVA shoreline survey had found flint nappings also but they were considered "of no significance." Even if deemed "of no significance" by you, the flint napping would seem to me to still qualify as "archaeological deposits." (**Comment by:** *Charles Rose*)

**TVA Response:** No artifacts (including flint) were identified as a result of the shoreline survey. The statement in the hand out sheet was not in error. Any confusion caused in our discussion with you on this topic at the public meeting is regretted. Based off our staff's observations on December 21, 2005, the

shoreline adjacent to the tract does contain natural chert eroding from the ground surface. Chert is a material that was commonly used by prehistoric people for the production of stone tools. The by-products of this manufacturing are referred to as lithic flaking debris. No lithic flaking debris was found in association with the naturally occurring chert along the exposed shoreline. It is possible to find chert flakes in association with natural materials. These flakes can be formed through natural processes.

TVA has also reviewed the photograph presented by a member of the public at the February 9, 2006 public meeting of materials along the shoreline. Visual inspection of the photographs of this debris indicated that this material is largely natural in origin. However, a couple of pieces of the chert debris in the photograph appeared to have characteristics of lithic flaking debris, prompting TVA to verify its earlier findings. A TVA archaeologist conducted another field visit on March 14, 2005. TVA staff re-examined the shoreline and confirmed the presence of natural chert that has eroded from the ground surface. The shoreline was carefully examined. One small fragment of flaking debris was found amid an abundance of natural chert. This limited amount of material would not qualify the shoreline area as an archaeological site.

**Cultural Comment #12:** Although a Phase I archaeology survey of Tract XWR-21PT was performed for TVA by TRC Solutions, a private contractor from Atlanta, the DEA states that: **“TVA Cultural Resources staff defined the area of potential effects (APE) to be the 91 acres of land planned for proposed commercial recreation easement development.”** There is an inherent flaw in this decision by the TVA Cultural Resources staff: **They failed to include the dredge area, located near the mouth of the small slough, in the “area of potential effects”.** This dredge area, required by the developer for his Dry Storage fork Lift Launch, is not even mentioned in the DEA’s Cultural Resources section. TVA has not conducted an archaeological survey of the river bottom that will be dredged and according to TVA’s Helen Rucker, when I asked her at the 2/9/06 Rogersville meeting, TVA has no plans on surveying the dredge site. Why survey the 91 acres above water and not the dredge area? Before the impoundment of the waters of Wheeler Lake and the lower Elk River by Wheeler Dam, the dredge area was not under water. It was part of the floodplain, or alluvial terrace, of the Elk River. According to various account, this area was part of a rich “bottom land” farm which from circa 1900 to circa 1934, when it was acquired by TVA because of the looming impoundment, belonged to Robert Lawrence Barnett and heirs. I have a copy of the 1934 TVA Land Acquisition Map which is also referred to in TRC Solutions’ Phase I Archaeological Survey. The map clearly indicates the present day shore line (the 556 & 560 topo contours), the pre-impoundment boundaries of the Elk River and various other features of the Barnett farm, some which are now under water, including various springs, houses, sheds, wells, a smoke house, a barn, a stable, a storm cellar and “field roads”.  
(**Comment by:** Charles Rose)

**TVA Response:** In response to the first round of comments on the DEA, the area of potential affect (APE) was revised to include the proposed dredge area. The proposed dredge area (approximately 40 feet by 60 feet) is located over 1,500 feet from the original Elk River channel. There is some likelihood for the presence of archaeological resources along the river terraces and flood plains of the Elk River that were inundated as a result of the construction of Wheeler dam. These sites are likely located in the floodplain immediately adjacent to the pre-

inundation flow of the Elk River. The proposed dredge, by contrast, is located in the small cove area which is significantly removed from the original floodplain of the Elk River.

The shoreline inspection conducted by TVA on December 21, 2005 included the portion of the dredge area exposed during winter drawdown, which is representative of what would occur in the dredge area. An additional shoreline survey of the dredge area was conducted on March 14, 2006. TVA staff examined the underwater location and sampled materials from the inundated ground surface. Based on these surveys, TVA concluded that the dredge area below pool is similar to the exposed shoreline surface, consisting of a highly eroded upland surface with exposed natural chert outcroppings. Thus, the dredge location has an extremely low potential for archaeological sites to be present. Based on the shoreline and underwater inspections, the distance of the dredge location to the nearest original water source (original Elk River channel), and the shoreline erosion that has occurred in this location, TVA made the determination that the proposed dredge would have no effect on historic properties.

Contrary to the commenter's assertions, TVA surveyed the exposed portion of the dredge area during the December 21, 2005, inspection and then verified this survey in a subsequent inspection of March 14, 2006. The exposed portion was completely surveyed and a representative sample of the inundated surface was also examined for cultural relevance. Shovel testing was not conducted along the shoreline because of the significant amount of erosion that has occurred in this location. As a result of this erosion, there was 100 percent visibility of the ground surface. In cases where there is 100 percent surface visibility, visual inspection of the ground surface constitutes a Phase I survey. The exception to this rule would be surveys conducted in floodplain areas. The location of the proposed dredge is not located in a floodplain.

**Cultural Comment # 13:** What TRC Solutions didn't seem to notice in their survey was an old roadbed (which is also indicated on the 1934 TVA map). When I inspected Tract XWR-21PT on 2/8/06 with Lamar Marshall, Executive Director, Wild South, and his team, Lamar easily spotted this roadbed with no map. Mr. Marshall, is an expert on the subject of early pioneer roads and Indian trails and has published many articles on the subject. He is also co-author of the book, **Indian Trails of the Warrior Mountains** by Lamar Marshall and Rickey Butch Walker. Mr. Marshall thinks that this road was probably an Indian trail prior to occupation by early settlers. This road is indicated on the 1934 TVA map. It is the one that leaves the homestead site on the central ridge, between the two sloughs, traveling due east on the southern side of the small slough, before leaving the present day shoreline for the now submerged home site featuring a barn, smoke house, shed, house & spring. Concerning this old roadbed, the fact that it is depicted on the 1934 TVA Land Acquisition Map proves that it is at least 73 years old. Also, a genealogical book I found at the Florence-Lauderdale Public Library said this about the former owner of Tract XWR-21PT: "**Robert Lawrence Barnett was born 29 July 1863 in Lauderdale county.....Barnett moved from the Anderson/Grassy area around 1900 and worked in a general merchandise store in Rogersville.....he was able to purchase several hundred acres of rich farm land**

**on Elk River. Much of this acreage was flooded with backwaters of Wheeler Dam when it was built in the 1930s.”** It seems that if Mr. Barnett bought the “**rich farm land on Elk River**” circa 1900 and that if the farm was already in existence when he bought it, both the farm and the old roadbed could easily be surmised to be more than 100 years old. And don’t forget, Lamar Marshall, an expert on the subject, thinks that the roadbed was previously an Indian Trail, possibly making it much, much older. The National Historic Preservation Act of 1966 requires that any road or trail over 100 years old be protected as an archaeological resource until a study determines that it is not significant. **TVA must survey this old roadbed before any development takes place.** On 2/8/06 as the Wild South team followed the old roadbed down to the present day shoreline, we found a large pile of what appeared to be cut stones, possibly indicating another home site or stone wall. This is not indicated on the 1934 TVA map nor is it mentioned in the Phase I archaeology survey of Tract XWR-21PT, performed for TVA by TRC Solutions. I wonder why they did not notice it. (**Comment by:** *Charles Rose*)

**TVA Response:** There are at least 5 lines of evidence to support the finding that the roadway is not historically significant:

(1) - **Literature survey.** TVA reviewed maps in Alabama: The History of a Deep South State, an authoritative treatise written by four eminent scholars of Alabama history, Leah Rawls Atkins, Wayne Flynt, William Warren Rogers, and Robert David Ward. These maps revealed no historically significant Indian trails or early roads in the vicinity of the Elk River. Nor are any such historically significant roads depicted on the maps presented in Walker and Marshall 2005. Even if trade routes, trails, and roads existed in the area, there is no evidence in the literature to suggest that overland routes in the vicinity of the Elk River were historically significant (Abernathy 1922; Lineback and Traylor 1973; Moore 1927).

(2) - **TVA site survey.** TVA’s archaeological survey included shovel tests and visual inspection of the entire tract at either 30 or 60-meter intervals, depending on the amount of surface exposure. This testing is consistent with the Alabama Historical Commission’s Policy for Archaeological Survey and Testing in Alabama (2002). Shovel testing included areas along and adjacent to the old roadbeds. Other than two late 19th century homesteads, no historic resources potentially associated with any Native American occupation or use of the land Indian trail from the 1700s or early 1800s or historic roadbed was found. TVA’s additional field investigation of the roadbeds in response to this comment further confirmed the absence of any evidence of historic resources.

(3)- **Roads were connected to homesites.** Based on the location of the roadbeds on the TVA Land Acquisition map, the likely purpose of the eastern-most road was for driveway access to the homestead that was recorded during the archaeological survey. This homestead lines up with the structures also present on the acquisition map. Field inspection of the road confirmed this assumption. As such, it is unlikely that this road precedes the construction of the homestead.

(4) - **TVA use of road.** There is no evidence or documentation to indicate that the road identified on the west end of the tract was in use prior to TVA

ownership. During the 1980s, a timber harvest was conducted on a portion of Tract 21. The forestry prescription documentation indicates that TVA needed to build a road from an adjoining subdivision to the pine stands on the tract in order to thin and burn the trees. The western-most road ends at the subdivision. It is very likely this road was constructed by TVA to access the pine stands.

**(5) - Homesites date to the late 19th century and early 20th century.** The age determination of the historic homesteads identified on the property was based on the types of artifacts present at the site. Archaeological material associated with these sites included porcelain and ironstone ceramic fragments, colorless, aqua, and amethyst bottle glass, and miscellaneous metal fragments that all indicate the sites were predominantly occupied during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Since use of the roads is associated with the homestead sites, the roads likely belong to the same period as the homestead sites.

**Evaluation using National Register Criteria.** The National Historic Preservation Act of 1966 (NHPA) defines historic property or historic resource as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register including artifacts, records, and material remains related to such a property or resource.” [Section 301 (16 U.S.C. 470w)] Section 101(16 U.S.C. 470a) of the NHPA states that the National Register of Historic Places is “composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture. To be listed on the National Register, a historic resource must meet one or more of the criteria established by the Secretary of the Interior (36 CFR Part 60):

**Criteria for evaluation.** The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or (b) that are associated with the lives of persons significant in our past; or (c) that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or (d) that have yielded, or may be likely to yield, information important in prehistory or history.

Typically, historic properties are 50 years old or older when they are listed on the National Register of Historic Places. However, age is just one indication and does not, by itself, make a road or a home site significant. Referring to the criteria above, the roadbed and home site may be historic, but they are not historically significant. With regard to criterion (a) and (b), the roads and homesteads are not associated with events that have made a significant contribution to the broad patterns of our history; neither are they associated with the lives of persons significant in our past. No distinctive characteristics of a type, period, artistic value, or method of construction that are worthy of note which would make them eligible under criterion (c). With regard to the late 19th century homesteads and criterion (d), TVA’s archaeological survey concluded that the two homesteads are not eligible for the NRHP since they lack research

potential as individual sites and present limited opportunity for regional research. In addition, better examples of similar sites are preserved elsewhere and provide much better data for meaningful research. Therefore, under criterion (d) the properties are not eligible for the NRHP and no additional archaeological investigations were recommended.

TVA investigated the reported stone piles located on the proposed easement tract, adjacent to the shoreline. The stone pile was located and examined by a TVA archaeologist. The pile did not consist of a discernable pattern and is not representative of an old homestead. Based on the field investigation, TVA believes the pile is likely either a remnant of dilapidated stone retaining wall, or a pile of stone resulting from a field clearing. It is not considered significant.

**Cultural Comment # 14:** Furthermore, on 2/8/06 upon reaching the shoreline, adjacent to where the dredge area is depicted in one of Mr. Doss' crude drawings, we found numerous flint nappings and one much larger piece of worked flint. These were all lying loose and in plain sight on the shore and were obtained without any digging or scratching of the surface. At this point in the day (it had been raining steadily for quite some time) we left. The DEA says a shoreline survey was conducted during a 1990-1991 study and the handout at the 2/9/06 Rogersville meeting states that: **“TVA confirmed that no archaeological resources were present between normal summer and winter pools. A shoreline survey of this area was conducted on December 21, 2005. No evidence of archaeological deposits was identified as a result of this survey.”** When I read this and told Helen Rucker that we had found the flint nappings and the larger piece of worked flint just the day before, she replied that the 12/21/05 TVA shoreline survey had found nappings also but that they didn't consider them significant or meaningful. In my opinion, if TVA found flint nappings on the shore, that is quite different than the above stated **“No evidence of archaeological deposits was identified as a result of this survey.”** When I recently requested a copy of the 12/21/06 TVA shoreline survey, Helen Rucker's email reply stated that, **“No formal report was prepared of the 12/21/05 survey conducted by TVA during the drawdown of the reservoir.”** The fact that no report was prepared is very curious to me, considering how much TVA likes reports, paperwork and red tape and considering that they stated in the DEA that the survey would take place during low pool this winter. It is curious that they would not write a report and it is curious that they would not mention finding the flint nappings that Helen Rucker told me they found. **(Comment by: Charles Rose)**

**TVA Response:** No artifacts (including flint) were identified as a result of the shoreline survey. The statement in the hand out sheet was not in error. Any confusion caused in our discussion with you on this topic at the public meeting is regretted. Based off our staff's observations on December 21, 2005, the shoreline adjacent to the tract does contain natural chert eroding from the ground surface. Chert is a material that was commonly used by prehistoric people for the production of stone tools. The by-products of this manufacturing are referred to as lithic flaking debris. No lithic flaking debris was found in association with the naturally occurring chert along the exposed shoreline. It is possible to find chert flakes in association with natural materials. These flakes can be formed through natural processes.

TVA has also reviewed the photograph presented by a member of the public at the February 9, 2006 public meeting of materials along the shoreline. Visual inspection of the photographs of this debris indicated that this material is largely natural in origin. However, a couple of pieces of the chert debris in the photograph appeared to have characteristics of lithic flaking debris prompting TVA to verify its earlier findings. A TVA archaeologist conducted another field visit on March 14, 2005. TVA staff re-examined the shoreline and confirmed the presence of natural chert that has eroded from the ground surface. The shoreline was carefully examined and just one small fragment of flaking debris was found amid an overwhelming abundance of natural chert. This limited amount of material would not be considered an archaeological site.

TVA had previously surveyed this shoreline as a part of the Wheeler Reservoir survey in 1991. Results of this investigation were documented in a report by Scott Shaw published in 2000. This survey consisted of an intensive examination of the exposed shoreline with limited visual inspection of the upland tracts. No sites were identified as a result of the 1991 investigations. Because this earlier survey focused on the shoreline and did not include an intensive Phase I investigation of the adjacent upland tract, TVA decided to conduct an additional survey of Tract 21. In response to public concern over the proposed dredge, TVA conducted an inspection on December 21, 2005 to confirm the absence of archaeological resources along the exposed shoreline. An archaeological report for the shoreline inspection was not prepared because this investigation was conducted to confirm the absence of potential for archaeological sites as documented in the 2000 report. No further archeological report was required by the Alabama State Historic Preservation Officer (SHPO) when TVA informed the SHPO that a shoreline inspection of the proposed dredge area would be conducted. A letter report was sent to the SHPO on February 15, 2006, notifying them of the results of the inspection. A copy of this letter has been added to the Final EA. The findings of the December 21, 2005 shoreline survey were confirmed in a subsequent survey conducted on March 14, 2006.

**Cultural Comment # 15:** Let me summarize: The Wild South team on 2/8/06 in just a couple of hours in a steady rain found an old roadbed/possible Indian trail, a possible home site or wall, and numerous flint nappings and a larger piece of worked flint on the shoreline adjacent to the dredge area, none of which TVA's Phase I Archaeological Survey found as far as I can tell. For all those reasons, TVA should perform an archaeological survey of the dredge area before any dredging takes place. Their own survey techniques are obviously less than perfect. (**Comment by:** *Charles Rose*)

**TVA Response:** TVA believes that its archaeological techniques were adequate for identifying archaeological resources. Standard archaeological survey methods described in the Alabama Historical Commission's Policy for Alabama Survey and Testing in Alabama (2002) were used. The survey sampled the entire tract for archaeological resources by both visual inspection and shovel tests. Areas that were relatively level (10 percent slope or less) and contained less than 50 percent ground surface visibility were systematically shovel tested at 30-meter intervals, and the soil recovered from shovel tests was screened. Areas with greater than 50 percent surface visibility were shovel tested at 60 meter intervals. When artifacts were located, additional shovel tests were excavated at 10-meter

intervals to delineate site boundaries. Locations with greater than 10 percent slope were not shovel tested, since habitation does not typically occur on steeper inclines. Those areas were visually inspected for potential cultural features.

TVA was aware of the presence of a road on the proposed easement property. Based on the Phase I survey and further research, we have confirmed that these roads are not significant and do not warrant further documentation. For a detailed analysis of the road issue, see response to cultural comment #13. This information has been added to the EA.

Two home sites were recorded as part of the Phase I survey. These sites both had structural remnants that consisted of stone pilings. However, both sites were considered ineligible for listing in the National Register of Historic Places due to their lack of further research potential. The Alabama SHPO concurred with TVA's findings.

As mentioned previously, upon examination, the "nappings" that were collected by the public were found to consist largely of naturally occurring chert fragments. These materials were noted during the shoreline inspection, but not collected due to their lack of cultural relevance. The presence of naturally occurring chert fragments on the shoreline was confirmed in the inspection of March 14, 2006.

**Cultural Comment # 16:** The DEA, on page 19, states the following: **"Prehistoric land use and settlement patterns vary during each period, but short- and long-term habitation sites are generally located on floodplains and alluvial terraces along rivers and tributaries. Specialized campsites tend to be located on older alluvial terraces and in the uplands."** On the same subject, a University of Texas archaeology website states the following: **"Flood plains and river deltas are two common landforms that are composed of alluvium. Floodplains are often referred to as alluvial terraces. They are called terraces because floodplains are typically flat and level. Through time, as rivers meander back and forth across floodplains and as riverbeds become deeper, they leave behind alluvial terraces of different heights and different ages. In general, the terraces that are highest and furthest away from a river are the oldest whereas the modern floodplain or terrace is the lowest one and the present riverbank. Archeologists pay a lot of attention to floodplains because many sites are located on or within alluvium."** As quoted above, TVA's own DEA states, **"habitation sites are generally located on floodplains and alluvial terraces along rivers and tributaries"**, yet TVA does not think it needs to survey the dredge site. Yet, a glance at the 1934 TVA Land Acquisition Map will inform anyone with an open mind that the dredge site is **definitely** located in what once was the flood plain, or alluvial terrace, of the Elk River, pre-embayment. **TVA can't have it both ways. If your own DEA states that floodplains are likely habitation sites, then you should survey this site, located in a former floodplain, before you let Mr. Doss dredge it up, destroying whatever may be there. (Comment by: Charles Rose)**

**TVA Response:** TVA believes that the dredge (approximately 40 feet by 60 feet) will not impact the inundated floodplain, as is it approximately 1,500 feet from the original Elk River and according to the 1915 topography map, it is upland area. Approximate locations of the dredge area and the original river channel are represented in Figure 2-1.

**Cultural Comment # 17:** Of course, if TVA refuses to survey the site and a Native American burial site is destroyed while the area is dredged, TVA will be violating The National Historic Preservation Act of 1966. (**Comment by:** *Charles Rose*)

**TVA Response:** TVA is confident that no historic properties will be impacted by the proposed easement and dredge. Since no research strategy can provide 100 percent certainty that individual archaeological features or human graves would not be identified during the proposed construction, the post-review discovery of archaeological features is covered under the implementing regulations for Section 106 of the NHPA (36 CFR Part 800). Inadvertent discovery of human remains is also covered under the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR Part 10). Should archaeological features or burials be inadvertently discovered during any activity related to the proposed easement, then TVA would immediately be notified. If burials are determined to be of Native American origin, TVA would be required to contact federally recognized Indian tribes that may be culturally affiliated with the remains. NAGPRA's implementing regulations outline a process for treatment and repatriation of such remains. These protective covenants will be included in the land transfer instrument for the easement. Under TVA's General and Standard conditions included in the Section 26a approval (see Appendix H), the applicant will be required to notify TVA of archaeological features or burials are discovered during the construction of the resort.

**Cultural Comment # 18:** Now let's look into the matter of the "older alluvial terraces," mentioned above. The UT website said: "**the terraces that are highest and furthest away from a river are the oldest**" and TVA's DEA stated: "**Specialized campsites tend to be located on older alluvial terraces .....**"The dredge site is definitely "**furthest away from the river**" in the former floodplain of the pre-embayment Elk River and thereby probably on one of the "**oldest terraces**" and that means that it would be a site where we might expect to find a "**specialized campsite**" there, that is if it is surveyed before the dredging takes place. (**Comment by:** *Charles Rose*)

**TVA Response:** The shoreline inspection conducted by TVA on December 21, 2006, did not identify any archaeological sites in the location of the dredge. During the field inspection on March 14, 2006, TVA staff examined the underwater location of the dredge and sampled materials from the inundated ground surface. Based on this survey, TVA concluded that the dredge area below pool is similar to the exposed shoreline surface, consisting of a highly eroded upland surface with exposed natural chert outcroppings. These surveys confirmed that the dredge location has an extremely low potential for archaeological sites to be present. Based on the findings of the shoreline investigations, the distance of the dredge location to the nearest original water source (original Elk River channel), the topography of the dredge location, and the shoreline erosion that has occurred in the dredge location, TVA made the determination that the proposed dredge would have no effect on historic properties.

**Cultural Comment # 19:** I examined the rather extensive list of references in the back of TRC Solutions' Phase I Archaeological Survey. Although it even lists a study

concerning Fame Recording Studio in Muscle Shoals, AL, a business started miles away on the other side of the Tennessee River in the early 1960's and which has absolutely no connection in any regard to this site on the Elk River, the list of references **doesn't** include a work that I would thing [sic] is more apropos, **An Archaeological Survey of Wheeler Basin on the Tennessee River in Northern Alabama** by **William S, Webb**. Webb was surveying the Wheeler basin prior to the impoundment and time did not allow him to survey all the tributaries (such as the Elk River) of the Tennessee River. Also, because of the looming embayment, the great majority of known sites within the Wheeler Basin were not excavated. Only 19 of a total of 237 known sites were excavated and reported on in detail in his report. The remaining 216 sites are now underwater and their study is impossible. One would hope that since this travesty was perpetrated after TVA took control of the Wheeler Reservoir project that TVA might err on the side of caution and perform an I [original text was not provided by commenter]. In the Webb book , there are many sites noted near the mouth of the Elk River and Sites Lu 77-79 were actually **on** the Elk River at mile .25 on the Lauderdale (west) bank. This would place this site just 1.25 miles(?) south of Tract XWR-21PT, the marina site, on the same side of the river. The Webb book says this about these sites:

- Lu 77 Mound. Conical 15 feet in diameter and 3 feet high. Surface shows pottery sherds, mostly gravel tempered. Surface generally plain. A few were square stamped of cord paddled with rims plain.**
- Lu 78 MOUND. Conical. 25 feet in diameter and 3 feet high. Pottery was similar to Site 77.**
- Lu 79 Village. 1 acre. Pottery was similar to Site 77. These sites lie on a high bluff overlooking Elk River, about 0.25 mile from its mouth on Tennessee River. It is known locally as "Blind Horse Bluff," and is about 75 feet above river level, on the farm of Oscar Cox, of Rogersville. Lu 79 surrounds mounds 77 and 78. These mounds, which yielded skeletal material and a number of whole pots when explored by a resident of Decatur, will not be inundated.**

In a Lauderdale County plat book dated 2004 that I found at the Florence-Lauderdale Public Library, I noticed that a section of land on the Lauderdale bank of the Elk River that looked to be at that same .25 river mile mentioned above was listed in the name of James B. Cox etux, probably descendents of the Oscar Cox mentioned as the landowner in the Webb book. **In conclusion, there is much evidence that Native Americans were active in the near vicinity of Tract XWR-21PT and to not survey before dredging would be reckless and possibly illegal on TVA's part. (Comment by: Charles Rose)**

**TVA Response:** We recognize there are significant American Indian sites at certain locations on Wheeler Reservoir. However, these sites are not located within the APE of this project and sources suggest they may be a considerable

distance from the project site. No mounds or village sites will be affected by the project.

**Cultural Comment # 20:** Tract XWR-21PT of public property was allocated for Commercial Recreation in the 1995 TVA Wheeler Reservoir Land Management Plan without proper archaeological studies to determine the significance of known and unknown archaeological resources both above and below the normal pool elevation. A Phase I archaeological survey failed to find abundant evidence of Native American occupation on the shoreline at low water levels. Although dredging is proposed in the construction of the marina, TVA maintains that it will not provide for underwater surveys to determine whether Indian burials or other significant resources would be impacted. There is controversy over whether the homestead sites located on the property are late eighteenth, early nineteenth, late nineteenth or early twentieth century. Insufficient research was performed by TVA to determine whether there was a single occupation or a series of occupations (on at least two homestead sites) by Native Americans and later European immigrants. TVA failed to discuss the significance of a road/trail system found on this tract of lands. (**Comment by:** Lamar Marshall, Wild South)

**TVA Response:** TVA believes its archaeological survey was adequate for identifying significant archaeological resources. The evidence provided to TVA for archaeological material was very limited and consisted largely of naturally occurring chert fragments.

The age determination of the historic homesteads identified on the property was based on the types of artifacts present at the site. Archaeological material associated with these sites included porcelain and ironstone ceramic fragments, colorless, aqua, and amethyst bottle glass, and miscellaneous metal fragments that all indicate the sites were predominantly occupied during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Results of the Phase I survey indicate that the homesteads did not maintain the archaeological integrity that would have allowed archaeologists to study the sites in such a way that one would be able to discern single or multiple occupations of the property. The only feature left at these homestead sites was a well. However, wells typically were not places where individuals would dispose of material. Very limited information could be gleaned from such a feature.

For discussion of the road and trail system and its significance, see the response to cultural comment #13.

**Cultural Comment # 21:** EA: "No...known archaeological or historic sites." Page 7 The TVA EA states that there are no known archaeological or historical sites. The EA should have said "no known 'significant' archaeological or historical sites." I would still challenge TVA's position on this statement. TVA certainly knows that there are historic sites on the property. On page 20, the TVA Cultural Resources staff defined the APE and identified sites as late nineteenth century to early twentieth century historic homesteads. Since there are many EARLY nineteenth century homestead sites of both Native American and European in the area, how did the team determine these were late nineteenth century rather than early nineteenth century? Since this same contractual group walked the shoreline and failed to find evidence of occupation by Native Americans and in February a Wild South team walked the shore and found plenty of artifacts to warrant an investigation, we may conclude that the previous survey team was

wrong about the significance AND THE ORIGIN AND THE AGE of the homesteads. According to Rickey Butch Walker, Director of both the Lawrence County Indian Education Program and the Oakville Indian Mounds and Park. “The area proposed for a marina on Elk River in Lauderdale County, Alabama, was part of Cherokee Chief Doublehead’s Reserve recognized by the Cotton Gin Treaty of January 7, 1806. Prior to and after this treaty, the land actually belonged to the Chickasaws as recognized by the Chickasaw Boundary Treaty of January 10, 1786.” Mr. Walker is also a noted author of several books on north Alabama Indian history. The homestead on the TVA property may well be from Doublehead’s era. Certainly this would be an important element and subject of discussion in TVA’s research and in conjunction with TRC Solutions’ (Wild, 2005) Phase I archeological survey. Please remit a copy of this report to me. Robert L. Barnes bought the property in 1900. The two homesites were either built then OR BEFORE, roads and trails were built then OR BEFORE. Simple subtraction says that one or more of the two known home sites are at least 106 years old. NHPA says home sites, structures, roads, trails, etc, a hundred years old are defined as archaeological resources and protected by law until studied for their significance or nomination to NRHP. TVA blew over this property and its resources much too swiftly and incompletely to deem the known and unknown resources insignificant. Indeed, the property contains historical sites that are known to TVA and most likely, sites not found by TVA due to a failure to the study the area. **(Comment by: Lamar Marshall, Wild South)**

**TVA Response:** Page 7 has been changed to reflect that no “significant” archaeological or historic sites were identified.

The age determination of the historic homesteads identified on the property was based on the types of artifacts present at the site. Archaeological material associated with these sites included porcelain and ironstone ceramic fragments, colorless, aqua, and amethyst bottle glass, and miscellaneous metal fragments that all indicate the sites were predominantly occupied during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. No artifacts were found from the sites that would indicate the homesteads were occupied by Native Americans.

For a discussion of the cultural resources found and their National Register eligibility, please see the response to cultural comment #13.

Information regarding the nature and location of archaeological resources is protected under the Archaeological Resources Protection Act (ARPA) and other applicable historic preservation laws. Portions of the survey report sent to the reviewer were redacted and are not available for public viewing.

**Cultural Comment # 22:** TVA has not completed adequate archaeological surveys in this area. The few shovel pits and a walks along the shoreline does not justify an assumption by TVA that there are no significant resources in the proposed dredging area. Only an underwater survey and a more intensive surface grid of test pits can satisfy these deficiencies. An on-site inspection by a Wild South team on February 8, 2006, found ample evidence along the shoreline to warrant a much more intense inspection of the property, both above waterline and below waterline. **(Comment by: Lamar Marshall, Wild South)**

**TVA Response:** Refer to the responses for Cultural comments #11 and 12.

**Cultural Comment #23:** Personal Testimony that Tract XWR-21PT was Occupied by Native Americans. Furthermore, I personally interviewed the great grandson of Robert L. Barnett, the man who owned the farm at the time of or just prior to the TVA acquisition. Troy Barnett testified that he was told many times that Indians lived on the farm prior to this family's occupation of the property. His testimony of family history substantiates the existence of Native American occupation of Tract XWR-21PT. His grandfather related that when the fields just below the proposed marina site were plowed, stone tools, pottery pieces, and projectile points were found. Therefore, the argument for the existence of significant archaeological resources on this property and underwater in the dredging area is very strong. (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** TVA recognizes that significant archaeological resources are likely present along the river terraces and flood plains of the Elk River that were inundated as a result of the construction of Wheeler dam. These sites were likely located in the floodplain immediately adjacent to the pre-inundation flow of the Elk River, but they are not within the APE of this project and are a considerable distance from the project site. The proposed dredge is located in the small cove area which is significantly removed from the original flow of the Elk River. Also according to the 1915 topographical map, the proposed dredge location is an upland area. TVA believes that its archaeological techniques were adequate for identifying archaeological resources.

**Cultural Comment #24:** Expert Opinion of Potentially Significant Sites on or Adjacent to Tract XWR-21PT. I have spent nearly forty years locating and visiting village sites of the Creek and Cherokee Indians in Alabama. I am very familiar with the location of hundreds of historical and prehistorical village sites. The junction of the Elk River and Tennessee River was very important politically, geographically and in other ways. For example, Indian tribes claimed their boundaries by rivers, streams, and the dividing ridges of watersheds. The Elk River is recorded in many pages of testimony of early tribal lands. Villages grew up along the fall lines and shoals because of the fishing, especially spring shad (and other species runs). This makes the large flat land underwater and adjoining Tract XWR-21PT a prime candidate for a significant village site. The higher elevations above the water line is an area of potential burial sites. In addition, Tract XWR-21PT would have been important to Indians because the principal and central portion of the property is bounded by two spring-fed streams that run together under the lake. Furthermore, additional springs and a home site are key features on the 1934 TVA acquisition map. Many European settlers built their houses on previously occupied Indian villages and campsites. This area underwater today contains all the elements for a potential hotspot of Native American occupation. (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** Based on the findings of this shoreline inspection, the distance of the dredge location to the nearest original water source (original Elk River channel), and the shoreline erosion that has occurred in this location, TVA made the determination that the proposed dredge would have no effect on historic properties. Although significant sites could be present adjacent to the old river channel, the scope of the project does not extend to the old river channel and would not affect sites that might be present in this area.

**Cultural Comment #25:** Failure of TVA to Identify Historic Road on Tract XWR-21PT. Furthermore, TVA failed to note the existence of a historic road that was clearly shown on the acquisition maps of 1934. According to the National Historic Preservation Act, any road or trail over 100 years old is protected by law as an archaeological resource until a study determines that it is not significant. I have seen no discussion of this road or any proof that TVA did in fact research this road. In fact, there is no record in any documents made available from TVA to indicate that this road was studied in the 1995 Plan. This fact adds to the weight of evidence that this property was mis-allocated in 1995 due to a lack of adequate archaeological surveying and testing. I consider myself an expert in early pioneer roads and Indian trails. I have published numerous articles and one book on the Indian Trails of Alabama. See the newly published book *Indian Trails of the Warrior Mountains* by Lamar Marshall and Rickey Butch Walker, submitted with my comments. For several years I worked for Frank Hollis and Associates and later for Gilliland Land Surveying in Oneonta, both of which were land surveying companies. I worked as a plat technician in charge of producing survey plats both from contemporary and historical surveys. I own a copy of the original 1818 survey of Alabama by John Coffee, which was conducted to divide the land into sections, townships and ranges. I have studied this document for many years. I inspected the historic road on this property. After having researched, identified, photographed, and documented hundreds of historic roads and trails, it is my opinion that this road was probably an Indian trail prior to occupation by early settlers before 1934. A trail and road system existed throughout the region. There is no doubt that a trail traversed up the west bank of the Elk River from the settlements on the Tennessee River just a mile or so below. It is also highly likely that another trail traversed parallel to the Elk River on higher ground parallel to the west bank of the Elk River. Melton's Bluff was an Indian settlement just across the Tennessee River from the mouth of Elk River. A major Indian trail called the Black Warrior's Path crossed the river in the Elk River Shoals and went up the east bank of the Elk River to Fort Hampton. There was a well known Indian trail/pioneer road that connected modern Huntsville with Bainbridge on the Tennessee River west of Rogersville. There was a system of roads and trails in place before European settlers moved onto former Indian lands. The old farm or field road shown on the TVA acquisition map and identified by our field team, could well have been a connecting trail that left the village site along this portion of the Elk River. It would have followed the contour of the hill along the south shore of the north wetland in this tract and followed the ridges to the vicinity of Rogersville. "Some of the trails not only tied up the uttermost parts of the present state, but extended into Tennessee, Florida, Georgia and Mississippi where they make connection with trails leading into states and territories in the far North and West. The main trails were so frequently intersected by hunting paths that it was difficult for any but experienced woodsmen to follow them. In many instances the trails were widened into roads by white settlers, or later marked the course of railroads." Albert B. Moore, History of Alabama. "And when our own engineers cut a road in 1811, they only felled trees to make a driveway through the wilderness over that same Indian path that these natives had used for maybe thousands of years. The Federal Road of 1811 is but the Indian path from the towns on the Atlantic seaboard to those in the Mobile, Natchez and Mississippi country." Alabama Highways, March 1928. "The roads followed the early Indian trails and prior to 1838 or 1840 there were only two or three routes traversing the state.....they all followed former trails and were in most cases 'ridge roads.'" Alabama Highways, May 1927. **(Comment by: Lamar Marshall, Wild South)**

**TVA Response:** For a discussion of the road and trail system and its significance, see the response to cultural comment #13.

**Cultural Comment #26:** “Archaeological Survey of Wheeler Basin on Tennessee River” Did Not Survey Include Tract XWR-21PT. The Archaeological Survey of Wheeler Basin On The Tennessee River in Northern Alabama by William S. Webb is very clear that surveys are insufficient in the vicinity of the proposed marina. For the purpose of expediency, TVA did not survey the proposed marina site prior to impoundment. The location of proposed dredging could be the site of a historic and/or prehistoric village. The topography is ideal for a village. Spring fed streams entered the Elk River on both sides of the TVA property. As previously discussed, an Indian Trail very probably followed the base of the hill of the proposed marina. Since oral testimony confirms the existence of occupation, the probability that Native Americans did not have a trail from the now-submerged spring parallel to the north wetland is highly unlikely. (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** No documentation or evidence was found that would indicate an Indian trail is located on this property. See the response to cultural comment #13. The exposed shoreline adjacent to the proposed dredge was investigated as part of the shoreline survey conducted on December 21, 2006. Based on the findings of this inspection, the distance of the dredge location to the nearest original water source (original Elk River channel), and the shoreline erosion that has occurred in this location, TVA made the determination that the proposed dredge would have no effect on historic properties. The findings of the December 21, 2005 shoreline survey were verified in an inspection conducted on March 14, 2006.

**Cultural Comment #27:** Notification of Native American Tribes: It is unclear in the EA if the Native American tribes have been contacted as required by law. The page 39 List of Agencies and Persons Consulted shows no Native American tribes. If the required tribes were not contacted, TVA is obligated to extend the comment period in order to accommodate the tribes. (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** TVA consulted with the following Federally- recognized Indian tribes:

Muscogee (Creek) Nation of Oklahoma  
Chickasaw Nation  
Cherokee Nation of Oklahoma  
Choctaw Nation of Oklahoma  
Seminole Nation of Oklahoma  
Alabama-Quassarte Tribal Town  
Eastern Band of Cherokee Indians  
Jena Band of Choctaw Indians  
United Keetoowah Band  
Kialegee Tribal Town  
Poarch Band of Creek Indians  
Seminole Indian Tribe  
Thlopthlocco Tribal Town

TVA received responses from three of these tribes. Documentation of this consultation has been added to the Final EA.

**Cultural Comment #28:** Conclusion: Based on the failure of TVA to survey Tract XWR-21PT for significant archeological resources, and for failure to allocate the tract for its highest public and natural benefits, forest, visual quality, wildlife habitat and undeveloped recreational values, the request for a lease to build a marina should be denied. This tract should be reallocated for these stated values. TVA must complete underwater archaeological surveys before a decision can be issued. No dredging or construction can take place without the satisfaction of the National Historic Preservation Act. TVA has not addressed the issue of Indian Trails or historic roads on this property. NHPA specifies that any road or trail over a hundred years old is an archeological resource. No ground-disturbing activities can occur until these resources can be studied. **(Comment by: Lamar Marshall, Wild South)**

**TVA Response:** Based on the findings of this shoreline inspection, the distance of the dredge location to the nearest original water source (original Elk River channel), and the shoreline erosion that has occurred in this location, TVA made the determination that the proposed dredge would have no effect on historic properties. The Alabama SHPO has concurred with TVA's findings.

The allocation decision was made in the 1995 plan after consideration of natural resource values and potential recreation demand on lower Wheeler Reservoir. There are no unique natural resource values on the tract, but there is a need for additional recreational facilities on lower Wheeler Reservoir.

**Cultural Comment #29:** The Native American history of the area deserves a lot more attention than it was given it in the EA. The confluence of the Tennessee River and the Elk River was a major Native American cultural site. This area would be impacted by the presence of a marina on the Elk River. **(Comment by: Janice Barrett)**

**TVA Response:** Additional historic information has been added to the Cultural Resources section of the final EA. Additional bibliographic references have also been included.

**Cultural Comment #30:** The area proposed for a marina on Elk River in Lauderdale County, Alabama, was part of Cherokee Chief Doublehead's Reserve recognized by the Cotton Gin Treaty of January 7, 1806. Prior to and after this treaty, the land actually belonged to the Chickasaws as recognized by the Chickasaw Boundary Treaty of January 10, 1786. Before the occupation of the Cherokees and Chickasaws, the Shawnee inhabited the area of Elk River Shoals. The Shawnee moved to the area after it was vacated by the Yuchi in the early 1700's. Before the Yuchi, Indian people of the four major prehistoric periods-Paleo, Archaic, Woodland, and Mississippian-occupied the area around Elk River Shoals because of the vast food supply provided by fresh water mussels. Based on private collections of Paleo artifacts of chert points known as Clovis, Folsom, Quad, and Beaver Lake the area has had continuous aboriginal occupation for some 14,000 years. **(Comment by: Robert Butch Walker, Oakville Indian Mounds Education Center)**

**TVA Response:** There is no question that Native Americans inhabited the southeastern United States, including what is now the state of Alabama. Chief

Doublehead's Reserve was described as a "parcel of land on the North side of the Tennessee River at a place known as the Muscle Shoals, bounded southward by the Tennessee River westwardly by a creek called Tee-Kee-ta-no-eh (Cypress) eastwardly by Chee-wa-lee (Elk River) and from a point ten miles north on Elk River to same Cypress Creek (p.115, Journal of Muscle Shoals History, Volume IX, 1981)". However, there is no evidence of the presence of any significant historic resource or property in the proposed project area.

**Cultural Comment #31:** Major trails and roads crossed the Tennessee River along the Elk River Shoals with secondary Indian trails leading in numerous directions. Two major trails that crossed in the area were known as Black Warrior's Path, which later became known as Mitchell Trace, and the Sipsie Trail, which later crossed the river at Lamb's Ferry. The crossing area was known by Indian people as Chake Thlocko, the Great Crossing Place or Big Ford. In November 1813, Colonel Joseph Brown who served under General Andrew Jackson crossed the Tennessee River from Chief Cutthaytoy's Island to the mouth of Elk River. General Joseph Wheeler made a similar crossing on October 9, 1863, during the Civil War. From the monument erected to General Joseph Wheeler at Lock A, the Marina will be just across the Tennessee and up the Elk River. **(Comment by: Robert Butch Walker, Oakville Indian Mounds Education Center)**

**TVA Response:** For a discussion of the road and trail system and its significance, see the response to cultural comment #13.

**Cultural Comment #32:** Why mention these few historical facts? Until a complete archaeological and historical survey is conducted at the site of the marina to insure that the prehistoric and historic resources are not destroyed, the project should not go forward. The historical and archeological surveys must include the land area prior to the impoundment of the Tennessee River. Just because burials, archaeological resources, and historical remains are under water does not mean that they are not protected by Federal and State laws. Since aboriginal burials are known to exist within the area of close proximity to the marina site, extreme care must be taken to insure that burial sites are not disturbed, even if they are underwater. Disturbing such aboriginal burial sites would create a national backlash from American Indian people all over the United State. Rest assured that many local people both Indian and non-Indian would lay the blame squarely on the shoulders of the Tennessee Valley Authority. If this project goes through without proper documentation through extensive archeological surveys, the credibility gap on historic protection will get wide enough to swallow the Tennessee Valley Authority. **(Comment by: Robert Butch Walker, Oakville Indian Mounds Education Center)**

**TVA Response:** TVA has made a good faith effort to identify historic properties that could be affected by the proposed recreation easement as required under Section 106 of the National Historic Preservation Act (NHPA), including those that may be of significance to culturally affiliated Indian tribes.

The proposed dredge, included as a part of this project, is minimal (approximately 40 feet by 60 feet) and TVA believes that the shoreline inspection at low winter pool was adequate for identifying the potential for archaeological resources to be located below pool in this location.

**Cultural Comment # 33: (Comments by: Jason Totoiu and Sandra S. Nichols, Attorneys for Wild South)**

**33a** 1. No analysis of impact on historic resources

Due to controversy about the presence of historical resources in the proposed project area, further study must be done before proceeding with the NEPA process on this project.

A federal agency is required to consider the impacts of any expenditure of funds on any “district, site, building, structure, or object that is included or eligible for inclusion in the National Register [of Historic Places]” under the National Historic Preservation act (NHPA). 16 U.S.C. § 470f.

Implementing regulations require TVA to consult with the state historic preservation officer, make a reasonable and good faith effort to identify historic properties, determine their eligibility for listing in the National Register of Historic Places, and assess the effects of a project on such properties. This consultation process is commonly referred to as the “Section 106” process after Section 106 of the NHPA. Id.

In consultation with the SHPO, you must identify all historic properties, buildings, structures, or objects within a designated “area of potential effects.” The “area of potential effects” is “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.” 36 C.F.R. § 800.16(d).

**TVA Response:** TVA has complied with NHPA requirements. TVA consulted with the SHPO as to the impacts of the project on eligible historic properties. The SHPO has concurred with TVA’s finding that no historic properties would be affected. Comment noted.

**33b.** While a survey was apparently conducted, the results presented in the EA do not reflect known facts about the site. Further, you violated NEPA when you failed to identify and discuss all potential impacts to known cultural resources. Mentioning only two sites identified as “late nineteenth century to early 20<sup>th</sup> century historic homesteads” neglects a host of other historic resources identified by the public. EA at 20.

**TVA Response:** TVA made a good faith effort to identify historic properties on the proposed easement tract. The Draft EA described the two archeological sites identified through the survey. Historic information provided by the public was reviewed by TVA staff and addressed as part of the final EA.

**33c.** NEPA mandates that federal agencies “use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may . . . preserve important historic, cultural, and natural aspects of our national heritage.” 42 U.S.C. § 4331(b)(4).

“The regulations implementing the NHPA require agencies involved in projects such as the present one to consult with state historic preservation officers (“SHPOs”),

make reasonable and good faith efforts to identify historic properties...” Pres. Coalition v. Fed. Transit Admin., 356 F.3d 444, 447 (2d Cir. 2004).

“The NHPA... is designed to protect certain ‘historic properties’... Section 106 of the statute requires that prior to a proposed federal ‘undertaking,’ the agency must ‘take into account the effect’ on such properties and allow the Advisory Council on Historic Preservation a ‘reasonable opportunity to comment.’ 16 U.S.C. § 470f. The act thus imposes both a substantive obligation to weigh effects in deciding whether to authorize the federal action and a procedural obligation to consult.” Save Our Heritage, Inc. v. FAA, 269 F.3d 49, 57-58 (1st Cir. 2001)

“Eligible property” that federal agencies must take account for under the NHPA includes any property that qualifies on basis of literal eligibility under National Register criteria. “Eligible property” is not restricted to property officially determined to be eligible for inclusion on National Register. Boyd v Roland, 789 F.2d 347 (5<sup>th</sup> Cir. 1985), reh. denied 789 F.2d 347 (5<sup>th</sup> Cir. 1985).

The absence of an official determination of “eligibility” does not render the NHPA inapplicable since “eligible property” is defined as any district, site, building, structure, or object that meets criteria of National Register. Hough v Marsh, 557 F. Supp 74 (D. Mass. 1984).

You have failed to meet the requirements of surveying all eligible or potentially eligible resources. There is no mention of any under- water resources in the EA. Apparently, a shoreline archeological survey was done at some point. The information discovered and the impacts on these resources must be included in the EA. Furthermore, you must address how the proposed “shoreline stabilization” will impact these resources.

**TVA Response:** TVA completed a intensive Phase I archaeological survey of Tract 21 using the standards defined in the Alabama Historical Commission’s Policy for Archaeological Survey and Testing in Alabama. Two archaeological sites were identified. These sites were identified as two historic homesteads. The age determination of the historic homesteads identified on the property was based on the types of artifacts present at the site. Archaeological material associated with these sites included porcelain and ironstone ceramic fragments, colorless, aqua, and amethyst bottle glass, and miscellaneous metal fragments that all indicate the sites were predominantly occupied during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Results of the Phase I survey indicate that the homesteads did not maintain the archaeological integrity that would have allowed archaeologists to study the sites in such a way that one would be able to discern single or multiple occupations of the property. The only potentially significant feature left at these particular sites was a well. However, wells were not typically places where individuals would dispose of material. Very limited information could be gleaned from such a feature. . As a result, these resources were determined ineligible for listing in the National Register of Historic Places.

TVA was aware that roads were present on the proposed easement tract. Based on the location of the roadbeds on the TVA Land Acquisition map, it is likely the purpose of the eastern-most road was for driveway access to the homestead that was recorded during the archaeological survey. This homestead lines up with

the structures also present on the acquisition map. Field inspection of the road confirmed this assumption. As such, it is unlikely that this road precedes the construction of the homestead. The road identified on the west end of the tract may have been historic in origin; however, this road was likely maintained and altered by TVA for the purpose of conducting timber harvests. There is no evidence or documentation to indicate that this road was in use prior to TVA ownership. During the 1980s, a portion of Tract 21 was used as a timber harvest. The forestry prescription documentation indicates that TVA needed to build a road from a subdivision to the pine stands in order to thin and burn the trees. The western-most road ends at a subdivision. It is very likely this road was the one constructed by TVA to access the pine stands. Field investigation of this road verifies that the road has likely been used within the last 50 years.

Even the information submitted by commenters Walker and Marshall (2005) shows that no historic Indian trails were located in this area. Archaeological investigations failed to identify any evidence of prehistoric or historic Native American occupation of the tract. Based on lack of archaeological findings or historic documentation, TVA does not believe that the roads located on the tract possess the historic significance to make them eligible historic properties. Additional information has been added to the EA to reflect this finding.

Shoreline inspection was conducted by TVA staff. The findings of these inspections have been added to the EA. No archaeological sites were identified along the shoreline; therefore, the proposed shoreline stabilization will have no effect on historic resources.

**33d** The two sites mentioned in the EA, but presented as ineligible for protection, are not described in any detail. Since there are many early nineteenth century homestead sites of both Native American and European in the area, how did the team determine these were late nineteenth century rather than early nineteenth century? One of the fundamental purposes of NEPA is to inform the public of the potential environmental impacts prior to taking any major federal action. Therefore, the EA must describe the sites and how the conclusion presented was reached in order to satisfy this directive.

**TVA Response:** Archaeological material associated with the historic homesteads included porcelain and ironstone ceramic fragments, colorless, aqua, and amethyst bottle glass, and miscellaneous metal fragments that all indicate the sites were predominantly occupied during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Additional information was added to the EA to support TVA's determination.

**33e.** The same consultants walked the shoreline and failed to find evidence of occupation by Native Americans. In contrast, in February a Wild South team walked the shore and found ample artifacts to warrant an investigation. Given this apparent discrepancy, there is no way to rely on the conclusions about the significance, origin, and age of the homesteads.

**TVA Response:** TVA believes its archaeological survey was adequate for identifying archaeological resources. The evidence provided to TVA of archaeological material was very limited and consisted largely of naturally occurring chert fragments.

**33f.** There is a great deal of archeological and historical information that must be addressed in the EA. The proposed project area was part of Cherokee Chief Doublehead's Reserve recognized by the Cotton Gin Treaty of January 7, 1806. Prior to and after this treaty, the land actually belonged to the Chickasaws as recognized by the Chickasaw Boundary Treaty of January 10, 1786. Did the consultant determine whether the homestead on the TVA property could be from Doublehead's era? Certainly this would be an important element and subject of discussion in TVA's research and in conjunction with TRC Solutions' Phase I archaeological survey.

Robert L. Barnes bought the property in 1900. Two home-sites, as well as several roads and trails that have been identified on the site were likely built at that time, or earlier. Thus, some if not all of these structures are at least 106 years old. NHPA provides that home sites, structures, roads, and trails that are a hundred years or older, are defined as archaeological resources and protected by law until studied for their significance or nomination to the National Register of Historic Places.

**TVA Response:** No archaeological evidence was found to indicate that the homestead was occupied by historic Native Americans.

Section 106 of the NHPA requires TVA to consider the effects its undertakings will have on historic properties (defined as any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places (NRHP). To be determined eligible for listing in the NRHP, a site must meet the criteria of eligibility established in the Code of Federal Regulations, Title 36, Part 60. These criteria are listed in the EA.

The National Historic Preservation Act of 1966 (NHPA) defines historic property or historic resource as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register including artifacts, records, and material remains related to such a property or resource." [Section 301 (16 U.S.C. 470w)] Section 101(16 U.S.C. 470a) of the NHPA states that a National Register of Historic Places is "composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture." To be listed on the National Register, a historic resource must meet one or more of the criteria established by the Secretary of Interior (36 CFR Part 60): **Criteria for evaluation.** The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and **(a) that are associated with events** that have made a significant contribution to the broad patterns of our history; or **(b) that are associated with the lives of persons significant in our past;** or **(c) that embody distinctive characteristics** of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or **(d) that have yielded, or may be likely to yield,** information important in prehistory or history.

Typically historic properties are 50 years old or older when they are listed on the National Register of Historic Places. However, age is just one indication and does not, by itself, make a road or a home site significant. Referring to the

criteria above, the roadbed and home site may be historic, but they are not historically significant. A detailed analysis of the resources found in relation to National Register criteria is contained in the response to cultural comment #3. The age determination of the historic homesteads identified on the property was based on the types of artifacts present at the site. Archaeological material associated with these sites included porcelain and ironstone ceramic fragments, colorless, aqua, and amethyst bottle glass, and miscellaneous metal fragments that all indicate the sites were predominantly occupied during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Had these sites been determined to be historically significant, the sites would have been investigated further.

TVA determined that no historic properties were present on the proposed easement tract. The Alabama SHPO concurred with these findings.

**33g.** An on-site inspection by a Wild South team on February 8, 2006 found ample evidence along the shoreline to warrant a much more intense inspection of the property, both above waterline and below waterline.

**TVA Response:** See the responses to cultural comments # 11 and 12.

**33h.** Personal testimony that tract XWR-21PT was occupied by Native Americans and that it contains historic objects must be explored or analyzed. The junction of the Elk River and Tennessee River was an important historical, political, and geographical region. The Elk River is recorded in many pages of testimony of early tribal lands. Villages were established along the fall lines and shoals. This makes the large flat land underwater and adjoining Tract XWR-21PT a prime candidate for a significant village site. Higher elevations above the water line may also contain burial sites. Was this considered in the survey? If so, the findings must be analyzed in the EA.

**TVA Response:** The proposed dredge area (40 feet by 60 feet) is located over approximately 1,500 feet from the original Elk River. TVA recognizes that significant archeological resources are likely present along the river terraces and floodplains of the Elk River that were inundated as a result of the construction of Wheeler Dam. These sites were located in the floodplain immediately adjacent to the pre-inundation flow of the Elk River. The proposed dredge, by contrast is significantly removed from the original flow of the Elk River. Based on the findings of the shoreline inspection, the distance of the dredge location to the nearest original water source (original Elk River channel), and the shoreline erosion that has occurred in this location, TVA made the determination that the proposed dredge (approximately 40 feet by 60 feet) would have no effect on historic properties. As to historic objects or sites on Tract XWR-21PT itself, these were evaluated by TVA in great detail to conclude that no historic object or site eligible for the NRHP is present on the tract. In addition, TVA consulted with Federally-recognized Indian tribes who did not identify any important cultural issues related to the proposal.

**33i.** Furthermore, you fail to note the existence of a historic road that was clearly shown on the acquisition maps of 1934. According to the National Historical Preservation Act, any road or trail over 100 years old is protected by law as an archaeological resource until a study determines that it is not significant. The EA contains no discussion of this road or any proof that TVA did in fact research this road.

In fact, there is no record in any documents made available from TVA to indicate that this road was studied in the 1995 Plan. This supports a long-standing contention that that this property was misallocated in 1995 due to a lack of adequate archaeological surveying and testing.

***TVA Response:*** As discussed above in response to cultural comment #13, the road is not a significant historic property and is not eligible for the NRHP.

**33j.** There is no evidence of whether a study was done to determine whether the road was an Indian trail prior to occupation by early settlers before 1934. A trail and road system existed throughout the region. There is no doubt that a trail traversed up the west bank of the Elk River from the settlements on the Tennessee River just a mile or so below. It is also highly likely that another trail traversed parallel to the Elk River on higher ground parallel to the west bank of the Elk River. Melton's Bluff was an Indian settlement just across the Tennessee River from the mouth of the Elk River. A major Indian trail called the Black Warrior's Path crossed the river in the Elk River Shoals and went up the east bank of the Elk River to Fort Hampton. There was a well known Indian trail/pioneer road that connected modern Huntsville with Bainbridge on the Tennessee River west of Rogersville. There was a system of roads and trails in place before European settlers moved onto former Indian lands. The old farm or field road shown on the TVA acquisition map and identified by our field team could well have been a connecting trail that left a village site along this portion of the Elk River. It would have followed the contour of the hill along the south shore of the north wetland in this tract and followed the ridges to the vicinity of Rogersville. Numerous historic references discuss the importance of these roads. See e.g., William Webb, *The Archaeological Survey of Wheeler Basin on the Tennessee River in Northern Alabama*, Smithsonian Institution (1939). However, the EA fails to even mention them.

Thus, this EA fails to comply with the NHPA and NEPA. These failures make this project vulnerable to an injunction pending compliance with these statutes.

***TVA Response:*** TVA conducted a literature survey and a site survey on the road. See response to cultural comment #13.

**33k. 2.** Inadequate consultation

Although the EA lists having "consulted" with several agencies and relevant tribes, this consultation is inadequate. It is elemental that consultation must include actually contacting the relevant agency. James Warr is listed as the director of the Alabama Department of Environmental Management. EA at 39. Mr. Warr was replaced in early 2005 by Troy Glenn. Further, the document lists having consulted Charles Rose, Florence, AL. Mr. Rose has not lived in Florence since April 2002.

The EA does not indicate having "consulted" with any of the relevant Federally Recognized Native American tribes as required by the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001) and the National Historic Preservation Act, much less reflect any actual analysis of information from them. Because of the location of the proposed project, at a minimum, the Poarch Band of the Creek Indians and the Mowa band of the Choctaw should have been consulted about the impacts of this project.

Finally, simply sending a notice to agencies that TVA is required to consult with these agencies is not sufficient. You must include these agencies' responses and discuss the findings of these consultations. Failing to do this frustrates the very purpose of the consultation requirements.

**TVA Response:** The error in listing the erstwhile ADEM Director as the current Director is regretted. Likewise, identifying Mr. Rose's home address as Florence is regretted. This has been corrected in the FEA. Both ADEM and Mr. Rose got the opportunity to review the Draft EA. Due to frequent personnel changes with all the government agencies that TVA coordinates with, the intergovernmental review letters greeting and address specify the agency and position, for this reason. TVA consulted with the following Federally recognized Indian tribes:

Muscogee (Creek) Nation of Oklahoma  
 Chickasaw Nation  
 Cherokee Nation of Oklahoma  
 Choctaw Nation of Oklahoma  
 Seminole Nation of Oklahoma  
 Alabama-Quassarte Tribal Town  
 Eastern Band of Cherokee Indians  
 Jena Band of Choctaw Indians  
 United Keetoowah Band  
 Kialegee Tribal Town  
 Poarch Band of Creek Indians  
 Seminole Indian Tribe  
 Thlopthlocco Tribal Town

TVA received responses from three of these tribes. Documentation of this consultation has been added to the Final EA. TVA made a good faith effort to identify and then consult with the federally recognized Indian tribes, consistent with its responsibilities under the NHPA. The Mowa Band of Choctaw is a state-recognized Indian tribe. No comments were received on the draft EA from the Mowa Band of Choctaw.

### **13. Solid Waste Disposal**

- The EA many times states that there will be no "impact" to the 91 acres of wilderness and wetlands. The proposed 50 boat slips and 200 campsites will completely stress the current local resources available and the proposed plan has no accommodations for the increase ....trash pickup.... (**Comment by:** *Susan Roesse*)

**TVA Response:** The applicant plans to use local solid waste collection services to manage and dispose of all solid waste. As indicated in the EA, waste collection is available from the county and there is adequate landfill space in the region.

### **14. Visual Resources**

- I know how much I love and enjoy the benefits of the scenery of this area (including, in addition to the natural scenic beauty, looking at attractive residential developments and boat-gazing at Bay Hill and Joe Wheeler State Park Marinas) and consider myself extremely blessed and luck to be able to live close enough to enjoy the scenic

and recreational benefits as often as I do. The proposed marina would open the opportunity for other regional residents to similarly enjoy the natural resources and recreational opportunities afforded by Wheeler Reservoir, I am all for that! Perhaps some restrictions on tree/vegetation removal and impacts could be associated with the easement to help preserve the visual beauty of riparian habitat on the site; this could be done in conjunction with the plans for a nature trail and campground on the marina grounds. **(Comment by: Atkinson, Anne L.)**

**TVA Response:** TVA has committed to work with the applicant through the ongoing phases of design development to incorporate development practices which would minimize potential impacts to the existing scenic value. These development practices would address designs for all potential site amenities including campgrounds and trails. TVA will require 50-foot riparian buffers along the stream drainages and the shoreline.

- It is unfair to deprive local residents and visitors of their last bit of natural scenic beauty that provides a recreational and wildlife habitat area for all to enjoy. Riparian buffers are needed for health of the river and for people who understand and appreciate natural aesthetics and processes. This is located in an already fragmented area - no more fragmentation in the name of private development please. **(Comment by: Nancy Muse)**
- If you have not seen first hand this piece of property which Bubba Doss wished to destroy, you have missed seeing a true piece of God's handiwork. To wreck this beautiful area would be sinful. **(Comment by: Catherine Tackett)**
- It is sad to envision the river's edge without beautiful unspoiled scenic vistas. **(Comment by: Nancy Muse)**
- I recently walked into the proposed site just to look around. It is simple beautiful. Why would anyone want to destroy the beauty of this place all the wildlife and animals surrounding it is astounding. The trees and plant life here are more than pleasing to the eye. **(Comment by: Troy Barnett)**
- Tennessee, Elk River, Shorelines Overdeveloped Already: Already, the Tennessee River and Elk River have degraded shoreline to residential over-development and polluting corporations like Solutia, Amoco Chemicals and International Paper. The proposed development in this area would destroy a scenic area. **(Comment by: Lamar Marshall, Wild South)**

**TVA Response:** TVA assessed the scenic value of each parcel adjoining Wheeler Reservoir in 1995. Approximately 152 parcels (75 percent of all parcels evaluated) were allocated to visual resource management (127 parcels or 63 percent) or visual resource protection (25 parcels or 12 percent). The nearest parcels allocated for visual resource management /visual resource protection lie immediately upstream at parcel 22, and across reservoir to the east approximately one half mile at parcel 24. This data suggests that a large percentage of the lands surrounding Wheeler Reservoir exhibit an inherent scenic value which TVA has committed to manage and protect based on the Scenic Value Criteria (see Appendix C). This data from the 1995 plan further suggests that fragmentation of the lands which exhibit a high scenic value is not

occurring and would not likely occur within the life cycle of Wheeler Reservoir Land Management Plan while existing allocations and current management objectives remain in place.

- In addition, RV parks are tacky. They do not promote the scenic beauty of the area. There are many ways to encourage revenue in natural areas without destroying 91 acres of forest; an RV park is not one of them. (**Comment by:** *Kathleen Marshall*)
- The natural beauty of the area cannot be restored once it is taken away. (**Comment by:** *Susan Phelan*)
- Disruption of the natural scenic environment. (**Comment by:** *Sharon Robinson*)
- The scenic beauty of this natural area will be lost forever under such high-impact use, or misuse. (**Comment by:** *Wild South - Lamar Marshall*)
- The intangible and priceless values of natural beauty and solitude would be lost forever. (**Comment by:** *Janice Barrett*)

**TVA Response:** These comments have been reviewed and noted.

- I also have enclosed a picture of the beautiful foliage that Mr. Doss plans to destroy with his marina. (**Comment by:** *Catherine Tackett*)
- Who decides how much “consideration” would be given to protection of the “natural beauty?” Given the paucity of detail in the EA, as now written, it would appear that the decision as to how much forest to clear depends on how much and what kind of “consideration” the developer would give to this matter. “[C]onsideration” of this sort offers no assurance to TVA, to the public, or to any other interest--other than the developer--as to how much of the 91 acres of “100 percent forested” land (page 9, Section 3.1.1) in Tract XWR-21PT would remain in forest cover upon completion of the proposed project. Nor is there any consolation in the commitment of TVA (Page 37, Section 3.13) to “...provide the applicant with visual management practices to incorporate in the final design, which will be subject to TVA approval.” It is abundantly clear, given the paucity of detail in the EA, that there is no “final design” for this project. Although details of the initial shoreline development features are provided in the EA, the additional features of the proposed Phases 2 through 5 are only conceptually sketched in this document. With respect to these features, the EA provides, at best, the opportunity to review and comment upon a development concept, not a development plan. Absent the details of these additional developmental features, including their locations and the extent of forest alteration required for each, the reader of this EA has no reasonable basis on which to anticipate and responsibly comment upon the environmental impacts of TVA’s “preferred alternative” (**Comment by:** *John Crowder*)

**TVA Response:** The visual resource impact analysis evaluated the extent and magnitude of potential changes in the visual environment that could result from the proposed actions. The objectives of this analysis were to identify:

- The scenic and aesthetic character of the existing landscape

- The degree of discernible contrast between the proposed action and the existing landscape
- The location and sensitivity levels of viewpoints available to the public
- The visibility of the proposed action from the public viewpoints
- Any potential cumulative changes to the visual landscape

This impact analysis was conducted using a methodology adapted from the US Forest Service's Scenery Management System (U.S. Forest Service 1995). A copy of TVA's Scenic Value Criteria is included in (Appendix C). The proposed project area comprises 91 acres. Information provided by the applicant indicates that approximately 30 acres of forestland would be cleared through development of phase one through four and approximately 10 acres of forestland would be cleared through development of phase five. Approximately 51 acres, or 56 percent of the forestland would remain and approximately 40 acres or 45 percent of the forestland would be cleared for development.

- Mr. Doss wants to put up billboards and signs to advertise. What about our scenic beauty? (**Comment by:** *Robin Burchfield*)

**TVA Response:** Placement of signs on TVA land could be considered by the watershed team if the placement would not adversely affect the public's use of the site, and the sign would not conflict with allocated land uses. Any signage proposed for location on TVA land would be sited on land that is part of an existing operation and would be made of materials and colors which are acceptable to TVA. Neon signs are not acceptable and no signs would be attached to trees. The overall size of the sign would be determined on a case-by-case basis, but generally would not exceed 32 square feet. The applicant could choose to purchase advertising space on existing billboards, or to erect new ones on private property consistent with applicable local regulations.

- **Direct and Indirect Impacts on the Environment**

"NEPA imposes procedural requirements designed to force agencies to take a 'hard look' at [the] environmental consequences" of their actions. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9<sup>th</sup> Cir. 2003). "This includes considering all foreseeable direct and indirect impacts. *Id.* See also 40 C.F.R. § 1508.25 (c).

This EA fails to consider a wide range of foreseeable direct and indirect impacts on the area's resources. In addition, many of your discussions on direct and indirect impacts are contradictory and inconsistent with past findings. You must correct these and other deficiencies and provide a thorough and well-reasoned discussion of all direct, indirect and reasonably foreseeable environmental impacts.

Your discussion on the impacts to visual resources is inadequate. First, you fail to provide a reasonable description of the entire project and its impacts. The applicant is proposing to build a five-phase, multi-use development that includes access and secondary roads, a marina, 200 RV sites, campgrounds, office, storage and retail buildings, a restaurant, bathhouses, hiking trails, playgrounds and parking lots. Rather than specifically addressing the direct, indirect and cumulative visual

impacts of these structures, you summarize the potential impacts in the vaguest of terms:

“Construction activity associated with Phase 1 of the development would be visible to recreational lake users and shoreline residents from within the foreground...views of proposed structures and water-use facilities, such as the incremental additions to the marina would increase to the middleground viewing distance...” EA at 12.

These and other statements fail to provide a detailed account of the potential impacts this development will have on the surrounding community. You must analyze the visual impacts each of the five phases will have on the area and you must base your discussions on actual data (such as blueprints and diagrams) rather than mere conjecture. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** The EA provides a description of the various phases of the proposed development. This phased development approach was illustrated graphically in Appendix A of the EA. Impacts for all five phases were assessed based on the conceptual development plan and a mass/void comparison using the structure footprints, their positions relative to the shoreline and adjacent property lines, and their positions relative to other structures planned within the development. Review of the conceptual plan provides a realistic assessment of the visual impacts because it is representative of the types of facilities that will be allowed by TVA in granting the easement and approval of the Section 26a request.

TVA assesses impacts to existing scenic resources using a methodology which measures the sensitivity (the level of scenic importance), and the view distance. This is not vague because the viewshed of specific subdivisions and the recreating public in the area were considered. Specifically, Tract 21 may be viewed from the reservoir by recreational lake users and by residents who live along residentially developed shoreline areas of Hidden Valley Shores, Elk River View, The Pointe, Pinedale Homesites, Twin Rivers, Poplar Springs Branch, and Dell’s Vista Shores. The frequency and duration of available views vary between these two primary constituent groups. Shoreline residents would have more frequent views of a longer duration; recreational lake users would have varying views based on seasonal variations in the use patterns within that section of Elk River. In both constituent groups the concern for scenic quality are generally high. As analyzed in the EA, the visual affects of campground and marina facilities would be minimized of through the use of visual management practices.

Your statements are also inconsistent with the evidence that you do provide. For instance, you state that “[t]he discernable increase in the number of vehicles and water vessels would remain in context with the surrounding landscape character.” EA at 21. What landscape character are you referring to? (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** Landscape character refers to the overall visual and cultural impression of landscape attributes which give a landscape identity or sense of place. The existing landscape character within this

section of the Elk River is comprised of residential development along the shoreline interspersed with areas of undisturbed shoreline. The area surrounding Elk River Mile 2.0 currently experiences moderate watercraft traffic. User groups were determined to be those with private water use facilities in the vicinity, those who access the river at launching ramps located in the vicinity, those who use this section of the Elk River as a destination for water based recreation, or those whose use patterns are based upon a combination of the three.

Vehicular traffic data is currently not available for Hooie Lane or Barnett Road, which provide residents access to Barnett Landing to the south and US Highway 72 to the north. At the nearest point where traffic data is collected by the state of Alabama (the intersection of Hooie Lane and US Highway 72), information suggests that the number of vehicles per day is presently over 10,000. The data supplied in section 3.12.1, Roads and Traffic, indicates an increase in the number of vehicles traveling Hooie Lane and Barnett road by approximately 50% during peak periods of operation. This increase, although discernable, would not significantly affect visual resources along either of the two local roadways which make up Lauderdale County Road 77 because of the proximity of US Highway 72, a heavily traveled highway, and because traffic would be dispersed throughout the day.

The surrounding area remains in a natural state and is largely undeveloped. How will a discernable increase in automobiles, RVs, campers, boats, personal watercraft and other vessels in the area be consistent with this natural landscape? (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** The surrounding area includes seven residential developments with shoreline access and private water use facilities. Within the first five miles of the Elk River embayment, there are approximately 10.31 miles of shoreline along the right bank. There are approximately 7.86 miles of this shoreline which front existing residential development. There are approximately 175 water use facilities permitted within this 7.86 miles of shoreline which comprises 76% of the entire right bank shoreline within the first five Elk River miles.

There are approximately 7.8 miles of shoreline along the left bank within the first five miles of the Elk River embayment. There are approximately 1.11 miles of this shoreline along the left bank which front existing residential development. There are approximately 2 water use facilities permitted within this 1.11 miles of shoreline which comprises 14% of the entire left bank shoreline within the first five nautical miles.

These shoreline residential developments along the right and left banks are in varying stages of completion ranging from 61% to 96% total build-out. Given this level of development in the surrounding area, the increase in the use of automobile, RVs, campers, boats, recreational water craft and other vessels will not be at variance with the general landscape.

You then conclude:

“the construction of resort amenities would potentially result in an adverse impact on the existing visual resources. However, given the current land allocation, the concept of a ‘natural’ theme for this proposed development, and incorporation of best practices to meet visual management objectives, the impacts to visual resources associated with the proposed action would be insignificant.” EA at 21. Your conclusion ignores the size and scope of this development. Irrespective of the current land allocation, this 91-acre tract has forever remained in a natural state. However, once this project is completed, most, if not all, of this land will lose its natural resources and characteristics. Therefore, you must analyze the resulting impact not from the perspective of what this land is allocated for but in view of how the natural landscape will change as a result of this project. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** In the Wheeler Reservoir Plan, the 91 acre tract was allocated to commercial recreation and visual resource management based on data collected by resource specialists and public input. This allocation was determined to best maximize the resources present and balance competing demands for shoreline property. It is noted in the Plan that approximately one half of the tract is comprised of planted loblolly pine, which would indicate substantial human alteration had occurred in the past and that the tract has not forever remained in a natural state. Human alterations of the tract as well as the absence of sensitive resources were among the factors that led to the allocation of the tract for commercial recreation. The incorporation of context sensitive design practices for visual management and the design of the resort based on a natural theme will mitigate the visual impacts. Commitments to minimize impacts to visual resources include minimizing the height of structures (no more than 40 feet) to prevent protrusion above the tree line, requiring land-based structures or facilities constructed within 250 feet of the shoreline and all water-use facilities to be analogous in color to the surrounding environment, and requiring lighting styles with full cut-off optics in order to minimize light trespass and glare.

Furthermore, your reliance on design themes in support of your “no significance” finding is misplaced and unsupported in the record. You refer to the concept of a “natural theme,” but nowhere in the EA do you define the concept. How is a commercial marina consistent with a “natural theme?” Even assuming that a marina can have a natural theme, the applicant’s proposal makes no mention of a “natural” theme for this development. In fact, there is not a single blueprint or diagram evidencing the planned architecture for this development. Without these plans, you cannot accurately say that this project will follow a “natural theme.” However, even if the proposed construction follows a “natural theme,” any new development on this site will invariably change the visual appearance of the area. Considering that the surrounding area is largely unimproved and undeveloped, even a giant tree-house would change the visual landscape of the region. Therefore, it is imperative that you require the applicant to provide architectural plans and/or models and closely examine these plans before concluding that the development will have an “insignificant” visual impact on the surrounding area and local community. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** The maintenance of the 50-foot managed vegetative shoreline and wetland buffers, and avoidance of the wetland areas are consistent with the natural theme of the resort. The retention of vegetation in portions of the footprint area would also add to the natural theme of the resort. Finally, through context sensitive design practices for visual management such as minimizing the height of structures (40 feet) to prevent protrusion above the tree line, requiring land-based structures or facilities constructed within 250 feet of the shoreline and all water-use facilities to be analogous in color to the surrounding environment, and requiring lighting styles with full cut-off optics in order to minimize light trespass and glare, the proposed development would be visually compatible with the remaining natural landscape.

Lastly, you need to include a much more thorough and detailed discussion of the mitigation measures you intend to implement for this project. It is unclear whether and to what extent the applicant is required to follow certain BMPs in its design plans and construction practices. While you provide a few general examples of BMPs that TVA would require from the applicant (height and color restrictions) you only entertain the possibility of requiring additional BMPs (such as lighting restrictions to reduce trespass and glare). A more thorough analysis of these mitigation measures is needed and you must incorporate these measures in a mitigation plan that the applicant is required to follow. (**Comments by:** Jason Totoiu and Sandra S. Nichols, Wild Law)

**TVA Response:** In the mitigation measure section, there are specific commitments the applicant is required to follow, such as avoiding wetlands and maintaining shoreline buffer zones. As to mitigation of visual impacts it would be premature to list measures with specificity without the benefit of a final design plan. Accordingly, TVA has provided the applicant best practices for visual management to be included in the project design, and will ensure that these practices are incorporated into the final design by requiring that the final design plan be subject to TVA approval. Commitments included in the FEA to minimize impacts to visual resources include minimizing the height of structures (no more than 40 feet) to prevent protrusion above the tree line, requiring land-based structures or facilities constructed within 250 feet of the shoreline and all water-use facilities to be analogous in color to the surrounding environment, and requiring lighting styles with full cut-off optics in order to minimize light trespass and glare.

## **15. Noise**

- For more than 30 years my family and I have been permanent residents at mile marker 10 on Elk River. We owned the river since there was little river traffic. There were no bassboats as we know them today. Jet skis were practically nonexistent. Pontoons could be counted on one hand. While DDT no longer poses a threat to the waterfowl and water animals, the water that they make their home is becoming more and more polluted by the emissions from the ever increasing river traffic. The once serene river now suffers from noise pollution. There are now bass boats and jet skis that can fly over these waters faster than any duck. There are dozens of pontoons

and runabouts. The river is once again faced with a different dilemma -- heavy river traffic and its polluting emissions and noise. (**Comment by:** *Steve Copeland*)

**TVA Response:** Analysis shows that the potential increase in noise on the river from the proposed resort and marina will be insignificant based on the current river usage.

- In addition, the applicant should build a "sound break" between the entrance to the park and the residence next to it. (**Comment by:** *Bob Freeman*)

**TVA Response:** A "sound break" or highway noise barrier type of structure at the resort entrance would have little effect on reducing the traffic noise at the adjacent residence. Highway noise barriers are effective at reducing high frequency noise from tire of vehicles traveling at relatively high speeds, about 40 miles per hour and greater. As vehicles enter the resort they will be traveling at low speeds and where tire noise is not heard. The engine, transmission, and exhaust noise from these low speed vehicles will not be attenuated effectively by a noise barrier.

- I must object to the data TVA used to count boats and assess the traffic on Elk River. TVA counted boats on a weekend when gas topped \$3.00 a gallon. A lot of people were protesting gas prices and stayed home. I live on Elk River and it was an extremely low turnout. It was so unusually quiet. The jet skis were silent for a change. The entire river traffic report should be disregarded because it is totally unreliable. (**Comment by:** *Bob Freeman*)

**TVA Response:** The commenter incorrectly assessed the effect of a potentially low boat count on noise. A low boat count would increase the potential impact of the added boat traffic since noise impact is inversely related to the base boat count. Because the incremental impact of noise added to a quiet zone is more disruptive than the incremental impact of the same noise added to an area with a higher background noise, monitoring on a low noise day would estimate a higher level of impact. Further, there were 26 separate, documented jet-ski events during the boat count.

- Mr. Doss (who does not live in this community) has no right to disturb our or our neighbors' right to a peaceful existence by creating traffic and noise congestion in our neighborhood which is the direct path to the proposed site. (**Comment by:** *Mabel, Rodney, and Emily Smartt*)

**TVA Response:** The worst-case, modeled noise increase for a typical weekday peak hour would be just under 3 decibels (dB), for Saturday just under 2 dB, and for Sunday it would be 4.5 dB. Sunday is largest increase because of the largest projected traffic increase, from 57 to 158 vehicles per hour during the peak hour. With the increase the projected one-hour equivalent sound level at a residence 100 feet from the road is 45 dB, about the same level as a quiet office. An increase of 2 to 3 dB is considered barely detectable. The 4.5 dB increase on Sunday would be detectable more from the increase traffic volume than from the increase in sound level. A typical house would attenuate sound by about 24 dB with windows closed and about 12 dB with windows open. In the summer during peak resort usage, most people would have their air conditioning on with the

windows closed. Also, this increase is for the day-time peak hour, one day a week, for the busiest holiday weekends.

- I am outraged that TVA is considering leasing 91 acres of land on the Elk River to a private developer for the construction of a marina and RV Park. We do not need another polluting marina (...., noise from powerboats, ....) or any other high-impact commercial development on our rivers. (**Comment by:** *Janice Barrett*)

**TVA Response:** The analysis shows that the potential impact from power boat noise will not be significant.

## 16. **Security Concerns**

- I believe the environmental effects of this project could be catastrophic to our area. I also believe the issues of security for our community both on land and water have not been properly addressed. (**Comment by:** *Barnett, Kerri*)
- The applicant has an inadequate notion of security. The gate will be locked at night? I suppose this means that campers will have keys, right? How long will it be before the site is in effect an open site? Or what is to prevent miscreants (meth cooks) from just renting a campsite? The locked gate is not an adequate response to the need for security. Nor is reliance on infrequent patrol by Rogersville or Lauderdale police officers. (**Comment by:** *unknown*)
- Doss has no plans for any security whatsoever. He will have no guards or patrols such as used by the local State Park on First Creek. There are over 200 homes within 2 or 3 miles of the TVA land. How can TVA even consider letting a private developer put in such a huge marina with all those campsites and cabins, WITHOUT ANY SECURITY AT ALL? HOW CAN TVA DO THIS? WOULD YOU WANT THIS NEXT TO YOUR HOME? (**Comment by:** *Bob Blanks*)
- Security at the resort is another ignored issue/aspect of this development. The assessment states that a "caretaker will be on site at all times during normal and seasonally extended business hours to supervise activities." There should be a caretaker/manager on this massive destructive development to provide security from the many problems that will be created for the homeowners and the surrounding community year round! Security for this massive development has not been reviewed or completely addressed by the developer or TVA. The community will be placed in an unsecure situation. (**Comment by:** *H. Genne Johnston*)
- Safety of our neighborhoods -Make the marina smaller and eliminate the campsites. Instead of campsites, which draw drug dealers and vagrants, increase the number of cabins. The entrance to the site must have a gated entrance with a full time guard. The park at First Creek has a gated entrance and officers on patrol. Joe Wheeler Park at Wheeler Dam has officers on patrol and an entrance close to the main office. Neither have residences close to the park. There must be a quiet time and security officers on patrol to enforce it. The entirety of TVA land must be encased with a security fence to make sure visitors stay inside the park and that they do not infringe on our neighborhoods. The fence should be at least 10 feet high and encase both parcel 21 and parcel 22. There must be a guard, full time, in and around the marina to watch for those impaired from alcohol and drugs. They must be kept off the river. Lauderdale County is a "Dry County", meaning that alcohol is prohibited where the project will be. Ample signs should be posted throughout the park that prohibit the use of alcohol and/or drugs. TVA Police and Rogersville Police should be required to

make routine visits, every hour on weekends and holidays, and arrest anyone who is found to have alcohol or drugs. In addition, the applicant should be required to monitor and report any instances of these abuses to TVA and local authorities. He should be fined anytime someone is found with alcohol or drugs on the premises. TVA should have a policy in place in the contract for alcohol and drug related offences on the premises. If there are a certain number of alcohol/drug related offences (to be determined in the contract), the applicant's easement should be voided. **(Comment by: Bob Freeman)**

- As to the Environmental Assessment and the numerous "insignificant impacts" in it, this project will have an extremely significant impact on the over 220 homes that will have to live within close proximity to the proposed development. In addition, the 51 homes located on Barnett Road will be significantly impacted. The homes that will be broken into when the applicant has to rent by the month in the off-season will be significantly impacted. The children that play along Barnett Road will be significantly impacted. The wildlife and wetlands will be significantly impacted. The people who succumb to drugs purchased from drug dealers that will predictably flock to this remote area will be significantly impacted. **(Comment by: Robert Freeman)**
- The children that play along Barnett Road will be significantly impacted. In addition, the 51 homes located on Barnett Road will be significantly impacted. The homes that will be broken into when the applicant has to rent by the month in the off-season will be significantly impacted. **(Comment by: Bob Freeman)**
- your assessment's consideration of social impacts - Your assessment is void of the true social impacts on this project, which is the increased threat to the security and safety of the adjacent property owners. My assessment of your Assessment's consideration of social impacts - Private camping areas have developed into nothing more than shanty towns where the private owners of the cabins and campsites get into financial trouble. In the off season, the price reduces, and in comes the migrant workers, vagrants, and generally undesirables. Drug activity turns the cabins and campsites into meth labs. Theft of property from local boathouses and homes increases. Your assessment does not acknowledge social impacts in your environmental assessment, which relegates people to last in the assessment's prioritizations. **(Comment by: Thomas Gary Wicks)**
- Security seems to be an issue that needs to be addressed prior to the lease agreement. How will Mr. Doss and TVA ensure the residents on both sides of the proposed development that crime will not increase in our neighborhoods? We all moved to our small town neighborhoods because it's quiet and peaceful, to enjoy the natural beauty and wildlife. Crime will increase, drugs will increase. **(Comment by: Robin Burchfield)**
- Animal do not appear to have damaged the area greatly. They don't usually throw out cans and paper and other such garbage. They do not drink alcohol, use drugs, make drugs, steal, etc. This is of course in contrast to humans who sometimes have been known to "hole up" at cabins at Joe Wheeler or hotels in Florence or camp sites along Elk River and make meth. I know that TVA says that the area will be patrolled, but the cabins at Joe Wheeler were too and the hotels in Florence, as well. People Just generally are not as nice as animals. **(Comment by: Helen Ball)**
- In addition it appears there will be no security provided which is almost unheard of in this century. If not for occupants, etc, - could be helpful to the lessee. **(Comment by: Mrs. R. Freeman)**

**TVA Response:** The property is only accessible through a private road connecting to Lauderdale County Road 77. The proposal requests permission to place a heavy gate capable of being locked at the entrance. The hours of operation would be posted and the gate would be closed after hours. Resort staff and customers will have access to the property after established business hours. Managers will be onsite during normal and seasonally extended business hours to supervise activities allowed at the site. The applicant must notify local law enforcement of illegal activity. This tract is located within the responding jurisdiction of Rogersville Police Department, Lauderdale County Sheriff and TVA Police. Rogersville Police Department and Lauderdale County Sheriff respond to emergency situations.

- Exhibit "A" page 10 . . . states: "The applicant will take the necessary precautions to prevent offensive or illegal activity on the site" . . . Comment: Since there is a 300 foot boundary between Tract 21 and Tract 22 the applicant should erect a security fence. The applicant plans for 75% of the campground sites to be available for long term. . . Therefore, it is possible for a large number of campers (including children) to be camping at the same time. These campers, especially children, would be roaming around the area, exploring and possibly gathering firewood from the neighboring Tract 22. The fence between Tract 21 and Tract 22 is necessary in order to protect the natural beauty of Tract 22. Tract 22 should not be allowed to become the "backyard" of the Elk River Resort. (**Comment by:** *Kenneth Hammond*)

**TVA Response:** Because undeveloped TVA property is generally available to the public for informal recreation and no sensitive resources are known to occur on Tract 22, TVA does not see the need to keep the public off this tract. Informal recreation is an acceptable interim use for tracts allocated to industrial development.

- There is not enough police protection on land now and adding such a development will put a strain on our law enforcement. (**Comment by:** *Robin Burchfield*)
- Security chapter # 3 page 33 of the Draft Environmental Assessment - Appears that security will rely on local and county law enforcement with TVA updated annually. Since TVA will maintain ownership of the property, will the TVA law enforcement continue to respond? (**Comment by:** *Joe Serocki*)

**TVA Response:** TVA Police will continue to respond to the area when notified by Rogersville Police Department and Lauderdale County Sheriff's Office.

- It is also worth noting that a failed, empty 'marina' with nice remote campsites will be an ideal location for criminal activity. This very year at the Joe Wheeler State Park a meta-amphetamine ("Meth") laboratory was discovered. And the park has full time personnel on site. I shudder to imagine what a prime opportunity an empty, unsupervised, failed marina would present for the entrepreneurs of this industry. One of the long-term consequences this project could well be the introduction of a type of criminal activity that this community is ill equipped and ill prepared for. (**Comment by:** *Eric Kelso*)

**TVA Response:** If approved, TVA will monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would

be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant's expense or leaving the facilities in place and obtaining another individual to continue operation of the property.

- The increase of campfires will mean residents will be more liable to their homes burning. There are no fire hydrants located on Barnett Rd. and fire insurance is rated the highest now. There is a new fire station but it is farther away than the one in town. We do not need more chances of irresponsible fires starting in our neighborhoods. (**Comment by:** *Robin Burchfield*)

**TVA Response:** As noted in the scoping comments in the DEA, the Fire Chief for the Town of Rogersville and the Rogersville Volunteer Fire Department commented that the "fire department recently constructed a new fire station very close to this proposed project. One of the reasons for building this new station was for future growth such as the development Mr. Doss is proposing to build. This project will now be adequately covered for fire protection by our new #2 fire station." The DEA also stated that the applicant would take all reasonable precautions to prevent and suppress forest, grass and other fires by requiring campfires to be restricted to designated areas within fire rings.

## 17. **Property Access/Property Values**

- Overview page 2 of the Business Proposal - States "This land currently has access by way of Lakeview Drive...". This appears to ignore Mr. Bill Wright's ownership of property between Lakeview Dr and the TVA land in question. Has this proposal been reviewed for content accuracy? (**Comment by:** *Joe Serocki*)

**TVA Response:** The general public can not access Tract 21 from Lakeview Drive. The developer of Hidden Valley Shores Subdivision retained a five foot strip of property between Lakeview Drive and Tract 21. However, the applicant has secured property between Lauderdale County Road 77 and Tract 21 for public access to and from the proposal site. Currently, Lakeview Drive is not intended a point of access to the proposal site.

- After reading and rereading the environmental impact assessment on the proposed project I am even more concerned about this proposal than I was prior to seeing it. There is in this assessment a built in bias. And bias that overlooks an issue of tremendous risk. This proposal is based upon the viewpoint that this project will be commercially successful. This is hardly a foregone conclusion. This impact statement does absolutely nothing to assess the impacts if this project fails. I do understand that this assessment was focused primarily on just environmental issues. However for many of the residents of this area the environmental issues are secondary to the risks to the property values of the residents or the socioeconomic impacts of an incomplete or empty marina. (**Comment by:** *Eric Kelso*)

**TVA Response:** TVA reviewed the financial information and applicant's proposal and believes the project will be successful because there is a demand for this kind of facility. In general, a well-designed and well-run resort, campground, and marina is not likely to decrease property values and may even increase them. If approved, the facilities would remain under the control of the

owner/operator, who would be required to adhere to local laws and regulations as well as the terms of the agreement with TVA. TVA would monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant's expense or leaving the facilities in place and obtaining another individual to continue operation of the property. If the business is sold, the new owner must comply with the conditions set forth by the Environmental Assessment and Easement Instrument.

- On Page 12 of his proposal to lease, Mr. Doss states, "The value of making this land available to the public should be considered a large amount of compensation to TVA." I disagree with this statement. The public already has free access to this property. If the resort is built, access will be restricted to paying customers. Public access is currently available several ways: Walking from Barnett landing, via TVA Tract No. 22, Walking from Lakeview Drive, By boat. (**Comment by:** *Charles Rose*)

**TVA Response:** TVA would require that all facilities and services must be available to all members of the general public without discrimination or distinction because of race, color, national origin, age or handicap. However, the general public can not access Tract 21 from Lakeview Drive. The developer of Hidden Valley Shores Subdivision retained a five foot strip of property between Lakeview Drive and Tract 21.

## **18. Land Use**

- The beauty of the last undeveloped area from Elk River bridge to the mouth of Elk River will have been destroyed for what, another doomed venture? (**Comment by:** *Helen Ball*)
- Every chunk of wooded natural landscape along the river that is developed is yet another very significant chunk gone from what should be protected as a greenway along the river. Privately owned land is already unprotected. TVA's priority should be that of steward of the last natural areas along the river that remain. If developers want land to develop let them buy it from private land owners at a fair market price!!! (**Comment by:** *Nancy Muse*)
- My concern is about the last undeveloped parcel on Lauderdale Co. side, the Marina proposed site. (**Comment by:** *Robin Burchfield*)
- This site is home to quite a number of wild life. Deer, birds, squirrel, raccoon, coyote, etc, frequent the area. The bald eagle really does fly over the area. I know that TVA says there are plenty of other areas around that are similar to serve as the habitat for animals such as these. But, as more and more land is developed, there will be less and less. There is already less directly across the river from this proposed site at the site that is being developed on the Limestone County side of Elk River. One has to only look at a map of the Rogersville area to note that on the Lauderdale County side of Elk River from the Elk River bridge to the mouth of Elk

River there is only one undeveloped strip of land. Now TVA wants to destroy this last vestige of undeveloped land. (**Comment by:** *Helen Ball*)

- Several TVA employees from Tennessee pointed out that a large percentage of TVA land is not "in use". We had that thrown up to us numerous times. I do not know the correct figures, but it seems that TVA has a relatively small percentage of its property being used for commercial purposes and they are trying to increase those percentages. If this development is approved, Elk River will be 100% developed, except for the small parcel of "Commercial Industrial" land adjacent to the proposed marina. We feel like that will be next, along with all the land around it. That's the only thing that makes sense as it is apparent to us that the marina, by itself, will not be profitable. With so many acres of unused land, how can TVA justify forcing our area into 100% development, especially with local people so oppo I also firmly believe that the opposition to the proposed marina would have been much greater if we were not already beaten down. (**Comment by:** *Robert Freeman*)
- The Little Cedar Mountain (LCM) proposal will be made private upon completion of the public auction, which is why TVA required exchanged properties as mitigation for the LCM Proposal. Unlike LCM, this property will be developed for public commercial recreation. Why not sell the property to the developer and apply the money to TVA's debt? Why not donate the land back to the original owner's descendants? Why let any one individual or small group have the rights to public land that all Tenn Valley residents pay taxes and other money to purchase or upkeep? (**Comment by:** *unknown*)

**TVA Response:** The Wheeler Reservoir Land Management Plan (Plan) allocated this tract for Commercial Recreation and Visual Management in 1995. If a term easement is granted, TVA would receive fair market value compensation on an annual basis from the applicant for use of TVA property.

- In determining land use, it can be hoped the TVA considers the overall benefits to the general public, not just a handful of local residents. This proposed marina project could provide many improvements to the area for many years to come and will help in the growth and stabilization of our communities. (**Comment by:** *Fritz and Jane Schmidt*)
- No wonder that people are becoming so anti- TVA. I feel there are many people who would like the same opportunity. (**Comment by:** *Mrs. R. Freeman*)
- The integrity and beauty of so many of our great places has been destroyed by overzealous development. The legacy that we have to leave to our children is one of big box stores, sprawl, and smog where once there was a creek, a great old tree, a connection to place. We can see this so clearly when we look at our cities. With this retrospect, many of the most renowned community and regional planners are now working to preserve outlying green spaces and limit development. The idea being, why should we destroy what little we have left. (**Comment by:** *Ariana Tipper*)

**TVA Response:** These comments have been reviewed and noted.

- I note in the deed to my property, (Lot 26A and West ½ of Lot 26) Pinedale Homesites Subdivision that the county allowed the ground floor area of the main structure, exclusive of porches and garages, shall not be less than 900 ft<sup>2</sup>. Many of

the houses built since this document (July 20, 1960) are the equivalent of the one I am building presently (3600 ft<sup>2</sup>). My question is whether these requirements and subsequent developments are consistent with TVA requirements filed July 30, 1958. More specifically I would like to know whether the TVA has considered the conditions that the proposed Elk River Resort may impose on the existing Pinedale Homesites development. **(Comment by: Leonard E. Reid)**

**TVA Response:** TVA sold tract XWR442, also known as Pinedale Homesites Subdivision, as residential access with deeded ingress and egress rights. TVA placed no restriction on the type or size of dwellings located on private property. The proposal site is secluded, and the applicant has secured property between Lauderdale County Road 77 and Tract 21 for public access to and from the proposal site. Representatives from area financial institutions believe that based on their experience with other marinas, property values could increase in the surrounding areas as some people prefer to locate near the convenience of a marina. However, whether actual development of the surrounding area takes place would depend on several independent actions taken by third parties that are well beyond TVA's control. Overall, TVA does not believe that property values would be adversely affected.

- Highest and Best Use of Tract XWR-21PT: The highest and best use and net public benefits is NOT to destroy a vanishing American resource - a scenic, natural, native public forest - and build a commercial development. This property has intrinsic values that will be destroyed if TVA violates the Public Trust Doctrine. This land has far more value as a natural area for all Americans and especially for our children and childrens' children. Cities are sprawling across the land and native species are vanishing for lack of natural habitat. Conservationists are constantly pointing out that Alabama's biodiversity and the viability of many species is threatened by development and urban sprawl. TVA is contributing to the "net loss" of wildlife habitat in Alabama by promoting paving, deforestation, erosion and sedimentation of streams and lakes. **(Comment by: Lamar Marshall, Wild South)**
- "Bubba" Doss's bid to pursue his corporate dream of profiting from public property is nothing less than "nursing the public teat" for private gain. The TVA lease price to Mr. Doss is pittance of the real value. The leasing of public property worth millions of dollars for few thousand dollars a year is corporate welfare at public expense. Private property is for private enterprise. TVA should not lease or sell any public forests to private entrepreneurs at the expense of the public and the wildlife it will displace. **(Comment by: Lamar Marshall, Wild South)**
- In 1959, my late husband and I purchased a 14-acre plot on the Tennessee, which at the time was true wilderness. We cleared a spot and built a little hideway cabin that I still own. At the time, we agreed that we would not sell the adjacent property, and through the years, we have resisted many lucrative offers. When we began going there, much of the wildlife that had formerly been in the area, was no where in evidence. But we were patient, and slowly we began to see birds and animals that we had not seen before, raccoons, blue herons, foxes, deer, etc. Last year, twice I saw a bald eagle. Heretofore, we citizens of the area have considered TVA a partner in our attempts to conserve our environment. Now, however, TVA is considering granting a 30-year lease to a commercial entity whose very presence will destroy the patient work of decades. I am totally shocked that TVA would even

consider such a thing. We are losing our wild areas fast enough. (**Comment by:** *Milly Caudle*)

- Why cannot TVA make it a policy to set aside areas such as this for future generations? These generations will probably never get to see a tulip poplar so tall that the leaves are mere specks. Leave a few areas filled with oxygenating trees! (**Comment by:** *Helen Ball*)
- I question the wisdom of leasing TVA property for private business ventures, when current rules do not allow adjacent land owners full access to the water, except in areas zoned residential. (**Comment by:** *Jerry Howard*)

**TVA Response:** Tract 21 was allocated for future commercial recreation development in the Wheeler Reservoir Land Management Plan. This proposal is consistent with that allocation.

- We don't think a public entity like TVA has the right to take public land and turn it over for private development. I had to buy mine at an auction. (**Comment by:** *Ms. Bill Wright, court reporter comments*)
- I remember the TVA signs "this is your land" - what happened to it? This land was practically taken from my great grandfather for a little of nothing and now you want to ruin it and make me pay to use what should not have been taken to begin with. I am totally against the whole thing. (**Comment by:** *Troy Barnett*)
- We have lived on Elk River near the proposed Resort for 30 years. we strongly oppose the Resort Development --- especially since the Joe Wheeler State Resort and Bay Hill Marina is within five miles. To destroy nature in order to accommodate "Bubba" Doss III is unthinkable. We, as many area residents, feel the deal was made with Doss before the public was notified. Most of the residents feel The Feb. 16th meeting is another transparent attempt by T.V.A. to justify a decision already made. (**Comment by:** *Joe and Ann Anglin*)

**TVA Response:** TVA manages lands for multiple public benefits. To reach sound land use decisions, TVA places high value on public opinions about specific land use proposals. Public participation is a vital part of the TVA land use decision-making process.

- **Public Lands in Alabama Diminishing:** There is very little public land in Alabama. The total public lands in Alabama represent about 5% of Alabama's 21 million acres of timberland. Forested public acreage is even less. The population is growing rapidly and natural areas are becoming scarcer. The Bush Administration is currently selling off millions of acres of public national forests, over public outcry. Over 3000 acres of Alabama National Forests are on the chopping block for development. TVA should not contribute to diminishing public natural areas. The very idea of developing one of the last wild, natural areas of Alabama's public lands is absurd. We have too much development already. Shorelines are natural corridors for wildlife. Fragmentation and impediment of wildlife corridors has had an adverse effect on the viability of wildlife population. TVA should practice stewardship of the land, not the destruction of public properties. Alabama needs more public lands in order to protect its native biodiversity. The destruction of this area by development

would further impact wildlife habitat in Alabama by reducing the net acreage available. **(Comment by: Lamar Marshall, Wild South)**

**TVA Response:** TVA owns approximately 1,760 acres of property along the Elk River on Wheeler Reservoir. Tract XWR21PT contains approximately 91 acres representing approximately 5 percent of all TVA-owned property along the Elk River and less than one percent on Wheeler Reservoir. The Elk River Resort proposal "footprint" and anticipated clearing for recreational purposes are approximately 80 and 40 acres, respectively. Further, the proposal would be consistent with the longstanding allocation of this tract for commercial recreation.

- The land behind the TVA land would most likely become available in years to come...then it would be developed putting a lot of money in Mr. Doss' pocket should he purchase it plus put more people on the Elk River along with Christopher's lot/home buyers. **(Comment by: Sharon Bridges)**

**TVA Response:** TVA is not aware of any pending subdivisions on the neighboring agricultural lands.

- We understand that the officials of Rogersville are for this endeavor. How about the people who live on the road to the resort? Has anyone bothered to talk with them? **(Comment by: Paul Hargrove)**

**TVA Response:** TVA provided ample opportunities to the public, including people living on the road to the resort, to comment on the proposal. After TVA received a formal request from the applicant, TVA solicited public input by publishing a public notice in the local newspaper. Copies of the public notice were sent to local leaders as well as distributed in the community of the proposed marina/campground. Two newspapers published short articles which included information for submitting comments. TVA and the applicant also attended a community meeting about the proposal. On October 5, 2005, TVA mailed approximately 360 written notices for an open-house-style public meeting concerning the Draft Environmental Assessment at Lauderdale County High School, Rogersville, Alabama, on October 18, 2005. Additionally, the public had another opportunity to provide comments on the DEA, at an open house on February 9, 2006, also held at the Lauderdale County High School. Comments were received by TVA until February 16, 2006.

- This project should be built on private property, not our public land. The brochure pushing the Resort contains this statement "COME AND BE A PART OF NATURE AS OUR GUEST IN A RESORT WHERE THE PRESERVATION OF OUR NATURAL RESOURCES COMES FIRST!" **(Comment by: Lamar Marshall, Wild South)**
- No wonder that people are becoming so anti- TVA. I feel there are many people who would like the same opportunity. **(Comment by: Mrs. R. Freeman)**
- I did not have to have a marina built to do so. This will impact the environment and will go over like a lead balloon. Any one that has lived here can tell you that this venture will go under. **(Comment by: unsigned from Feb 9 2006 open house)**

- I recently walked into the proposed site just to look around. It is simple beautiful. Why would anyone want to destroy the beauty of this place all the wildlife and animals surrounding it is astounding. The trees and plant life here are more than pleasing to the eye. (**Comment by:** *Troy Barnett*)
- Private enterprise does not belong on public land. (**Comment by:** *Janice Barrett*)
- I urge TVA to stand by its stated commitment to environmental stewardship. That is the only way it will be of true service to the public. (**Comment by:** *Janice Barrett*)
- I think I can speak for most of the residents that have homes and cabins on the Elk. We do not understand why TVA has changed so much. Why are you letting Bubba Doss turn our area into a commercial fiasco? We also feel that Mr. Doss is not in this alone. Many people have stated that he has backing from someone else that has obtained land in the past from TVA. Please investigate this entire deal as completely as you possible can. (**Comment by:** *Paul Hargrove*)
- It is sad to see the current trends toward privatization of our public lands. It is easy to see that the political persuasion of the TVA board and future board of directors is tied into the Republican agenda which seeks to privatize everything. This dynamic is a conflict of interest and is perhaps the strongest reason that TVA is catering to those who profiteer off of public land. It is unfortunate that science is being upstaged by shortsighted, political backscratching at the cost of irreplaceable natural areas and the host of wildlife that depend on them for their existence. (**Comment by:** *Nancy Muse*)

**TVA Response:** Comment Noted.

- TVA would set a dangerous precedent by leasing public land for such a terrain-altering, polluting, private enterprise. (**Comment by:** *Janice Barrett*)
- I base my opposition on the dangerous precedent of turning over public owned land to private developers for these developers to turn a profit at public expense. Once the land is "developed", the damage can never be undone and the land never returned to its natural state. If developers want access to land, let them follow the rules of the free market and purchase it. I sincerely doubt if this Resort would be built if 90 acres of waterfront land had to be purchased at current market prices. The precedent set by this "giveaway" of public property would soon endanger every acre managed by TVA and owned by the public, as developers all over the Valley would soon be proposing other projects and TVA would have to turn over all its lands to anyone with any type of development proposal or face serious legal challenges. (**Comment by:** *Michael Ezell*)

**TVA Response:** This is not a precedent setting proposal. Currently, TVA has one campground located on TVA Property along Wheeler Reservoir and 11 campgrounds located on TVA Property through out the Valley.

The applicant will be required to remit to TVA either the easement's fair market value on an annual basis or five percent of his gross, whichever is greater.

- According to Terry Johnson (TVA spokes person) >80% of all feedback TVA has received has been against this project. I do not understand why this project is still being considered. This land could be used in other ways which would be more valuable. (**Comment by:** *Jay Copley*)

**TVA Response:** TVA manages lands for multiple public benefits. To reach sound land use decisions, TVA places high value on public opinions about specific land use proposals. Comments for and against the project, as well as the need for a marina facility in the lower Wheeler Reservoir region were considered by TVA in making a decision on this proposal.

- And, once the area adjoining the proposed site is let out by TVA to some industry for development, how many people will want to bring in their RV or camp by an industrial development? (**Comment by:** *Helen Ball*)

**TVA Response:** No one has requested use of this TVA land, nor is TVA aware of any potential requests.

- Adequate public notice of the proposal was not given. Many people who own properties on Elk River and Wheeler Lake live in Huntsville and there was no notice that I am aware of in the Huntsville newsmedia. (**Comment by:** *John L. Dumbacher*)

**TVA Response:** Public notice of TVA's proposed land action appeared in the *Florence Times Daily* on Sunday, June 26, 2005. It also ran the following Wednesday. Another local paper, *East Lauderdale News*, also ran the notice on Thursday, June 30, 2005. TVA also placed approximately 35 flyers for the initial public notice on mailboxes along the Hidden Valley Shores road and County Road 70. The comment period ran through July 29, 2005. TVA accepted comments through August 19, 2005. Another public notice was issued on August 26, 2005, announcing a public comment period through September 26, 2005. TVA issued a public notice announcing the availability of the draft for review and the scheduled public meeting to receive comments to be held on October 18, 2005. The notice appeared in the *Florence Times Daily* on October 5, 2005; in the *East Lauderdale County News* on October 6, 2005; and in the *Athens News Courier* on October 5, 2005. Postcards were mailed or emailed to 358 individuals to notify them of the open house, 20 of which were returned due to incorrect address. On October 18, 2005, TVA held a public meeting with an open house format at the Lauderdale County High School in Rogersville, Alabama. The comment period closed on November 7, 2005, but several comments were received during the following 2 weeks, which TVA took into consideration in preparing comment responses. The Draft Environmental Assessment was also available for review on the TVA website at: <http://www.tva.gov/environment/reports/elkriver>. On January 31, 2006, TVA issued a public notice announcing plans to hold another open house style public meeting on February 9, 2006 at the Lauderdale County High School in Rogersville, Alabama. The public had until February 16, 2006 to provide any additional comments on the Draft EA.

- While part of me would like to see some land held forever undeveloped in our area, as I consider the development I have observed...I realize reality dictates otherwise. Realistically, I think the tract in question will eventually be developed in such a way

[like Bay Hill] as to bring in a revenue stream to TVA. That being the case, I think a non-industrial use such as the proposed marina is a reasonable and desirable use for this land which will provide additional recreational access to residents of this region. I would love to see everyone work together to compromise and support the avenues to increased recreational access the proposed marina would provide. Instead of fighting this development, why not work to find common ground for balanced and responsible development of the proposed marina and associated recreational facilities. I feel that carefully managed development that balances retention of trees and vegetation to support riparian habitat and natural beauty while providing greater recreational access for the community is the optimal use for this land to provide the most benefit of these treasures to the greatest number in our community. **(Comment by: Atkinson, Anne L.)**

- It seems to be a shame to develop it in a manner that could turn into a dump, trashy trailer park and heaven for all types of unlawful activities. **(Comment by: unknown)**

**TVA Response:** Comment Noted. The applicant for the Elk River Resort proposal is asking TVA to grant a term easement over another tract of TVA property for commercial recreation purposes. The proposed action would provide additional recreational access and would include buffers and vegetation management to reduce impacts on the environment.

- **Direct and Indirect Impacts on the Environment**

“NEPA imposes procedural requirements designed to force agencies to take a ‘hard look’ at [the] environmental consequences” of their actions. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9<sup>th</sup> Cir. 2003). “This includes considering all foreseeable direct and indirect impacts. *Id.* See also 40 C.F.R. § 1508.25 (c).

This EA fails to consider a wide range of foreseeable direct and indirect impacts on the area’s resources. In addition, many of your discussions on direct and indirect impacts are contradictory and inconsistent with past findings. You must correct these and other deficiencies and provide a thorough and well-reasoned discussion of all direct, indirect and reasonably foreseeable environmental impacts.

You fail to address the indirect impact this development will have on growth and development patterns in the region. Under the CEQ regulations, an agency must consider the direct, indirect, and cumulative impacts on the environment when determining whether a federal action is “significant.” 40 C.F.R. §§ 1508.8, 1508.27(b).

An EA must analyze “indirect effects”, which:

“are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. 40 C.F.R. 1508.8(b) (emphasis added).

In *TOMAC v. Norton*, 240 F. Supp.2d 45, 50-52 (D.D.C. 2003), the Court held that the Bureau of Indian Affairs failed adequately to analyze the potential impacts of a casino upon local growth and development patterns. The Court determined that the assessment was lacking because (1) it did not address the “related affects on air and water and other natural systems, including ecosystems”, and (2) it did not support the finding that the Project would not have a significant impact. Specifically, the agency failed to address secondary growth as it pertained to impacts to groundwater, prime farmland, floodplains and stormwater run-off, wetlands and wildlife and vegetation. Additionally, it failed to explain how the increase in jobs, and the concurrent expansion in population due to new employees and their families, would not have a significant impact on a community of only 4,900. In order to ensure that the agency did not ignore any “arguably significant consequences,” the Court held the FONSI to be inadequate for its failure to address the Project’s “indirect growth inducing effects” related to wetlands, stormwater drainage, traffic, environmental contamination, cleanup, relocation of the complex, closure wells and septic tanks.

In *Friends of the Earth v. United States Army Corps of Eng’rs*, 109 F. Supp.2d 30, 43 (D.D.C. 2000) the Court held that an EIS was required for a series of shoreline casinos that would spur development, and rejected the Corps’ determination that the effects of shoreline casino development would be minimal, as there was no analysis to support the conclusion. The Court ruled that NEPA required the Corps to analyze both the significant upland development adjacent to casino barges and the inevitable secondary development that would result from casinos, and the agency failed to adequately consider the cumulative impact of casino construction in the area. See also *City of Davis v. Coleman*, 521 F.2d 661 (9<sup>th</sup> Cir. 1975) (requiring the agency to prepare an EIS on effects of a proposed freeway interchange on a major interstate highway in an agricultural area and to include a full analysis of both the environmental effects of the exchange itself and of the development potential that it would create.); *Mullin v. Skinner*, 756 F. Supp. 904, 925 (E.D.N.C. 1990) (enjoining the agency from proceeding with a bridge project which induced growth in island community until it prepared an adequate EIS identifying and discussing in detail the direct, indirect, and cumulative impacts of and alternatives to the proposed project).

In this case, the location, pattern and rate of development in the surrounding area will be significantly altered, including its land uses and transportation and utility infrastructure. The land use changes and the infrastructure extensions made for this project may be the catalyst for several other developments. Indeed, your own statements suggest this:

“Representatives from area financial institutions believe that based on their experience with other marinas, property values could increase in the surrounding areas as this would initiate additional property development as people want to locate near the convenience of a marina.” EA at 34 (emphasis added).

The applicant’s proposal corroborates your findings:

“The owner applicant will...operate the facilities as a must see for the public while providing a positive cash flow back to TVA...This development will sustain TVA’s growth initiatives by creating public land access, public infrastructure, [and] job opportunities...The resort would attract people to this area so that they can take

advantage of the resources offered by the Tennessee Valley Authority (TVA). TVA expects that demands for water-based recreation activities will increase as a result of continuing residential development of privately owned land and increases in population in the surrounding area.” Appendix A at 4, 18.

You acknowledge these facts, but fail to address the significant impact of this additional development, let alone evaluate carefully and disclose fully the indirect impacts of this project. Your failure to analyze the project’s far – ranging and permanent impacts on the landscape of region defies your findings and the law. **(Comments by: Jason Totoiu and Sandra S. Nichols, Wild Law)**

**TVA Response:** TVA has assessed the potential of the project to cause indirect effects. As to far-ranging indirect effects, (i.e., the potential of this project to cause additional property development in the area), TVA believes that the causal relationship between the federal action and future property development is too attenuated. Future property development in the area would depend on the occurrence of contingencies controlled by third parties. TVA has no control over the independent actions of third parties that would be necessary predicates for future development. NEPA requires a federal agency to consider those indirect effects caused by its actions that are reasonably foreseeable. An agency need not consider effects that are remote and speculative.

The commenter reads too much in the paragraph quoted from the Draft EA. It is true that people like to locate near the convenience of a marina, but the existence of a marina would not be the sole factor that spurs development in the area. Rather, several independent actions by third parties, over which TVA has no control, must come to fruition in order for development to occur in the area.

TVA has assessed those indirect effects caused by this proposed that are reasonable foreseeable. Thus, for example, TVA has assessed the indirect effects of the proposed resort on traffic generation on local roads, other recreational facilities, boating traffic, wetlands, terrestrial ecology, noise, land use, solid waste disposal, and on minority or disadvantaged communities.

Likewise, TVA has also assessed the cumulative impacts resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Thus, for example, TVA has considered the biological resources on the tract, such as forest and wildlife, in relationship to the condition of resources in the region. There are no unique or unusual resources and TVA is not contributing to any adverse affects or decrease in trends in these resources.

### **Last Piece of Undeveloped Land**

- We have such few acres left of wildlife in this country. There isn't much left. This is one of the few remaining undisturbed wild riverfront areas left in the Elk River/Tennessee River area. The parcel under review is just about the only piece of undeveloped shore left at the mouth of Elk River. This is the last undeveloped parcel on Lauderdale Co. side, the Marina proposed site. **(Comment by: Arthur John Peck, Tom Ress, Robin Burchfield, unknown)**

- Several TVA employees pointed out that a large percentage of TVA land is not "in use". ... it seems that TVA has a relatively small percentage of its property being used for commercial purposes and they are trying to increase those percentages. If this development is approved, Elk River will be 100% developed, except for the small parcel of "Commercial Industrial" land adjacent to the proposed marina. With so many acres of unused land, how can TVA justify forcing our area into 100% development, especially with local people so opposed to it? (**Comment by:** *Bob Freeman*)
- For miles in either direction from the 91 acres, construction of homes and condos have put tremendous pressure on our shoreline. There is a home or cabin on virtually every nook and cranny for miles. People are selling out up north and out west and moving here in large numbers. Since I moved here, the area has become fully developed. TVA has allowed private development to destroy the entire shoreline for miles in any direction on Elk River and the Tennessee River for miles in either direction from the mouth of Elk River. There is only one TVA parcel left. TVA is now considering an Easement on this property to another private developer to ruin the only remaining wilderness and wetlands. THERE WILL BE NO UNDEVELOPED LAND FOR MILES. So why are we so upset? Because this is the last of it. There is nothing left on the shoreline. (**Comment by:** *Bob Freeman*)
- This UNSPOILED piece of land is one of the few TVA has left. There are few places on the Elk downstream of Sportsman's Cove that are not developed. This marina would eliminate one of the last remaining significant sites. (**Comment by:** *John Deemer, Chris Otto*)
- One has to only look at a map of the Rogersville area to note that on the Lauderdale County side of Elk River from the Elk River bridge to the mouth of Elk River there is only one undeveloped strip of land. Now TVA wants to destroy this last vestige of undeveloped land. The beauty of the last undeveloped area from Elk River bridge to the mouth of Elk River will have been destroyed for what, another doomed venture? (**Comment by:** *Helen Ball*)
- I ask this to you, why should we destroy what little we have left? Why corrupt Elk River, a relatively undeveloped riparian area for the sake of more motorized "recreation"? What, truly, do we value? (**Comment by:** *Ariana Tipper*)

**TVA Response:** This is not the last undeveloped property. TVA has allocated approximately 380 acres of Recreation, Resource Management and Environmental Protection near the immediate vicinity of the proposal area. The Wheeler Reservoir Land Management Plan (Plan) has allocated approximately 9,140 acres of TVA property to Recreation and Resource Management. Land Use / Land Cover data was derived from color infrared aerial photography taken at a scale of 1:24,000, in February and March 2005. The Elk River Watershed within the State of Alabama contains approximately 121,300 forested acres of TVA and private property. The sub-watershed encompassing the proposal area contains approximately 1,420 forested acres of TVA and private property.

## **Development of Public Land**

- Nature and the surrounding land owners are being subjected to this massive destruction of the environment by a private developer. This is public land, not land

for private benefit. This proposal in no way benefits the area. (**Comment by:** *Harriet Johnston*)

- The land managed by TVA is just that..... managed by TVA... it does not belong to TVA. This is our land! Public Land! It belongs to “we the people”! And as “we the people” have stated in meeting after meeting, letter after letter...phone calls too numerous to count..... we do not want TVA to give away our land....This is Public land...{that means it belongs to us} And We want to > **keep it public, keep it natural, keep it undeveloped...KEEP IT!** (**Comment by:** *Loli Howard*)
- I base my opposition on the usage of public property for private monetary gain. I think this sets a dangerous precedent for TVA in its role as a steward of public lands. I do not think this marina would be built if the requestor had to purchase lakeside property for the project. Please do not allow public property to be given away this way, as it would endanger all the precious few public acres available on our reservoirs. (**Comment by:** *Michael - mrekb@bellsouth.net*)
- I base my opposition on the dangerous precedent of turning over public owned land to private developers for the these developers to turn a profit at public expense. The precedent set by this "giveaway" of public property would soon endanger every acre managed by TVA and owned by the public, as developers all over the Valley would soon be proposing other projects and TVA would have to turn over all its lands to anyone with any type of development proposal or face serious legal challenges. (**Comment by:** *Michael Ezell*)
- I was exceedingly upset to learn that the TVA is about to turn over 91 acres of natural shoreline area that is currently publicly owned (by TVA) land in the Elk River/Tennessee River junction area. The purpose of this is to enable a private developer to create a development for boating and car camping. This land is public land and should remain as a natural shoreline area for the use of the general public who own it. It should not be turned over to private hands for development. The type of facility proposed should be built on private land and the remaining undeveloped shoreline still left on public lands should be kept in public hands for the use of the public. (**Comment by:** *Stewart Horn*)
- THE DESTRUCTION OF THE ENVIROMNENT AND COMMERCIALIZATION OF THE ELK RIVER SHOULD NOT BE PERMITTED. MORE AND MORE PUBLIC LAND IS BEING GIVEN AWAY TO BUSINESSES THROUGHTOUT ALABAMA. EVERY DAY. WHY? (**Comment by:** *Tom Hodges*)
- It is my hope and desire that the TVA Board of Directors will consider these issues and decide not to sell the land to private developers. I hope the Board will decide to preserve the historical and cultural environment for the educational benefit my children and grandchildren and the future of all generations will be able to receive from the existing environment. I would appreciate your earnest attention to the impact it will have on the future generations and decide not to sell this land and instead decide to preserve the integrity of the existing environment. (**Comment by:** *Sharon Robinson*)
- We need to understand the seriousness of the losses that will be incurred as a result of this project, and I question who the project will really benefit. I do not want public land turned over for private development when there is not a pressing need for it. (**Comment by:** *Susan Phelan*)

- “Bubba” Doss’s bid to pursue his corporate dream of profiting from public property is nothing less than “nursing the public teat” for private gain. The TVA lease price to Mr. Doss is pittance of the real value. The leasing of public property worth millions of dollars for few thousand dollars a year is corporate welfare at public expense. Private property is for private enterprise. TVA should not lease or sell any public forests to private entrepreneurs at the expense of the public and the wildlife it will displace. (**Comment by:** *Lamar Marshall, Wild South*)
- TVA DOESN'T HAVE THE RIGHT TO GIVE AWAY PUBLIC LAND This land was taken by eminent domain from private landowners for public use. The land is currently available to the public. The proposal to give this land to a private developer for his own profit does not fit with TVA's mission. Look at the Vermont Journal of Environmental Law: "Regardless of these limitation, this Article argues that public lands entrusted to TVA management and taken by eminent domain for public purposes declared by Congress, cannot be sold legally and deeded directly to developers for private residential use." You can find the rest of the article at <http://www.vjel.org/articles/mccaleb.html> where it goes on to argue that the land shouldn't be used for individual profit. (**Comment by:** *Susan Roessel*)
- We don't think a public entity like TVA has the right to take public land and turn it over for private development. I had to buy mine at an auction. (**Comment by:** *Ms. Bill Wright, court reporter comments*)
- I remember the TVA signs “this is your land” - what happened to it? This land was practically taken from my great grandfather for a little of nothing and now you want to ruin it and make me pay to use what should not have been taken to begin with. I am totally against the whole thing. (**Comment by:** *Troy Barnett*)
- Private enterprise does not belong on public land. (**Comment by:** *Janice Barrett*)
- It is sad to see the current trends toward privatization of our public lands. It is easy to see that the political persuasion of the TVA board and future board of directors is tied into the Republican agenda which seeks to privatize everything. This dynamic is a conflict of interest and is perhaps the strongest reason that TVA is catering to those who profiteer off of public land. It is unfortunate that science is being upstaged by shortsighted, political backscratching at the cost of irreplaceable natural areas and the host of wildlife that depend on them for their existence. (**Comment by:** *Nancy Muse*)
- This is a public land that belongs to me as well as you. The public at large does not want its public land to be turned over to private interest. Private marinas belong on private property. (**Comment by:** *Wild South - Lamar Marshall*)
- This project should be built on private property, not our public land. The brochure pushing the Resort contains this statement “COME AND BE A PART OF NATURE AS OUR GUEST IN A RESORT WHERE THE PRESERVATION OF OUR NATURAL RESOURCES COMES FIRST!” (**Comment by:** *Lamar Marshall, Wild South*)
- TVA I feel is acting out a politically fueled agenda to privatize public lands along the river. I am disappointed that TVA our only hope to keep our public lands preserved for natural systems is bending in favor of development. (**Comment by:** unsigned from Feb 9 2006 open house)

- In conclusion, the only reasonable decision is to deny the proposed project. I now believe that there is no other viable alternative. Mr. Doss can do nothing to make it palatable. I admit one more error. Since I was convinced that you were going to give him the land no matter what we think, one of my prior letters had a number of suggestions to make it safer for our community. After reviewing the situation, especially the destruction at the granary, The Point, and Bay Hill, there is nothing that can be done to make another TVA land giveaway acceptable. **(Comment by: Robert Freeman)**

**TVA Response:** For more than seven decades, TVA has been improving quality of the Tennessee Valley through its threefold mission of providing affordable and reliable power, promoting sustainable economic development and acting as a steward of the Valley's natural resources. The TVA Act authorizes TVA to acquire land and other property rights by purchase through eminent domain necessary to carry out the purposes of the TVA Act. Property is sold or transferred if it is identified as no longer being needed or would support one of TVA's missions. TVA then may dispose of the land only in a manner authorized by the TVA Act or other federal laws and is sold at an appraised value. If approved, the applicant would receive a term easement on Tract XWR-21PT for commercial recreation, and TVA would receive compensation on an annual basis from the applicant for use of TVA property. One objective of the Plan was to help provide for a diversity of quality recreation opportunities on Wheeler Reservoir. The Plan identified four tracts (Tracts 21, 67, 88, and 91) for future commercial recreation development.

- We are also concerned about the magnitude and scope of the project. Given that this is public property I believe that there should be a larger portion set aside for public not private use. **(Comment by: James Rich, City of Athens)**

**TVA Response:** If a term easement is granted to the applicant, TVA would require that all facilities and services must be made available to all members of the general public without discrimination or distinction because of race, color, national origin, age or gender.

- Mr. Doss claims he will pay to put in a culvert at Barnett Rd and have the road widened. I talked to Mr. Thornton (road commissioner) at the meeting Feb 9 he knew nothing about this. He has not been approached by anyone on this matter. The day after the meeting there were surveyor marks (says locate) on Barnett Rd. for the culvert. How can TVA say this is not a done deal with Mr. Doss? Appears he has started on the road work. **(Comment by: Robin Burchfield)**

**TVA Response:** To date, the applicant has not undertaken any actions related to this proposal.

- There should be an initiative for TVA to turn the river banks into a designated greenway instead of a series of developments. We have no other agency here to protect our continuing loss of open space and wildlife habitat. Endangered species must not be the only reason a tract of land is valued for wildlife and natural systems. The EA has been totally unprofessionally constructed leaving out very important details addressing the above issues. **(Comment by: unsigned from Feb 9 2006 open house)**

- The 1995 Wheeler Reservoir Land Management Plan needs to be reassessed because it does not apply to 2005 and years of gross development and sprawl along the waterways. Look at what is happening at the Nickajack and Tims Ford Dam - Sprawl and destruction! (**Comment by:** *Harriet Johnston*)
- As a lifelong resident of the Tennessee Valley, I ask that this request be denied, not just to preserve a small part of the riverfront for future generations, but to save all the precious few acres that remain. Once turned over to private interests, the public's (taxpayers) right to free and unrestricted access would be denied forever, and this would be, in my opinion, a direct violation of the TVA's mission and responsibility to the people of the Tennessee Valley. (**Comment by:** *Michael Ezell*)

**TVA Response:** TVA has a broad regional resource development mission which calls for integration of conservation and recreation objectives with economic development objectives. In reservoir land management plans, TVA identifies specific parcels that have been determined to be suitable for economic and recreation development. TVA also reviews proposals to develop reservoir land to determine if the proposal would help further these objectives. TVA recognizes the importance of striking a balance among the competing demands placed on the land and water resources. This proposal fulfills the intent of the existing Wheeler Reservoir Land Management Plan, which was initially approved by the TVA Board in 1995. The designation of XWR-21PT to "commercial recreation" in the Plan is still appropriate today.

- This is just a scheme to privatize a public asset, and those promoting such blatant corruption should be ashamed of themselves! The only reason any portion of the Tennessee river is undeveloped is that TVA had the foresight to set aside riverfront lands IN PERPETUITY, such that future generations could enjoy it in a relatively unspoiled condition. (**Comment by:** *Bruce Morgan*)

**TVA Response:** One objective of the Wheeler Plan was to help provide for a diversity of quality recreation opportunities on Wheeler Reservoir. The Plan identified four tracts (Tracts 21, 67, 88, and 91) for future commercial recreation development, and the proposal for Tract 21 is consistent with the allocated use. The applicant has requested a term easement over TVA Tract XWR-21PT for commercial recreation.

### **TVA Stewardship of Land**

- Heretofore, we citizens of the area have considered TVA a partner in our attempts to conserve our environment. Now, however, TVA is considering granting a 30-year lease to a commercial entity whose very presence will destroy the patient work of decades. I am totally shocked that TVA would even consider such a thing. We are losing our wild areas fast enough. (**Comment by:** *Milly Caudle*)
- Why cannot TVA make it a policy to set aside areas such as this for future generations? These generations will probably never get to see a tulip poplar so tall that the leaves are mere specks. Leave a few areas filled with oxygenating trees! (**Comment by:** *Helen Ball*)

- Highest and Best Use of Tract XWR-21PT: The highest and best use and net public benefits is NOT to destroy a vanishing American resource - a scenic, natural, native public forest - and build a commercial development. This property has intrinsic values that will be destroyed if TVA violates the Public Trust Doctrine. This land has far more value as a natural area for all Americans and especially for our children and childrens' children. Cities are sprawling across the land and native species are vanishing for lack of natural habitat. Conservationists are constantly pointing out that Alabama's biodiversity and the viability of many species is threatened by development and urban sprawl. TVA is contributing to the "net loss" of wildlife habitat in Alabama by promoting paving, deforestation, erosion and sedimentation of streams and lakes. **(Comment by: Lamar Marshall, Wild South)**
- TVA is apparently willing to relinquish its role as an environmental steward in order to participate in a "secret" deal with the developer. We have to question whether TVA can any longer be trusted to perform its operations according to proper procedure. **(Comment by: Woodfin and Carla Gregg)**
- I urge TVA to stand by its stated commitment to environmental stewardship. That is the only way it will be of true service to the public. **(Comment by: Janice Barrett)**
- TVA is supposed to help us preserve the land not give it away so people can make money. You are going to open the flood waters on Poor old Elk River. **(Comment by: Paul Hargrove)**
- Don't we already have enough development? Public property should remain public, and preserved for future generations. The TVA has been a steward of preservation and conservation of the River and wildlife and riparian buffer zones for generations. Now, we must assess TVA's role in the preservation of the future. Preserve our wild areas from unnecessary development please because the beauty of our natural environment will be forever. **(Comment by: Bonita McCoy)**
- We need accessible primitive (undeveloped except for trails) land for hikers, birders, and plant enthusiasts, who far outnumber the people who will be able to afford monthly slip rental. Does TVA have a strategic view of this type of use? **(Comment by: unknown)**
- I just think that if we don't preserve the land who will ? What will we do when one day we all wake up and there is no trees no wildlife, no deer and ducks nothing just people with their boats and trash, well enough I just think that we need to save all the wildlife and trees that we can. **(Comment by: Guy Shipp)**
- TVA has always tried to present the public image of caring for the environment and the river and doing its best to preserve cultural and historical sites. The sacrifice of a wild piece of river and 91 acres of life-supporting forest for a thirty-year lease to someone who wants to destroy all that with an unnecessary marina is completely contradictory to what TVA claims to be: an environmental steward. **(Comment by: Janice Barrett)**
- Every chunk of wooded natural landscape along the river that is developed is yet another very significant chunk gone from what should be protected as a greenway along the river. Privately owned land is already unprotected. TVA's priority should be that of steward of the last natural areas along the river that remain. If developers want land to develop let them buy it from private land owners at a fair market price!!! **(Comment by: Nancy Muse)**

- I think I can speak for most of the residents that have homes and cabins on the Elk. We do not understand why TVA has changed so much. Why are you letting Bubba Doss turn our area into a commercial fiasco? (**Comment by:** *Paul Hargrove*)
- [From Mr. Freeman's letter to FWS] I don't know if you or your agency can do anything to help us. It appears that no government agency is willing to oppose TVA. Our local congressman has done nothing to help. It appears TVA is the Almighty that can make decisions to devastate a community without any controls on them whatsoever. The local TVA representatives apparently have no input in the decision making process. Decisions are made in Knoxville, Tennessee. I do not believe that someone from Tennessee should have the right to make such decisions that affect wildlife, fishing, and so many people in a local community in Alabama. Could you please see if there are any government agencies or officials who might help the public against such a huge, out of control, Bureaucracy such as TVA? (**Comment by:** *Bob Freeman*)
- Is TVA not speaking with a forked tongue? While visiting their web site they are saving the environment in one breath and giving permission to destroy it in the next. (**Comment by:** *Robin Burchfield, John Crowder*)
- My concerns are larger than saving this piece of land in the Tennessee Basin. The United States and, in fact, most areas of the world are facing a crisis in holding ecological and environmental sensitive lands, wetlands, rivers, lakes, and other land forms from exploitation and development. TVA, of most all our US agencies, should be one of the main stalwart leaders among governmental and private organizations as a defender of these lands. It is time to put economic concerns and private gain subordinate to the concerns of human survival and environmental survival. This will mean that you in TVA will have to create and follow the policy first and foremost of land and water conservation and preservation instead of economic development of the Tennessee River basin. Saving the Elk River should be the main concern as the first major step in following this overriding conservation policy. Please, in the interests of our American heritage deny approval of Elk River Resort and save that Natural Area from development of the Marina. (**Comment by:** *Thomas A. Brindley*)
- Now because TVA and others see dollar signs this area of Elk River as we know it will be destroyed forever. Can TVA not preserve a few areas like this for future generations to experience what it is like to take a walk in the woods and truly see nature? Does it always have to be about money? How about having a place for peace of mind? Our wildlife is running out of places to go. (**Comment by:** *Robin Burchfield*)

**TVA Response:** For more than seven decades, TVA has been improving the quality of life in the Tennessee Valley through its threefold mission of providing affordable and reliable power, promoting sustainable economic development, and acting as a steward of the Valley's natural resources. The TVA Act authorizes TVA to acquire land and other property rights by purchase through eminent domain necessary to carry out the purposes of the TVA Act. Property is sold or transferred if it is identified as no longer being needed or would support one of TVA's missions. TVA then may dispose of the land only in a manner authorized by the TVA Act or other federal laws and is sold at an appraised value. The Wheeler Reservoir Land Management Plan (Plan) has allocated

approximately 9,140 acres of TVA property to Recreation and Resource Management. The reservoir and the approximate 11,000 acres of land surrounding them offer nearly limitless opportunities for fun-filled activities, including water skiing, canoeing, sailing, windsurfing, fishing, swimming, hiking, nature photography, picnicking, birdwatching, and camping. TVA has allocated approximately 380 acres of Recreation, Resource Management and Environmental Protection near the immediate vicinity of the proposal area. One objective of the Plan was to help provide for a diversity of quality recreation opportunities on Wheeler Reservoir. The Plan identified four tracts (Tracts 21, 67, 88, and 91) for future commercial recreation development, and the proposal for Tract 21 is consistent with the allocated use.

TVA owns approximately 1,760 acres of property along the Elk River on Wheeler Reservoir. This proposal occupies approximately five percent of all TVA-owned property along the Elk River and less than one percent on Wheeler Reservoir. The Elk River Watershed within the State of Alabama contains approximately 121,300 forested acres of TVA and private property. The sub-watershed encompassing the proposal area contains approximately 1,420 forested acres of TVA and private property.

- One of my neighbors researched some of TVA's prior environmental assessments on other projects. He reported that they are all basically the same. The local residents plead with TVA not to do it. But they always do. For once in your life, please listen to the people who live here. The only people that want it are a few business people in the town of Rogersville, a few supporters and friends of the developer, and a very few people who think they can more easily get gas for their boats. None of those people will have to live next to it. TVA officials should, for once in their life, do something for the people who will have to live in close proximity to a new development. (**Comment by:** *Bob Freeman*)
- This project comes down to what is right and what is wrong. To quote Bridgette Ellis from the publication, "TVA River Neighbors", October, 2002, "I've learned how important it is to be open-minded -to listen to what stakeholders are telling us about the way we manage the public lands and waters in our care". If you listen to the vast majority of the stakeholders who live here and who are most familiar with Elk River, you will deny the project. (**Comment by:** *Bob Freeman*)

**TVA Response:** TVA manages lands for multiple public benefits and balances competing uses. To reach sound land use decisions, TVA places high value on public opinions about specific land use proposals. Each proposal is evaluated by TVA on its own merits.

- TVA has done many wonderful things for the Tennessee Valley since it was formed almost 75 years ago. The accomplishments of TVA have helped so many people, and these accomplishments have all but silenced the naysayers. On a much smaller scale, TVA has another opportunity to do something for the good of many. (**Comment by:** *Bob Khym*)

**TVA Response:** Comment noted.

- “In its rich history, TVA has greatly promoted the South. In recent times, however, TVA ...has forgotten its most treasured ally: the Tennessee Valley resident who is the user of its public lands and the beneficiary of its public policies. TVA has lost touch with its statutory mandates and the people it was created to benefit. Although this distance does not have to be fatal, it does need serious attention.” (Joe W. McCaleb, Stewardship of Public Lands and Cultural Resources in the Tennessee Valley: A Critique of the Tennessee Valley Authority, 1 Vt. J. Env. L. 1, ¶ 83 (1998-1999) at <http://www.vjel.org/articles/articles/mccaleb.html>.)

We hope you have not lost touch with the people of the region and that you will honor your statutory mandates and commitment to protecting the natural resources of the Tennessee Valley. Unfortunately, the EA for this project fails to demonstrate any real concern for the environment and the local community. Thus, we urge you to thoroughly review the environmental impacts of this project before taking any further action with respect to Elk River LLC’s application. Failure to do so may result in future litigation. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** Recreational development benefits the region and the local community. The environmental impacts of this project are insignificant.

### **Development of Backlying Property**

- The existence of access roads cut into neighboring agricultural land indicates that a large subdivision will follow the development of this waterfront property. (**Comment by:** *Chris Otto*)
- The land behind the TVA land would most likely become available in years to come...then it would be developed putting a lot of money in Mr. Doss’ pocket should he purchase it plus put more people on the Elk River along with Christopher’s lot/home buyers. (**Comment by:** *Sharon Bridges*)

**TVA Response:** TVA is aware of temporary field routes that the applicant created on private property along a portion of the boundary of the TVA tract to create an access path into TVA Property. This allowed easier access to the property to evaluate the site and conduct the appropriate surveys for the environmental assessment. TVA is not aware of any pending subdivisions on the neighboring agricultural lands.

- Finally, as a son that grew up with a father employed by TVA for 28 years, I always held TVA in high regard for its stewardship of public land. I no longer have that opinion. My opinion now is that it is moved by influence, by people of influence. Money talks and the rest of us get to read about it in the newspapers. I don't believe that Bubba Doss has that kind of money. (**Comment by:** *Grant Posey*)

**TVA Response:** As part of TVA’s land / land rights use request process, the applicant is subject to a credit evaluation and analysis in order for TVA to determine his/her creditworthiness. TVA evaluates each proposal based on its own merit and its capability to satisfy TVA’s overall mission.

## 19. Other

- Adequate public notice of the proposal was not given. Many people who own properties on Elk River and Wheeler Lake live in Huntsville and there was no notice that I am aware of in the Huntsville newsmedia. (**Comment by:** *John L. Dumbacher*)
- Half of the people on Barnett Rd are African-American and might not take the local newspaper to stay informed of such things as a marina. (**Comment by:** *Robin Burchfield*)

**TVA Response:** TVA made an extensive effort to inform all members of the public of the proposed action. Public notice of the proposal appeared twice in the *Florence Times Daily* and once in the *East Lauderdale News*. Comments were accepted for almost eight weeks after the first notice was published. A later joint public notice by TVA and the US Army Corps of Engineers was published after the applicant submitted his application. Comments were accepted in response to this notice for one month. On October 5, 2005, TVA mailed approximately 360 written notices for an open-house-style public meeting concerning the Draft Environmental Assessment at Lauderdale County High School, Rogersville, Alabama, on October 18. TVA also posted the DEA on the TVA's environmental reports website page. Because of the large local interest in the proposal and the confusion regarding the scope of the proposal, TVA felt another meeting would be helpful. TVA held an additional open house on February 9, 2006, to ensure the public had ample opportunity to identify issues with the proposed action and draft EA.

As discussed in Section 3.14 (Environmental Justice) of the Final Environmental Assessment, no disproportionate impacts to minority populations would be likely.

- Questionability of the Developer's ability to complete the project - Gilbert Bubba Doss has run a successful marine construction company in this region for many years. Some of the most attractive and well-constructed docks in this region are products of his and his crew's labor. He is the 'go-to' name that is mentioned in this region if you ask about dock construction. His longstanding success and integrity in this business demonstrates that he has the knowledge and can obtain the resources to complete such a project in a responsible and attractive manner. (**Comment by:** *Atkinson, Anne L.*)
- It is human nature to fight change but guess where this county would be if we stayed in the horse and buggy environment. If we want progress, we must embrace change, otherwise we would be worse than a third world county. So often the minority drive decisions that are made which is totally opposed by our political and social climate in which the majority rules. Unfortunately, you will never get the folks that would benefit from such a project to come out in support of it. Therefore this project would definitely benefit the population as a whole and the decision certainly should not be made by a minority of folks who just do not want change. (**Comment by:** *Crowson, W. L.*)
- In conclusion, the only reasonable decision is to deny the proposed project. I now believe that there is no other viable alternative. Mr. Doss can do nothing to make it palatable. I admit one more error. Since I was convinced that you were going to give

him the land no matter what we think, one of my prior letters had a number of suggestions to make it safer for our community. After reviewing the situation, especially the destruction at the granary, The Point, and Bay Hill, there is nothing that can be done to make another TVA land giveaway acceptable. (**Comment by:** *Robert Freeman*)

**TVA Response:** Comment noted.

- I understand that the TVA board will ultimately decide this issue. How can a board that only has 2 people on it (and is supposed to have 9) come to a fair and equitable decision? (**Comment by:** *unknown*)

**TVA Response:** TVA is undergoing a transition to a new governance structure consisting of a 9-member Board. Until the new board is installed, the two members are authorized to make decisions for the Agency.

- If it's already a go and this meeting is just a formality why waste all of the time money and effort. (**Comment by:** *unknown*)
- This meeting is a farce! We should have had a public forum. This meeting doesn't resolve any questions about the proposed development. (**Comment by:** *unknown*)
- I resent having my intelligence insulted. I walked away from that meeting knowing that the resort is going to happen, period. It doesn't matter what I or anyone else things, writes, or says. What a dog and pony show, it was the best I have ever seen since the one in Athens concerning the Brown's Ferry reactor going back on line. (**Comment by:** *Grant Posey*)
- I also firmly believe that the opposition to the proposed marina would have been much greater if we were not already beaten down. Everywhere I turned, people said that TVA would not listen, that this was a done deal, and that there was no need to waste time trying. This was made more evident during the "open house" public meeting at Lauderdale County High School. TVA was allowed to speak. Mr. Doss was allowed to speak. But none of us were allowed to speak. That is not an open forum and certainly not an open discussion. This long process has been so frustrating. Our only hope is that someone, somewhere at TVA will have mercy on us and rule in favor of the people for a change. (**Comment by:** *Bob Freeman*)
- I attended the meeting in Rogersville last night. I was disappointed that there was not a more public discussion of the proposal for this development. I got the impression that the TVA position was "the less said the better." (**Comment by:** *John L. Dumbacher*)

**TVA Response:** The Open House style public meeting provides an opportunity for the public to come and learn about a proposal. This setting is usually less formal than the other meeting formats and the public is free to come and go as they please. Because of the informality and availability of staff, there is generally more one-on-one interaction. Also, some people will discuss their concerns more freely without an audience. Open houses are also used to obtain information from the public about the draft environmental assessment. Comments received can provide useful information that may indicate an issue needs further investigation or that the analysis did not consider some aspect of potential impacts on a particular resource.

- There should be an initiative for TVA to turn the river banks into a designated greenway instead of a series of developments. We have no other agency here to protect our continuing loss of open space and wildlife habitat. Endangered species must not be the only reason a tract of land is valued for wildlife and natural systems. The EA has been totally unprofessionally constructed leaving out very important details addressing the above issues. (**Comment by:** unsigned from Feb 9 2006 open house)
- As a lifelong resident of the Tennessee Valley, I ask that this request be denied, not just to preserve a small part of the riverfront for future generations, but to save all the precious few acres that remain. Once turned over to private interests, the public's (taxpayers) right to free and unrestricted access would be denied forever, and this would be, in my opinion, a direct violation of the TVA's mission and responsibility to the people of the Tennessee Valley. (**Comment by:** *Michael Ezell*)

**TVA Response:** TVA has a broad regional resource development mission which calls for integration of conservation and recreation objectives with economic development objectives. In reservoir land management plans, TVA identifies specific parcels that have been determined to be suitable for economic and recreation development. TVA also reviews proposals to develop reservoir land to determine if the proposal would help further these objectives. TVA recognizes the importance of striking a balance among the competing demands placed on the land and water resources. This proposal fulfills the objective of the 1995 Wheeler Reservoir Land Management Plan. The designation of XWR-21PT to "commercial recreation" in the Plan is still appropriate today.

Other nearby tracts on the Elk River have been allocated for Natural Resource Conservation.

- The second traffic concern is that the Elk River Resort roads will serve as a through-fair for traffic from Hidden Valley Shores and the surrounding areas to highway 72. The proposed development does not include an access road from this area. The road assessment does not include this in its traffic counts if this were to be allowed.
  - Will Elk River Resort development have a connecting road on the Southside of the property that could be utilized by locals as a through-faire to highway 72?
  - The proposed development does not show an access road on the south side of the property, will the developer have to apply for easement to have a connecting road that will allow access from the south side of the property?
 (**Comment by:** *Sharon Tidwell*)

**TVA Response:** The general public cannot access Tract 21 from Lakeview Drive. The developer of Hidden Valley Shores Subdivision retained a five foot strip of property between Lakeview Drive and Tract 21. However, the applicant has secured property between Lauderdale County Road 77 and Tract 21 for public access to and from the proposal site. Lauderdale County Road 77 intersects US Highway 72. Currently, Lakeview Drive is not intended to be a point of access to the proposal site.

- During the spring floods, large quantities of driftwood and other debris is washed down Elk River. Usually prevailing East or South East winds in the spring push the trash onto the right descending shore. The "trash break" will become a huge trash

trap sending its catch into the small slough and onto the shore of Tract 22. Since this trash would be outside of harbor limits would the applicant clean up all of the trash caught by his trash trap which is shown in the middle of the slough?

**(Comment by: Kenneth Hammond)**

**TVA Response:** The applicant has stated in his proposal that he will remove any additional debris accumulating on the shoreline of Tract XWR-22PT due to the trash break. Maintaining the area trash-free would be in keeping with the “natural theme” of the resort area.

- This TVA donation of public land to a private developer is not for the benefit of the people. The area described in the 1995 TVA Land Management Plan has changed drastically in the last ten years. Population has increased and much of the shoreline area has disappeared with construction. Where is the supposed stewardship of this land. Please do not destroy a beautiful area with additional sprawl and environmental destruction. The resort is a massive plan detrimentally affecting the natural beauty, habitat and community of the area. Once done there is no reversal. **(Comment by: H. Genne Johnston)**

- I will not say anything more about the trees being cut....after the chip mills deal... and the near miss on the river-front, forest to golf course deal...I already know how TVA feels about the forest and the trees... **(Comment by: Loli Howard)**

**TVA Response:** The project is consistent with the 1995 Wheeler Reservoir Land Management Plan. The designation of Tract 21 to “Commercial Recreation” is still appropriate today. The Plan allocates other tracts for forest and wildlife management. With regard to the site, staff will assist the applicant in identifying the specific trees that can be removed during the initial construction phase. The mitigation measures required of the applicant will help preserve the “park-like” nature of the tract. TVA must also approve a vegetation management plan submitted by the applicant prior to the commencement of construction.

- Your assessment’s economics - You have agreements with the private developer to share in the private developer’s profits for, in essence, giving away this public land to a private developer for his personal gain -- at a loss to adjacent property owners. b.) There is no way your share of the private developer’s profit will ever amount to even a fraction of the market value of this public land. You exist to hold land in the government’s trust. I buy land, build a cabin, work 30 years to develop it, take care of it, improve it, abide by your construction to your wishes. Now after thirty years I’m ready to retire to my cabin, and you are giving away these financially valuable natural resources which you’re supposed to hold in government trust, to a private developer. My property declines, while your private developer gets fat. And TVA and hence, the public loses. **(Comment by: Thomas Gary Wicks)**

**TVA Response:** The applicant has requested a term easement over TVA Tract XWR-21PT for commercial recreation. If approved, TVA will require an annual fair market value fee for the use of the property and TVA will monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant’s expense

or leaving the facilities in place and obtaining another individual to continue operation of the property. The reservoir and the approximate 11,000 acres of land surrounding them offer abundant opportunities for fun-filled activities, including water skiing, canoeing, sailing, windsurfing, fishing, swimming, hiking, nature photography, picnicking, birdwatching, and camping.

- The basic fact is that while the applicant is risking the success of his business in this project, he is also risking the property values of the homeowners in the area. From a simple google search on the internet for “business failure rate” and a scan of the first dozen or so sites, one can find estimates from across numerous authoritative sources (among them the National Chamber of Commerce and several state Better Business Bureaus) that the bulk of startup businesses fail within the first two years. The percentiles listed can range from 70 to 90 percent depending upon whose estimates you want to accept. But even using the most optimistic figures would mean that new startup business has at best a 1 in four chance surviving its first two years. It is difficult if not impossible to believe that a failed marina project will not decrease the resident home owners property values. For an Entrepreneur, a one in four chance of success might probably be justified. But from the perspective of a home owner facing a potential loss of value in his lifetime investment and home, a 3 in 4 chance of failure is not acceptable, especially with an applicant who has no proven history of successful marina development, management or operation. One of the recommended reading resources listed on many of these business sites is a book titled “The Entrepreneurial-Myth Revisited: Why Most Small Businesses Don't Work and What to Do About It.” In this text is the following statement: “Just because a person understands the technical work behind a business doesn't imply that the person understands that kind of business. People who understand the technical work don't necessarily understand how to operate the business. They are technicians, not entrepreneurs.” This is exactly the situation that can be seen with this applicant. While he may have experience in constructing some of the elements that would support a marina, he has no proven experience in operating a functional marina. This applicant apparently can build piers and seawalls but that experience proves absolutely nothing about his ability or capacity to build and operate a marina. **(Comment by: Eric Kelso)**
- In section 1.2 Paragraph 2: The assessment states that “TVA would seek private investors with the financial and managerial capability to develop large-scale facilities that can become destination points for tourists and local reservoir uses.” TVA does not discuss their criteria what constitutes a private investor with the financial and managerial capacity? Speaking with Mrs. Rutherford at the TVA open house held at Rogersville High School on Oct. 18 she confirmed my concern that the applicant has NEVER built, managed or operated a successful marina. One further has to wonder has he ever even WORKED at a Marina? The applicant did speak at the open house and mentioned that he had “been around marinas”. Never did he even mention gainful employment at a marina. In determining the qualifications of a developer an analysis of past performance should be available for public inspection. **(Comment by: Eric Kelso)**
- Without a competitive bidding process, other applicant proposals or even a thorough economic viability study; this proposal process is the equivalent of taking one's brand new expensive luxury car to a mechanic living in a tar paper shack just because he has just hung out a hand-painted sign reading “Eye fix cars, reel good”. No reasonably intelligent person would willingly undertake such a risk with a valuable

asset. Why is TVA so willing to consider such a risk with the public property it is charged to protect and/or properly develop? Previous successful performance of such a large and sensitive project should be the most important criteria for consideration of any applicant. Even a cursory examination of this applicant reveals this glaring shortcoming. This project is very obviously a new startup venture for this applicant. (**Comment by:** *Eric Kelso*)

- In section 3.11 the assessment states “Overall, TVA does not believe that property values would be adversely affected.” If this applicant is not able to complete the project or more likely FAIL within the first two years of business, does the TVA honestly expect that this will NOT reduce property values? Will TVA provide support economic analysis to back up this rather outrageous claim? Again, even using the most optimistic numbers, the applicant has 1 chance in four of succeeding. Also given that he has no apparent experience in operating a marina AND the fact that he is proposing to build a new marina during a time of unstable fuel prices, his chances of success do not look good. (**Comment by:** *Eric Kelso*)

**TVA Response:** If approved, TVA will monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant’s expense or leaving the facilities in place and obtaining another individual to continue operation of the property. The proposal states one administrative professional is currently on staff to manage the business portion of Phase I of the proposal. If the business is sold, the new owner must comply with the conditions set forth by the Environmental Assessment and Easement Instrument.

The applicant has nineteen years of project management experience with his core business specializing in marine construction and shoreline improvements. The applicant will assume the role of overseeing all daily operations of the resort. The grant of an easement does not go through the bidding process under the TVA Act. As part of TVA’s land / land rights use request process, the applicant is subject to a credit evaluation analysis in order for TVA to determine his/her credit worthiness. Representatives from area financial institutions believe that based on their experience with other marinas, property values could increase since some people like to locate near the convenience of a marina. However, whether actual development of the surrounding area takes place would depend on several independent actions taken by third parties that are well beyond TVA’s control. Overall, TVA does not believe that property values would be adversely affected.

- **Benefits to the Public:** This is not a question of some vital public necessity being accommodated by the TVA, but rather the equivocal commitment of a single developer, who doesn’t live on the Elk River. He negotiated a less than market, less than fair value and apparently less than arms length transaction, which if allowed will not give the Agency or the public a fair return for the value of the land or compensation for the destruction of the estuary and the environmental impact it will have on the surrounding Elk River area. In addition, there is ample unused capacity of public campsites and access to the water within a few hundred yards of the proposed site. In light of the tremendous amount of recent commercial development

in the immediate area of the proposed development there is a serious question as to whether the proposal is economically viable to begin with. This is no doubt why the developer proposes to develop “in phases”. In other words why should he risk anything with such a brother-in-law deal with the TVA? He has virtually no risk and the public could be denied any reasonable benefit because he has no monetary commitments for the land, if phase one doesn’t work, than he is under no compulsion to build phase two and he only pays on revenues. So let the government bet on his business acumen. This doesn’t make any business sense. It is quite clear that there is enormous local opposition to this proposed development. Further, any objective assessment of the area would show that the Elk River Resort is not currently needed due to recent development in the area and due to the available and underutilized facilities already in the area. **(Comment by: J. Thomas Noojin)**

- Issue Statement on your assessment’s ethics - You evicted the original owners of property from their land to build Wheeler Dam. Now you are giving the land you took from the original owners to a private developer. From my property deed I know of the original owners of my property. You told them they had no choice but to leave the land you were taking from them because it was for the public good. Since you are giving the land you got from nothing from the original landowners, to a private developer, you would be betraying the original owners that you evicted from their private land. And now. Selling their land for the personal gain of a private developer, not for the common good of all, as you told the original owners, adds insult to injury. **(Comment by: Thomas Gary Wicks)**

**TVA Response:** TVA acquired XWR21PT in two tracts. In the first tract, TVA acquired a 5/8 undivided interest by virtue of a Warranty Deed. The remaining 3/8 undivided interest was acquired by virtue of Final Decree. TVA acquired the second tract by virtue of Final Decree. Instead of this property becoming surplus after the completed construction of Wheeler Dam, TVA recognized the property’s value for recreation purposes. TVA retained this property and allocated its use for commercial recreation purposes in 1995. The current proposal is consistent with this allocation. There are two existing marinas near the proposed location, both of which are near or at capacity, with one marina having an extensive wait list for additional customers. Other marinas on the reservoir have waiting lists for larger boats. Thus, the current proposal will meet the public demand for additional recreational facilities.

As part of TVA’s land / land rights use request process, TVA has verified the applicant’s credit worthiness. TVA also believes that the project is economically viable in view of the demand for additional recreational facilities on the lower Wheeler Reservoir area. If a term easement for commercial recreation is granted, TVA would receive compensation on an annual basis from the applicant for use of TVA property.

TVA will monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant’s expense or leaving the facilities in place and obtaining another individual to continue operation of the property. The proposal states one administrative professional is currently on staff to manage

the business portion of Phase I of the proposal. If the business is sold, the new owner must comply with the conditions set forth by the Environmental Assessment and Easement Instrument.

- If TVA is determined to see this property developed as it appears this study implies, why is it that only ONE applicant is being considered? Why is TVA not widely announcing this potential easement and not pursuing an open bid process for it's development, especially from companies and corporations with a PROVEN successful history of marina development and management? Besides if the property is so valuable to generate the interest of one applicant, several applicants bidding on the same development would provide TVA with a far better opportunity for the success of the project and better financial gain for TVA than the current single proposal. **(Comment by: Eric Kelso)**

**TVA Response:** TVA is being responsive to the request received from Mr. Doss for the use of public land for the Elk River Resort. No other expressions of interest for the commercial development of Tract 21 for recreation purposes have been received. Grants of easement for such proposals typically do not go through a bidding process.

- As a final comment I have to say how disappointed we were in the open house that TVA held in Rogersville. No where was there to be seen any design details of the marina proposal other than the very basic line drawings from the original proposal. No sketches or artists renderings of the applicant's intentions were available. There was not even a mention of any involvement of a professional architect. Many residents left this open house knowing little more than they did before they attended. One can only hope that the applicant will at least take the wheels off his "office". In short the open house answered few questions and probably raised many more. I also disappointed that there was no further public discussion or even a Question and Answer period at the Open House. Exactly how is the public to get straight answers from this applicant regarding his intentions? At the original public hearing held that the new fire station, I repeatedly asked just what experience the applicant had with Marinas. One each occasion he answered regarding his "marine experience". His evasion of direct answers to my questions did nothing to reassure me that the applicant was willing to be forthright about his qualifications. I only learned of his lack of MARINA experience by speaking with Ms. Rutherford at the Open House. The question of his marina experience should have been discussed in an open public forum. **(Comment by: Eric Kelso)**

**TVA Response:** The Open House style public meeting provides an opportunity for the public to come and learn about a proposal. This setting is usually less formal than the other meeting formats and the public is free to come and go as they please. Because of the informality and availability of staff, there is generally more one-on-one interaction. Also, some people will discuss their concerns more freely without an audience. Open houses are also used to obtain information from the public about the draft environmental assessment. Comments received can provide useful information that may indicate an issue needs further investigation or that the analysis did not consider some aspect of potential impacts on a particular resource. When submitting to TVA a completed land use application, the applicant submits plans or drawings that includes the following information: the plans must be on paper suitable for reproduction;

contain the applicant's name; stream, river or reservoir name; river mile, locator landmarks and direction of water flow, if known; existing or proposed structures or other facilities to be developed; land disturbances proposed; and any development off TVA land which is part of the project. All necessary information was submitted by the applicant and made available to the public.

The applicant has nineteen years of project management experience with his core business specializing in marine construction and shoreline improvements. The applicant will assume the role of overseeing all daily operations of the resort. As part of TVA's land / land rights use request process, the applicant is subject to a credit evaluation analysis in order for TVA to determine his/her credit worthiness.

- I am in favor for the 92 acre primitive TVA land on the west bank of the Elk River, but only if the mouth of the Elk and Tenn River are dredged for the larger boats and the Elk River Channel dredged and trees cleared to Blue Springs. (**Comment by:** *Sara Barksdale*)

**TVA Response:** TVA maintains navigation aids for recreational boating from the US Highway 72 bridge to Elk River Mile 14.5. Currently, TVA does not maintain a specific depth within the Elk River navigational channel. Some floating debris is removed at the Wheeler Dam forebay by River Operations. The depths of water in the navigable channels on the Tennessee River and the Elk River exceed the depth required by the TVA Act to support commercial navigation. TVA guarantees an 11-foot depth in all navigable channels, a depth sufficient for even very large, inland recreational vessels, including the commercially marked portion of the Elk River up to the U.S. 72 bridge. There is no specific requirement for either TVA or the Corps of Engineers to maintain specific depths for recreational activity, but the 11-foot depth is considered sufficient for the activity. If there is a specific hazardous location on a recreational channel, it should be reported to the Watershed Team office. TVA and/or the USACE will investigate and either remove the obstruction or mark it. Dredging for access to recreational or commercial shoreline facilities, whether it be a barge terminal or a marina or a private dock, are the responsibility of the owner of that facility and requires the appropriate permits from local, state, and federal agencies. TVA's local Watershed Team office can assist with this activity.

- Thank you for allowing me to voice my objection to this project. Not only do I find the business aspect beyond any reasonable rationale but I also have a home on the Elk River that would be negatively affected by the project. In addition it would clearly marginalize the quiet and peaceful enjoyment of the homes and water use in the area without commensurate benefit to the public or the Agency. (**Comment by:** *J. Thomas Noojin*)

**TVA Response:** Intruding noise from vehicle traffic, watercraft, and industrial sources is heard at the site and in neighboring areas. Construction noise for the proposed resort location would be noticeable for a short time, and there would be increases in noise from land-based and water-based sources over the long term. Because of the current background noise, the potential for only modest increases in noise, and similar activities undertaken by neighboring residents, the environmental noise consequences would be insignificant.

- Your assessment's consideration of adjacent property owners - You publish a report on your website and hold one meeting in a local high school. And that's the extent of your communications to the adjacent property owners" Do you not want the people in the area around this project, who are most affected, to know about this project? You didn't inform this adjacent property owner of your project to give away public land to a private developer. You know each and every one of all the property owners in the sloughs adjacent to this public land. And you, TVA, have this adjacent property owner's name, address and phone number on file at TVA. You have my boat house application on file at TVA. You, TVA have letters from me on recent tornado damage on file at TVA. You, TVA also have my email address. You, TVA know where my cabin is. You, TVA have put notes on my door before. You, TVA have been to my cabin before at my request. You, TVA, know I am in the Rogersville phone directory. You, TVA know I am on record at the Lauderdale County tax collectors office. You, TVA know I am on file at the City of Florence Utilities. All these resources are available to you. And yet, you don't mail a simple letter, don't put a simple flyer on my door, you don't make a simple phone call, and you don't even send a simple email. Resultantly, this person, and adjacent land owner, is unaware of your intentions. (**Comment by:** *Thomas Gary Wicks*)

**TVA Response:** After TVA received a formal request from the applicant, TVA solicited public input by publishing a public notice in the local newspaper. Copies of the public notice were sent to local leaders as well as distributed in the community of the proposed marina/campground. Two newspapers published short articles which included information for submitting comments. TVA and the applicant also attended a community called meeting about the proposal. On October 5 TVA mailed approximately 360 written notices for an open-house-style public meeting concerning the Draft Environmental Assessment at Lauderdale County High School, Rogersville, Alabama, on October 18. Because of the large local interest in the proposal and the confusion regarding the scope of the proposal, TVA felt another meeting would be helpful. TVA held an additional open house on February 9, 2006, to ensure the public had ample opportunity to identify issues with the proposed action and draft EA. Overall, TVA believes ample opportunities were provided for the public to comment on the proposal

- Rogersville should realize that they will be in competition for their motels and restaurants. The people coming in will bring their supplies. They will be the wealthy from Florence and surrounding areas. (**Comment by:** *Paul Hargrove*)

**TVA Response:** Comment Noted.

- "Proposal to Lease: Section of EA: Is TVA Saying that the Public Should Be Grateful To Have A Marina On This Property? (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** The "Proposal to Lease" information was located in Appendix A of the Draft EA. This information is the applicant's package submitted to TVA.

- Why are you having an additional opportunity for public comments? At the last meeting most of the attendees were against the resort. Could it be you have had time to contact people that are for the resort to have them present. (**Comment by:** *Paul Hargrove*)

**TVA Response:** Because of the large local interest in the proposal and the confusion regarding the scope of the proposal, TVA felt another meeting would be helpful. This additional meeting was held on February 9, 2006, to ensure the public had ample opportunity to identify issues with the proposed action and draft EA.

- We ... feel that Mr. Doss is not in this alone. Many people have stated that he has backing from someone else that has obtained land in the past from TVA. Please investigate this entire deal as completely as you possible can. (**Comment by: Paul Hargrove**)

**TVA Response:** TVA has evaluated this proposal on its own merits. This evaluation included an assessment of the impacts of the proposal on the environment and its ability to fulfill TVA's overall mission.

- Finally, the proposed project is inconsistent with the TVA Act. In November, 1933, Congress enacted the TVA Act and mandated the Tennessee Valley Authority to provide, in the Tennessee River drainage basin (1) the maximum amount of flood control; (2) the maximum development of the Tennessee River for navigation purposes; (3) the maximum generation of electric power consistent with flood control and navigation; (4) the proper use of marginal lands; (5) the proper method of reforestation of all lands in said drainage basin suitable for reforestation; and (6) the economic and social well-being of the people living in the Tennessee River basin. 16 U.S.C. § 831(v)(1994)(emphasis added).

To accomplish the statutory purposes, Congress gave TVA the power of eminent domain to acquire lands for dams, reservoirs, power production, navigation projects, public recreation, and industrial development **for “the economic and social well being of the people.”** 16 U.S.C. § 831(c)(emphasis added). Congress restricted how and for what purposes TVA could dispose of land after being acquired in the name of the United States of America. These restrictions are contained in sections 831c(k) and 831d(d) of the act.

Section 831c(k) provides four ways in which TVA may convey lands. That section reads:

“[The Corporation]

(k) [s]hall have power in the name of the United States -

(a) to convey by deed, lease or otherwise, any real property in the possession of or under the control of the Corporation to any person or persons, for the purpose of recreation or use as a summer residence, or for the operation on such premises of pleasure resorts for boating, fishing, bathing, or any similar purpose[.]” *Id.*

The sale of public lands for a private marina/resort is entirely inconsistent with Congress's mandate that TVA only convey public lands “for the economic and social well-being of the people living in the Tennessee river basin.” 16 U.S.C. §§ 831(c) and (v). While this marina may loosely fit the description of a “pleasure resort,” it remains a privately run enterprise. As such, the public must pay for the use of its facilities and amenities. A public to private land transfer for these purposes hardly supports the economic and social well-being of the

working people of the Tennessee Valley. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** Congress has given TVA broad authority to buy and sell land to accomplish the purposes of the TVA Act. One such purpose is to foster the economic and social well-being of people living in the Tennessee Valley region. Consistent with its broad mandate to provide for the economic development and social well-being of the Tennessee Valley region, TVA has decided to consider a request for use of public land on Wheeler Reservoir for the development of a 91-acre tract allocated for recreational development in the 1995 Wheeler Reservoir Land Management Plan.

## **20. Keep it as is**

- I feel that this property is a more valuable asset to the public if left in its present state. (**Comment by:** *Charles Rose*)
- I live at Freeman Acres with TVA land between me and the river. My comments regarding TVA land have always been for TVA to keep all TVA land. (**Comment by:** *Jackie Tipper*)
- There is intrinsic value in protecting great places. And Elk River is such a place. Having spent my childhood on Wheeler Lake and much of my adulthood thus far in sprawling and cities, I have come to appreciate the still pristine setting of Elk River. And I am so grateful that it exist as it does, with integrity and beauty. (**Comment by:** *Ariana Tipper*)
- My husband's family has owned a camp on Elk River for over 50 years and is saddened at the thought of more commercialization when so much is already available to the public. I encourage TVA to reconsider this venture and make the preservation of this beautiful land a priority. (**Comment by:** *Chris Hamilton, Athens City Schools*)
- We must leave this land undisturbed for the greater good. TVA's role should not be to cater to private developers who profiteer on public land. (**Comment by:** unsigned from Feb 9 2006 open house)
- The area is more useful as a natural area. My concern with this whole mess is that it doesn't make any difference to me what anybody might want to put there. It's that I don't want anything there. (**Comment by:** *Arthor John Peck*)
- The peaceful existence that my neighbors and I enjoy would be destroyed if this proposal is allowed to progress. I'm sure Mr. Doss would not appreciate this in his neighborhood. Please help us maintain this peaceful community which is becoming harder and harder to find these days. Please help us maintain the wildlife and peaceful surroundings for us and future generations to enjoy as it is becoming harder and harder to find. (**Comment by:** *Mabel Smartt; Mabel, Rodney, and Emily Smartt*)
- What is left on Wheeler should remain in its undisturbed state and preserved for future generations, not plundered to some individual or corporation for their own private gain. (**Comment by:** *Michael - mrekb@bellsouth.net*)

- I believe it is necessary to save this natural area of the Elk River, keeping it natural as possible, and not allowing development of any kind. The area is more useful as a natural area. (**Comment by:** Thomas A. Brindley, unsigned from Feb 9 2006 open house)
- Please recognize the value of this acreage as the natural treasure it is, the type of intact riparian forest that is becoming more and more rare because of just this type of exploitation. (**Comment by:** *Janice Barrett*)
- Given the beauty of the area and the fact that it is already used by a wide range of people who in general respect the area and use it well, it is not surprising to see that a number of people are upset by this proposed development. My parents have owned land at Barnett landing for over forty years. We have all gotten used to seeing the side opposite the slough verdant and undeveloped. We like it that way. (**Comment by:** *Helen Ball*)
- In this day and time when there is not many places for people to go and enjoy the outdoors it would be a shame to allow this land to be developed. I for one hike, fish, and enjoy this land as it is. I w--- along with many others if this deal goes through. (**Comment by:** *unknown*)
- I cannot believe TVA would allow Mr. Doss to butcher that beautiful piece of land and place a marina, complete with gas pumps, on that beautiful piece of nature that God has created. I always thought that TVA was developed to protect the land, not allow for its destruction. If Mr. Doss is granted this easement and is allowed to build his Marina my husband and I will probably sell our dream cabin that we have worked so hard to pay for. Please do not let Mr. Doss ruin that beautiful piece of land. (**Comment by:** *Catherine Tackett*)

**TVA Response:** Comments noted.

- Thirdly, TVA's approval of this project would be contrary to the spirit of land stewardship publicly expressed by its Board members. The TVA Board of Directors recently voted to auction off 578 acres of shoreline forest on Nickajack Reservoir, anticipating the purchase of these lands by a developer who, in return, transfer 1,100 acres of conservation lands to TVA for public use. In approving the proposal, Chairman Bill Baxter pointed out that, "The most important precedent that it sets is that there will be no net loss of public lands." Director Skila Harris applauded the proposal because it will expand public lands for preservation and recreation. The proposed marina and resort involve no such land swap as the TVA Board has endorsed in the Nickajack transaction. There would, without question, be a net loss of lands dedicated to conservation (although regrettably, as pointed out above, the extent of such loss is yet to be disclosed). In the anticipated Nickajack transaction, the TVA land is to be conveyed in fee, whereas with the Elk River Resort, the land would be made available under long-term (30-year) renewable easement. Irrespective of the legal instrumentality employed, the 91 acres of TVA land would be alienated from the public domain into private control, and would be reduced in environmental value, all without mitigation in any way comparable to or consistent with that which obtained in the Nickajack transaction. Although there is a difference between acquisition in fee and a grant of easement, the difference here is one that is largely formal and artificial and without a distinction in terms of the central concept

and purpose saluted by the TVA Board, that of “no net loss of public lands.” True, the 91 acres in Tract XWR-21PT would remain in TVA ownership, but they would not be “public lands” in any other substantive sense of that term. They would be lands under sole control of a private operator, no longer available without cost to the using public sector, including fishermen, hunters, equestrians, hikers or others who now use and enjoy this truly public land for recreation. (**Comment by:** *John Crowder*)

- Since leased TVA land along the river is not replaced on another location along the river, this practice of leasing is unacceptable. (**Comment by:** *Nancy Muse*)

**TVA Response:** TVA has a broad regional resource development mission which calls for integration of conservation and recreation objectives with economic development objectives. In reservoir land management plans, TVA identifies specific parcels that have been determined to be suitable for economic and recreation development. TVA also reviews proposals to develop reservoir land to determine if the proposal would help further these objectives. TVA recognizes the importance of striking a balance among the competing demands placed on the land and water resources. This proposal fulfills the intent of the existing Wheeler Reservoir Land Management Plan, which was initially approved by the TVA Board in 1995.

The Little Cedar Mountain (LCM) proposal, which was for residential development, became private upon completion of the public auction, which is why TVA required exchanged properties as mitigation for the LCM Proposal. Unlike LCM, this property will be developed for public commercial recreation. Amenities offered by the resort will be available to the public at a charge fixed by the developer.

The LCM Proposal consisted of a fee sale, the conveyance of fee ownership in TVA land in exchange for monetary or other consideration, for the purpose of disposing of surplus lands. The Elk River Resort, by contrast, requests a term easement for commercial recreation. TVA believes this distinction is meaningful in view of the limited term of an easement and the residual fee ownership that TVA would continue to retain over Tract 21. An easement is a recordable document, that is used to convey an interest on, over, and across a defined area of TVA land, and permit occupancy and use of the area for specific purposes for a fixed-term.

TVA identifies lands suitable for commercial recreation development through the reservoir lands planning process and allocates them through specific reservoir land management plans. Tract 21 was allocated for commercial recreation with the benefit of such a planning process. Further, the Elk River Resort proposal has been evaluated with respect to potential impacts on water quality, threatened or endangered species, historical and cultural resources, floodplains, wetlands, wildlife resources, environmental laws/regulations, etc. Mitigation to minimize impacts to the environment will be required of the developer.

## **21. Reservoir Operations Study**

- THE PUBLIC WISHES TO CONSERVE PUBLIC LANDS Please take a look at the “River Operations Study” that TVA completed recently. Part of the study include a

random phone survey of 3,600 residents in the Power Service Area. The top priority identified by the telephone participants was “protecting the environment (32 percent).” The proposed project will result in 100% development of this side of the river. If this happens, it will be contrary to TVA’s own development plans and contrary to TVA’s own River Operations Study. Again, there is no legitimate reason for TVA to allow that property to be given away to the detriment of current and future generations. (**Comment by:** *Susan Roessel, Bob Freeman* )

- Finally, the TVA Reservoir Operations Study - Final Programmatic EIS, Section 1.6 reports the results of an extensive TVA commissioned telephone survey showing that Stakeholders clearly consider conservation their top priority. Yet, review of TVA actions during the past several years show a preponderance of those actions favor of commercial developments. When will conservation actions begin to match your rhetoric? (**Comment by:** *Victor Dura*)

**TVA Response:** Comments noted. The property is not being given away. The project is consistent with long-term plans, developed with public consultation. TVA has a broad regional resource development mission which calls for integration of conservation and recreation objectives with economic development objectives. In balancing the demand for recreational facilities and importance of conservation, this proposal would be implemented with mitigation measures that minimize impacts to the environment.

In reservoir land management plans, TVA identifies specific parcels that have been determined to be suitable for economic and recreation development. Likewise, large areas of land are allocated for natural resource conservation. The Wheeler Reservoir Land Management Plan allocated approximately 9,140 acres of TVA property to Recreation and Resource Management. TVA has allocated approximately 380 acres for Recreation, Resource Management and Environmental Protection near the immediate vicinity of the proposal area.

## **22. Previous TVA Report**

- In TVA’s 1995 Wheeler Reservoir Land Management Plan, page 105-106, we find the following statements: “Presently there are two major resorts operating on Wheeler Reservoir-Joe Wheeler State Resort Park and Lucy’s Branch Resort.” “The greatest need for additional marina and resort development is near the two largest metropolitan areas, Huntsville and Decatur.” “During the tract evaluation process, TVA Recreation staff ranked the land capability for Tract No. 21 as excellent, but the suitability was considered poor because the location is so close to two existing resort operations.” [The very same “major resorts” mentioned earlier] “Therefore, the tract was requested by Recreation as a medium land need tract. The planning team recognizes the public could be better served if all three resort operations were not located on the same side of the reservoir and within 6 miles (10 km) of each other.” **What has happened to make TVA change its mind in this regard? Why is the “Action Alternative” now the “Preferred Alternative”?** (**Comment by:** *Charles Rose*)
- THE PROJECT IS CONTRARY TO YOUR OWN PLAN - Your study in 1995 recognized that another marina in this area would become a problem. Quoting from page 105 and 106 of “Wheeler Reservoir Land Management Plan” your study states concerning Tract 21: “Suitability was considered poor because the location is close

to two existing resort operations. Therefore, the tract was requested by Recreation as a medium land need tract. The planning team recognized the public could be better served if all three resort operations were not located on the same side of the reservoir and within 6 miles of each other". This finding was made in 1995 before several other marinas were built in the area. Joe Wheeler State Park is currently expanding their marina and cabins. (**Comment by:** *Susan Roessel, Bob Freeman*)

- Why in the world is TVA so intent on allowing Doss to destroy the last undeveloped land on Elk River? Is it that you can't admit you might have made a mistake in 1995 when you changed the designation of that property from recreation to commercial recreation? And don't give me the excuse about being down here and the good citizens didn't protest then. I know three of the local gentlemen that were on that committee. They admitted that they just don't know how they let it slip by them. I think they were naive and just didn't pay enough attention to know what was in store for us. I never knew anything about the change until this recent business came about. Many of my neighbors say they never heard of it either. Do the right thing for once. Admit TVA made an error and do what is right. Deny Doss and change the designation back to what it was prior to 1995. I openly admitted three mistakes in my prior letters, especially to Spencer Boardman. In my defense, however, I didn't know the inner workings of the TVA process. For once, can you just do what the majority of the people want? (**Comment by:** *Robert Freeman*)
- (Mrs. Wright) And we noticed, in their own tenure plan, they said there should not be another marina, when they have two on the river now. (Mr. Wright) And the TVA long-term plan, they're violating it. (Mrs. Wright) And we don't like the nature of this development, the tourist camp development. We object to that. That's all. (**Comment by:** *Ms. Bill Wright, court reporter comments*)
- In the Wheeler Land Management Plan - On pg 105 and 106 TVA recreation staff ranked the land for tract 21 as excellent but suitability was considered poor because the location is so close to two existing operations. The planning team recognizes the public could be better served if three resorts operations were not located on the same side of the reservoir and with 6 miles of each other. This says it all and TVA said it!!!! (**Comment by:** *Robin Burchfield*)

**TVA Response:** The Wheeler Reservoir Land Management Plan (Plan) also noted that the future commercial needs were being met locally for the middle and upper reaches of the reservoir. The planning team focused on the lower regions of the reservoir for potential commercial sites. Four tracts were allocated (Tract Nos. 21, 67, 88, and 91) to meet plan objectives. With boat slips and dry storage nearing capacity for small craft on Wheeler Reservoir, the market now appears to be strong for covered wet slips to accommodate large boats. Many of the marinas on Wheeler Reservoir currently have waiting lists for owners seeking space for large boats.

- I learned from him that he was in this area for a considerable period of time about 10 years ago when TVA was considering this property for reclassification from simply "Recreation" to "Commercial Recreation". You should know that I never knew anything about this reclassification until just recently. In fact, I asked several people in my community if they knew about it. Most of them didn't but I found three individuals who attended one or more meetings concerning the reclassification. One of those individuals was Bob Blanks who I consider as one of the "elders" and community leaders. He told me that he does not know how they let that "slip by".

Another of the individuals, Joe Serocki, said they simply made a big mistake. Ken Hammond told me today that they could not have envisioned the vast changes in this area and they certainly would not have been so agreeable had they known what would happen over the next 10 years. This is what I think actually happened. At that time, the local people who were involved in the changes in 1995 simply could not see what would happen in the succeeding 10 years. In fact, I believe if Mr. Doss had applied 10 years ago, he would not have received all the opposition that has arisen over the last several months. Although they would probably not have welcomed a marina with open arms, I think the opposition may have been minimal. I just can't believe they actually had any idea what was coming. The three individuals I mentioned are now shaking their heads in disbelief. TVA met little opposition, so the change was made. **(Comment by: Bob Freeman)**

- (had we been aware in 1995 that TVA was proposing to change the status quo, we would have protested then. TVA does not advertise their plans very well. Some people do not subscribe to a paper). **(Comment by: Helen Ball)**
- The area proposed to be leased to Mr. Bubba Doss on Elk River is supposedly zoned commercial. When this area was zoned, was this meeting publicized and was the meeting held in this area so that the people who live in this area could have input into this decision. Or was this decision made to zone this land commercial made by TVA in some location such as Knoxville with no input from the people of this area? **(Comment by: Johnny Tidwell)**

**TVA Response:** In addition to documented resource data, local residents and lake users were important in determining suitable uses for TVA public lands adjacent to the reservoir. TVA made a concerted effort to inform and encourage the public to participate in the development of the land management plan. During February 1991, TVA contacted local community cooperators to encourage these stakeholders to attend one or more of six informational meetings held in each county. From March 5 to March 12, 1991, informational meetings were held in Decatur, Athens, Guntersville, Huntsville, Moulton, and Florence, Alabama. At each meeting, TVA staff described the upcoming planning effort as it related to future use of the 11,284 acres of TVA public land around the reservoir. TVA also held three public workshops on March 19, 20, and 21, 1991. TVA invited over 1,700 individuals to attend these scheduled public workshops.

- In a newspaper article in the Huntsville Times on October, 18, 2005, Buff Crosby, TVA, is quoted as saying "officials have not made a decision about recommending the Elk River Resort deal to the utilities board. But she said 'it helps' that the agency identified the property a decade ago as a good location for commercial recreation." My contention is that information from a decade ago is totally out-dated and irrelevant in this case. Development in our area has exploded in the last 10 years and TVA is now considering giving the last of it away. TVA should not slavishly base decisions on projects such as Elk River Resort on data secured 10 years ago. An entire reevaluation should be done before any decision is made. It is simply unfair to the people who currently live here to rely so strongly on that outdated information. **(Comment by: Robert Freeman)**
- In my opinion, TVA is acting on outdated and currently erroneous information. It would be simply unfair to the people on Elk River for TVA to surrender the last

undeveloped property to shoreline development. My neighbors and I have had enough. But we can't do anything about it but beg. That's why I am so upset with TVA. They simply do not appear to listen. I have tried to remain professional and tried hard to recognize that TVA employees just work there. The people in opposition to this project are just everyday, hard-working people. They don't have time to be jerked around for 8 months attending meeting after meeting, writing letters, and responding to a sloppy, irresponsible document that is the entirety of the Environmental Assessment. The only reason I can attend meetings and write so many letters is because I recently retired to live out my days on the beautiful Elk River. I recently decided that a cautious approach has no impact with TVA. This letter may be offensive to some employees at TVA, but it is time "to take the gloves off". Somebody should be frank with you. Local people appear to always lose when TVA is involved, so it will probably make no difference anyway. (**Comment by:** *Robert Freeman*)

- The 1995 Wheeler Reservoir Land Management Plan needs to be reassessed because it does not apply to 2005 and years of gross development and sprawl along the waterways. Look at what is happening at the Nickajack and Tims Ford Dam - Sprawl and destruction! (**Comment by:** *Harriet Johnston*)
- The decision to allow this was made based on an outdated 1995 plan, by a TVA board with no Alabama representation. (**Comment by:** *Jimmy Wayne Cosby*)

**TVA Response:** The designation of XWR21PT to "commercial recreation" is still an appropriate designation today. In fact, the need for such an allocation is greater today than in 1995 in view of the substantial increase in demand recreational facilities. Additional analysis concerning this increase in demand has been added to the Final EA (see Section 3.7 Recreation).

Reports from the United States Census Bureau, Alabama Department of conservation and Natural Resources, Alabama Department of Motor Vehicle Division, and Tennessee Wildlife Resource Agency indicate that 95,568 boats and 17,390 recreation-vehicles are registered with 100 miles of the proposal site.

- As to the Environmental Assessment and the numerous "insignificant impacts" in it, this project will have an extremely significant impact on the over 220 homes that will have to live within close proximity to the proposed development. The people who succumb to drugs purchased from drug dealers that will predictably flock to this remote area will be significantly impacted. (**Comment by:** *Bob Freeman*)

**TVA Response:** The applicant has requested permission to place a heavy gate capable of being locked at the entrance. The hours of operation would be posted and the gate would be closed after hours. Managers will be onsite during normal and seasonally extended business hours to supervise activities allowed at the site. This tract is located within the responding jurisdiction of Rogersville Police Department, Lauderdale County Sheriff and TVA Police. Rogersville Police Department and Lauderdale County Sheriff respond to emergency situations. The security measures are expected to minimize the potential for criminal activity on the tract.

- Another marina, with potential additional development on adjacent property, will be unfair to those of us who live here. It will be contrary to TVA's "blended" approach to shoreline development and contrary to TVA's own Reservoir Management plans. There is no legitimate reason to allow this property to be destroyed for the sake of one private developer versus over 220 residences currently within close proximity of the site. (**Comment by:** *Bob Freeman*)

**TVA Response:** The proposal is not inconsistent with TVA's Wheeler Reservoir Land Management Plan, which designates Tract 21 for commercial recreation. One objective of the Plan was to help provide for a diversity of quality recreation opportunities on Wheeler Reservoir. The Plan identified four tracts (Tracts 21, 67, 88, and 91) for future commercial recreation development.

- **The Proposed Project is Inconsistent with TVA's Wheeler Reservoir Land Management Plan:** The proposed project is also inconsistent with the findings of TVA's 1995 Wheeler Reservoir Land Management Plan. The Plan states:

"Presently there are two major resorts operating on Wheeler Reservoir –Joe Wheeler State Resort Park and Lucy's Branch Resort...The greatest need for additional marina and resort development is near the two largest metropolitan areas, Huntsville and Decatur...During the tract evaluation process, TVA Recreation staff ranked the land capability for Tract No. 21 (the location of the proposed project) as excellent, but the suitability was considered poor because the location is so close to two existing resort operations...Therefore the planning team recognizes the public could be better served if all three resort operations were not located on the same side of the reservoir and within 6 miles (10 km) of each other."

Since 1995, several additional marinas have been established near the project area including, "Wheeler Lodge," "The Pointe" and "Bay Hill Marina." See Appendix B at 89-90. In view of all these marinas operating in such close proximity to each other and the proposed site, it is puzzling why TVA would grant an easement for one more marina.

The findings of the 1995 plan, coupled with the construction of several other marinas over the past decade, weigh against TVA granting an easement for the construction of this marina. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** One objective of the Wheeler Reservoir Land Management Plan (Plan) was to help provide for a diversity of quality recreation opportunities on Wheeler Reservoir. The Plan also noted that the future commercial needs were being met locally for the middle and upper reaches of the reservoir. The planning team focused on the lower regions of the reservoir for potential commercial sites. The Plan identified four tracts (Tracts 21, 67, 88, and 91) for future commercial recreation development to meet plan objectives, placing Tract XWR-21PT on a lower priority because of the location of two nearby resorts, Joe Wheeler State Park and Lucy's Branch Resort. TVA's evaluation of the situation ten years later reveals that both marinas have waiting lists. With boat slips and dry storage nearing capacity for small craft on Wheeler Reservoir, the market now appears to be strong for covered wet slips to accommodate large boats. Many of the marinas on Wheeler Reservoir, as a whole, currently have waiting lists for owners seeking space for large boats. Thus, the proposal for Tract 21 is

not only consistent with the allocated use but would also help meet current demand for water recreational needs.

### 23. *Granary*

- Granary chapter # 3 page 27 Draft Environmental Assessment - The issue of a bond to guarantee restoration of the property in the event that the proposed activity is terminated was raised by a number of people including myself. It was noted that the granary facility on the Elk River exists as an eyesore years after it ceased operation. This issue was identified as a legal issue and could not be addressed other than to note that no bond was currently required. Will there be any contingency restoration guarantee? (**Comment by:** *Joe Serocki*)
- In section 3.11 (With regards to the granary) “TVA is currently pursuing legal means to remove this structure.” Will TVA have to “pursue means” for decades to remove what structures the applicant will not remove when he bankrupts? It is incumbent upon TVA to clearly define what courses of action will be available in the highly probably event that this applicant cannot succeed with this project. (**Comment by:** *Eric Kelso*)
- It is with a deep sense of futility that I write to you. Many people have told me that it is simply no use to attempt contact with you because TVA will ignore the concerns of the people. The prime example of that attitude is located just east of the Elk River Bridge on US Highway 72. It is the wreck of the old Wheeler granary that was erected there some years ago; also over the objections of many residents of the area. That eyesore was abandoned within a year of it's construction after it blew up and polluted the area with the stink of burning corn for several weeks. (**Comment by:** *Carol Copeland*)
- So why are we so upset? Because this is the last of it. There is nothing left on the shoreline. And people here are still upset about the failed granary just upstream from the proposed marina site. The dilapidated structures are still on the shoreline years after it shut down. And what happened to the land close to the granary? More houses and shoreline destruction. (**Comment by:** *Robert Freeman*)

**TVA Response:** In 1983, the Wheeler Grain Company obtained an industrial easement from TVA for the right to load and off-load products across TVA property. The company constructed a steel-cantilevered structure on the easement area. The company is no longer in business, and the structure is not being used. TVA is currently evaluating options to remove this structure. The back-lying property has since been sold and has been developed into a subdivision with residential access rights subject to TVA's Shoreline Management Policy.

In reference to the Elk River Resort Proposal, if approved, TVA will monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant's expense

or leaving the facilities in place and obtaining another individual to continue operation of the property.

## 24. *Bay Hill, The Pointe Subdivision*

- It [TVA] is supposed to preserve the land, not give it away for profit the same thing will happen on this project as the Bay Hill Project. TVA controls nothing on this section. They have gotten their money and gave the condos for a \$1500.00 price so they have ownership and TVA doesn't. (**Comment by:** *Paul Hargrove*)
- In the last 10 years, Bayhill exploded into a major development. It started out as just a small marina and campground. Mr. Boardman saw it again while he was with me last Tuesday. It is humongous now. My neighbors and I see the same thing possibly happening again. For miles in either direction from the 91 acres, construction of homes and condos have put tremendous pressure on our shoreline. There is a home or cabin on virtually every nook and cranny for miles. People are selling out up north and out west and moving here in large numbers. (**Comment by:** *Bob Freeman*)
- Bay Hill Marina (formerly Lucy's Branch) has transitioned from a marina to a marina associated with non-permanent rental cabins to a marina with a large number of permanent single-family dwellings as well as multi-condominiums and the community amenities associated with such development. This development has occurred on TVA land. (**Comment by:** *Atkinson, Anne L.*)

**TVA Response:** TVA sold this the "Bay Hill subdivision land" in 1947, for public recreation purpose under Section 4(k)(a) of the TVA Act, as amended, which restricts the property be to used solely for the construction of cabins for public recreation. Since the deed did not contain an alienation clause, the tract could be subdivided. Cabins could be constructed on this private property and sold to individual owners, but these cabins had to be used only for public recreational purposes. These TVA restrictions did not prevent the land from being divided into small parcels and densely developed. The previous restrictions requiring any construction be used for public recreation purposes were lifted in 2002. A good portion of the development now in place was constructed before TVA removed the restrictions. Removal of the deed restriction allowed Tract No. XWR-288 to be utilized for any purpose consistent with Section 4(k)(a), which includes residential purposes and eliminated future title concerns of residential owners.

In contrast to Bay Hill, the applicant for the Elk River Resort proposal is asking TVA to grant a term easement for commercial recreation purposes. The property is identified as Tract XWR-21PT in the Wheeler Reservoir Land Management Plan (Plan) and was allocated for Commercial Recreation and Visual Management in the Plan (TVA, 1995). Residential development was not requested nor would it be consistent with the Plan allocation. Additionally, TVA would retain fee ownership of the tract.

- The developers at Bay Hill appear to have built high rise condo's on about every blade of grass and are still going. (**Comment by:** *Frank Noojin*)
- I would like for TVA to continue to monitor environmental issues reg this marina. No More Bay Hills! (**Comment by:** *Sue Parker*)

**TVA Response:** Comment noted.

- TVA should now recognize that the Environmental Assessment did not properly address the overwhelming impact that two large developments, (The Pointe and the Proposed Elk River Resort) separated only by a small body of water, will have on the adjacent family community. (**Comment by:** *Bob Freeman*)
- Then in the last two years, a major development called The Pointe just slipped in under the radar screen. All of a sudden, we have a huge development of private land directly across from the proposed marina site. Speaking of Billy Christopher and his "The Pointe" destruction project, including the dredging of an entire slough with no input whatsoever from the public. TVA has already allowed the developer to dredge a major slough out that completely ruined fishing there. He now has a large community boat slip that almost blocks the entire slough. That prime spawning ground is totally ruined and TVA allowed it to happen with no input or comments from anyone of whom I am aware. It should also be noted that the developer at the "The Pointe" has already built a huge private community "boat slip". It goes well over one-half way from one shoreline to the opposite shoreline directly across from it. It more or less blocks access to the rest of the public. TVA's regulations stipulate that the distance of a proposed new structure shall not exceed more than one-third of a particular body of water it crosses. TVA tells us they are going to allow him to build up to 5 or 6 more large community boat slips. In just a short 10 year span, everything is developed or in process of being developed, except for the TVA land now in question. Speaking of Billy Christopher and his "The Pointe" destruction project, including the dredging of an entire slough with no input whatsoever from the public. You've given him a private playhouse with huge sewage problems on the way. He brags that some woman from California wants to move here. Well, why not? She can sell out there and move here and live fat and happy off free TVA shoreline. There is an article in today's edition of The News-Courier of Athens, Alabama which quotes him as saying that TVA has already permitted him to build 140 boat slips. He brags that a private marina is nearby. Is he speaking of Bay Hill? Or, has he already been told that Doss's marina will be approved which will be just across Elk River from his destruction? Doesn't this smell fishy to you? I have three questions? What in the hell is the matter with you people? Are you intent on destroying the entirety of just Elk River? Or, are you going for the entire Tennessee River across North Alabama. What you have done and what you are planning to do is despicable. (**Comment by:** *Robert Freeman*)

**TVA Response:** The USACE issued a joint TVA and State of Alabama public notice, number 04-13, on March 3, 2004 for thirty days to solicit input on the Pointe's proposal. Public comments were reviewed and evaluated during the environmental review for this project. TVA and the US Army Corps of Engineers (USACE) permitted six community facilities and four day use piers to The Pointe Subdivision in May 2004. Harbor limits were established by TVA and the USACE by request of the developer. Harbor limits allowed the community facilities to occupy more than one-third width of the cove. However, special conditions were placed in the permit to restrict water use facilities within the harbor limits and near the day use piers, and the community facility could not occupy more than half the distance of the cove. The EA has considered the impact of the Pointe in conjunction with the Elk River Resort. Boats entering and leaving the proposed marina would be on the opposite side of the river some 1,500 feet away and

would not interfere with boat traffic at The Pointe community facility. See Section 3. 7.

## 25. Alternatives

- Isn't there a location the developer could use that is more suitable to his purposes? I don't think he put enough time into finding alternative locations. (**Comment by:** *Susan Roessel, Lu Parberry*)
- The search for an alternative site in the EA appears to be insufficient. More research should be done to find an alternative site. Here are some suggestions: A. The Point on Town Creek is available. The marina, restaurant, and roads are already there. The applicant would own his own land and we would not have to give him ours. B. The Park on Elk River, Limestone County, just north of Highway 72 Bridge is available. In fact, they already have roads next to a major highway. They already have an unused store. There is more than enough space for a marina. They had a gas station. The Park Attendant told me that the State was losing \$70,000 a month and had to pull the pumps. Makes you wonder why the applicant wants in the marina business, doesn't it? In addition, it appears that the land just north of the existing park is owned by TVA. We could give the applicant that land for cabins and campsites. I'm certain that the State would be willing to work out a deal. C. The State Park on the Lauderdale County side of the Highway 72 Bridge is already there. They already have two boats ramps and ample space for cabins and campsites. You should know that the State tore down the building that used to be a rest area and removed all the picnic tables because it was losing money. D. The search for an alternative site in the EA appears to be insufficient. More research should be done to find an alternative site. Here are some suggestions: A. The Point on Town Creek is available. The marina, restaurant, and roads are already there. The applicant would own his own land and we would not have to give him ours. B. The Park on Elk River, Limestone County, just north of Highway 72 Bridge is available. In fact, they already have roads next to a major highway. They already have an unused store. There is more than enough space for a marina. They had a gas station. The Park Attendant told me that the State was losing \$70,000 a month and had to pull the pumps. Makes you wonder why the applicant wants in the marina business, doesn't it? In addition, it appears that the land just north of the existing park is owned by TVA. We could give the applicant that land for cabins and campsites. I'm certain that the State would be willing to work out a deal. C. The State Park on the Lauderdale County side of the Highway 72 Bridge is already there. They already have two boats ramps and ample space for cabins and campsites. You should know that the State tore down the building that used to be a rest area and removed all the picnic tables because it was. D. As I predicted in one of my prior letters, Mr. Doss now has an opportunity to own the marina at Florence Harbor/McFarland Park. The restaurant has been opened and closed several times. This marina is in the middle of a major city and Mr Doss can move right in as the last "owner" skipped town without paying a number of his creditors, including the percentage of income that he promised the City of Florence. (**Comment by:** *Robert Freeman*)
- I lived in the Elk River State Park located on the four-lane Hwy. 72 on the Elk River, for over twenty years. My ex-husband was the ranger who operated the facility. Every year, the State of Alabama considered selling the area, which contains a group lodge, room to reinstall gas pumps, and a store, because it lost money. It is

one of the most beautiful sites on the river, and if the applicant wanted to pay what such a site is worth, he could certainly purchase it from the State. Unfortunately, there isn't as much profit for him when he can so easily get land for his business practically free from TVA. (**Comment by:** *Woodfin and Carla Gregg*)

- You posted your environmental assessment report on your website and called it an assessment, more specifically, an analysis of alternatives. It's not an analysis of alternatives at all. An analysis of alternatives is an analysis of more than one option, and includes cost-benefit trade offs of each option. Why is your, TVA's, gift of public land to a private developer the only alternative? Where is the alternative that turns the land back over to the original owners you evicted and paid nothing for the land in the first place? Where is the alternative use for environmental purposes? Where is the alternative for sale to the general public for the general good of many people? Further, where is your benefit analysis? Where is your costs analysis? Where is the cost-benefit trade off of alternatives? And, lacking an analysis of alternatives, what is your basis and rationale for a recommendation and decision? (**Comment by:** *Thomas Gary Wicks*)
- The land management plan still states not preferable to have 3 marinas on the same side of the river. I suggest this project be moved to the other side of Tenn. River to Spring Creek on some private land. If there needs to be some type of development put it on that side There is to much developing on the Elk and Tn. River's North side especially in a such a small area. This will cause to much stress on our river and environment. (**Comment by:** *Robin Burchfield*)
- There are other locations that are zoned commercial in this vicinity (Lawrence Co) that would have less impact on the area. Remove the areas of TVA land on Elk River from the list and allow Mr. Doss to lease one of the other areas. (**Comment by:** *Johnny Tidwell*)
- Range of Alternatives: TVA lists only two alternatives: All or nothing. These alternatives hardly recognize a spectrum of alternatives, the idea behind the NEPA requirement. (**Comment by:** *Lamar Marshall, Wild South*)
- Why cannot Mr. Doss use the area around Elk River bridge for development? A gas station has already operated there. (**Comment by:** *Helen Ball*)

**TVA Response:** Included in the introduction of Chapter 2 of the DEA are the alternative sites that the applicant considered and why they were eliminated from further consideration. The Point on Town Creek (Wilson Reservoir) is proposed to be developed another developer and is not available. The land for the Park on Elk River was transferred to the State for public recreational use. The State Park on the Lauderdale County side of the Highway 72 Bridge was a non-fee "rest area" and is not large enough to accommodate the proposed resort. A major component of the application is camping and cabins in addition to a marina and Florence Harbor only offers marina and related facilities. TVA has added a third alternative to the FEA. If the easement is approved by the Board, the applicant will pay fair market value for the use of TVA property.

TVA's purpose and need for this project was partly defined by the previous allocation of Tract 21 for commercial recreation. Because of the qualitative

nature of environmental benefits, such projects do not lend themselves to a formal quantitative cost benefit analysis. Project costs are discussed in the applicant's proposal in Appendix A. The EA provides qualitative descriptions of the recreational benefits and the environmental impacts.

- I was informed of another alternative site just prior to the meeting on the 18th. A neighbor and I visited the site the morning of the 18th. According to the informant, the applicant already has ample TVA land at the mouth of Second Creek right next to the main Tennessee River Channel. IF this is TVA land, it appears to be a perfect site for a marina, cabins, campsites, etc. IF, this land is used by the applicant per the informant's statement, it already has a fine road all the way to the shoreline, several acres for cabins and campsites, great access to the Tennessee River, and a huge mess of metal debris already in place. It's also very close to the applicant's current business site. (**Comment by:** *Bob Freeman*)

**TVA Response:** A small 0.3-acre portion of tract No. XWR-3PT is under license to the applicant for commercial barge loading/unloading and is considered an interim use. The tract was previously used as a barge loading/ unloading site while the Wheeler lock was under repair in 1961-62. There is an existing road on this tract and six mooring cells which are not currently in service, but the area is regarded as a safety harbor. Tract No. XWR-3PT (11.2 acres) fronts another parcel of land that was transferred to the state of Alabama as part of Joe Wheeler State Park. The tract is not large enough to accommodate the applicant's proposal, and navigation restrictions in the area could also create potential conflicts between commercial and recreational traffic.

- He could use the site of the grain silo. That site is sitting idle, and since it is unsafe and an eyesore, he could only improve upon that site's condition. This area would be closer to a main highway (easier access), near a public boat launch, in a sheltered area, etc. (**Comment by:** *Helen Ball*)

**TVA Response:** This land is privately-owned and is currently being developed as a subdivision.

- The EA Fails to Analyze a Reasonable Range of Alternatives

NEPA requires a "detailed statement" of "alternatives to the proposed action." 42 U.S.C. § 4332(2)(c). The alternatives analysis should address "the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for the choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14. This analysis must "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a).

The purpose of this section is "to insist that no major federal project should be undertaken without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Environmental Defense Fund v. Corps of Engineers*, 492 F.2d 1123, 1135 (5th Cir. 1974). The Council on Environmental Quality describes the alternatives requirement as the "heart" of the environmental impact statement. 40 C.F.R. § 1502.14.

While an agency is not obliged to consider every alternative to every aspect of a proposed action, reviewing courts have insisted that the agency “consider such alternatives to the proposed action as may partially or completely meet the proposals goal.” *Natural Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 93 (2d Cir. 1975).

This EA presents analysis of only two alternatives: one action alternative and a no action alternative. This is a violation of the law. By considering in detail only one action alternative, this EA fails to “provid[e] a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14.

A wide range of alternatives clearly exists. For instance, in addition to relocating the project to a less environmentally sensitive location, the agency could decide to limit the acreage of the easement. The agency could also impose a variety of development restrictions. For example, the agency could grant the entire 91-acre easement but require the applicant to set aside a certain percentage of the land for mitigation or conservation purposes. The agency could also require the applicant to “scale back” the intensity of the proposed development from five phases to just one or two phases. Or perhaps, the agency could permit the applicant to proceed with all five phases of construction but make certain design changes in order to reduce the impacts on the surrounding area.

Despite these and other reasonable alternatives, you have entertained only one option: satisfy the applicant’s every desire and grant Elk River LLC a 91-acre easement and the permission to do what ever it wishes with the land. This is not the careful consideration of alternatives that NEPA demands. (**Comments by: Jason Totoiu and Sandra S. Nichols, Wildlaw**)

- The EA Disregards a Number of Alternative Locations for the Proposed Site

In addition to not exploring a number of reasonable alternatives, you reject three other possible locations for this project with not so much as a sentence explaining why these areas were eliminated from further consideration. EA at 5. As courts have long recognized, “the existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Alaska Wilderness Recreation & Tourism v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995). See, e.g., *Dubois v. U.S. Dept. of Agric.*, 102 F.3d 1273, 1288 (1st Cir. 1996).

Instead of analyzing these alternatives as the law requires, you dismiss them, saying these areas are “unsuitable for a marina,” because they provide “limited room for future expansion” or “limit[ed] access for boats.” *Id.* These are conclusory statements with little or no explanation and “the record offers precious little to show that the agency ever paused to test its foundational assumption” that the proposed site is really in fact the preferred alternative. *Simmons v. United States Army Corps of Engineers* 120 F.3d 664, 670 (7th Cir. 1997).

Moreover, you have eliminated these perfectly reasonable alternatives from further consideration simply because they do not appear to be a perfect fit for the developer. However, “an alternative may not be disregarded merely because it does not offer a complete solution to the problem.” *Citizens Against Toxic Sprays v. Bergland*, 428 F. Supp. 908, 933 (D. Or. 1977). If you actually take the

time to consider these and other alternative sites, you may discover that these and other areas are better suited for a development of this size and intensity.

In closing, the CEQ regulations warn that a NEPA document is not to be used to justify a decision already made. 40 C.F.R. § 1502.2(g). However, in view of your decision to address only one alternative while summarily rejecting a number of other reasonable alternatives, it appears that you are doing just that and unlawfully making this EA nothing more than a “foreordained formality.” *Citizens Against Burlington, Inc.* 938 F.2d at 196. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response to B.1 and B.2:** Elk River Resort is an applicant generated proposal and is responsive to the long-standing allocation of tract XWR-21PT for commercial recreation. The review has not identified any significant environmental impacts. Included in the introduction of Chapter 2 of the DEA are the alternative sites that the applicant considered and why they were eliminated from further consideration. The Point on Town Creek (Wilson Reservoir) is proposed to be developed another developer and is not available. The land for the Park on Elk River was transferred to the State and is not available for the applicant’s project. The state park land on the Lauderdale County side of the Highway 72 Bridge is also not expected to be available to the applicant. As to the comment on TVA’s Cowford campground site, this site is unsuitable for a marina location because winter pool elevations make much of the embayment too shallow for a marina without a major dredge. In contrast the applicant’s proposal has adequate water depth year round, except for a minor portion fronting the dry storage facility. This information has been clarified in chapter 2 of the FEA. A major component of the applicant’s proposal is camping and cabins in addition to a marina, and Florence Harbor only offers marina and related facilities. The action alternatives (B and C) have been revised in the FEA to clearly show all the revisions that have been made to the proposal, since the initial application. Alternative C was presented as a mitigated alternative that would provide additional natural resource and water quality benefits.

## 26. **Project Description/Scope**

- Indicative of the general sloppiness of this DEA is this statement from page 9, “**Tract XWR-21PT is located on the west bank of the Elk River approximately 0.5 mile upstream from Wheeler Reservoir**” and this one from page 33, “**This site, containing approximately 91 acres, is located on the west bank of the Elk River approximately 0.5 mile upstream from Wheeler Reservoir.**” Both of these references to the location are wrong. The site is 1.5 miles from Wheeler Reservoir, not 0.5. (**Comment by:** *Charles Rose*)

**TVA Response:** Comment noted. The river mile location has been corrected in the FEA.

- Some of the drawings in Mr. Doss’s proposal show three docks containing boat slips and a fuel dock on the upstream side. Other drawings show four docks containing

boat slips with the fuel dock on the downstream side. Which are correct? (**Comment by: Charles Rose**)

**TVA Response:** The initial resort development proposal included a preliminary plan which showed three marina multiple-slip docks. More detailed drawings were submitted as part of the Section 26a permit application which showed four marina multiple-slip docks. The action alternatives (B and C) have been revised in the FEA to clearly show all the revisions that have been made to the proposal, since the initial application. Alternative C was added and includes additional features to minimize potential environmental impacts.

- Page 5 . . . . states: "Some Spoil will be removed by barge and transported to a loading dock... Comment: Public Notice 05-70 dated August 26, 2005 page 21 states: "Spoil will be removed by hydraulic dredge and pumped... The DEA fails to mention this pumping technique. Is this a viable option or what? Page 30. . . states: "Agree that spoil would be disposed of and contained on land lying and being above the 557.3 foot contour..."Page 5 . . . . states: "This dredge spoil could be utilized throughout construction as backfill above the 560 foot contour. . ." Comment: Where can dredge spoilage be located? (**Comment by: Kenneth Hammond**)

**TVA Response:** The revised method the applicant proposes to use for dredging is provided on page 5 of the Draft EA. A hydraulic dredge is not planned to be used. The draft EA states where the dredge spoil would be utilized or disposed of: "in some inland areas needing fill, most likely in areas along the road construction."

- Page 27. . . . states: "The trash break as proposed would be 800 feet long. The placement and distance from the shoreline for this structure has not been specified, although the drawings indicate it would not abut the shoreline, but rather allow room for boats to pass between the shoreline and the structure." Comment: This fact shows that the applicant has no regard for the boating public and is absurd to even suggest a structure reaching almost half way across Elk River. Since the proposal contains no detail as to the exact location of structures, even TVA does not know exactly where those structures would be placed and can only generalize and say that they define harbor limits. (**Comment by: Kenneth Hammond**)

**TVA Response:** The applicant has modified the proposal to reduce the harbor limits to no more than 550 feet which is one-third of the distance across the river at this point. Also, the applicant has provided more detail information on the trash break. The trash break will be a floating structure with suspended concrete panels (4-6 feet) below the water. It will be attached by an access walkway. The structure will look very similar to a floating pier. A boat will not be able to pass between the trash break and the shoreline. TVA approves harbor limits and the structures within the harbor limits.

- Page 28....states: The DEA says "(see figure 3-1 for approximate location)". Comment: This refers to the approximate location of the structures. The 550 foot trash break is located almost in the center of the slough and directly in front of the shoreline of Tract 22 and should be considered an encroachment upon the waterfront of Tract 22. Why is the trash break shown outside of the harbor limits? Also note that the trash break has suddenly, without explanation, shown as 450 feet in length. The location of the harbor structures, including the trash break, should be located by Global Positioning System (GPS) coordinates so that the applicant would

know exactly where the structures would be located and not have the option of locating them in a different area and even changing the angle with the shoreline. Since the proposal was deficient in details and shows only general locations, if approved, the applicant could locate the structures where he wanted them and who, without a defined detail, could challenge the location. This fact could give the applicant even more liberty to encroach on Tract 22 waterfront. (**Comment by:** *Kenneth Hammond*)

- I talked to Mr. Doss during the public meeting on his plans for this development and it appears he does not have a plan, just a lot of ideas. He did not know exactly where the road was going, if it would be one-way with a loop or two-way. He did not know what type campsites he would put in, if they would be drive-thru, back-ins, gravel or concrete. If you stop and think if each RV is approx. 25-35 feet long. The campsite will have to be at least 14x 40 feet long x 100 campsites. This will destroy more than 5 acres. The proposed area for campsites is on a sloped area and will cause significant erosion and runoff. Mr. Doss' business description pg. 18 states "RV Campsites will feature large level pads with full hook-ups which include electric, water and sewage connections." Electric, water and sewage all mean more destruction of understory vegetation or tree canopy and this means an impact on the erodible soils. (**Comment by:** *Robin Burchfield*)
- Why can we not see a definite plan by Mr. Doss for this project. All he tells us is he has a few ideas. Surely there is something in black and white. Where are the sewer systems, power lines, water lines etc.? This has to be available for the public in order to make a proper comment. (**Comment by:** *Robin Burchfield*)
- The document only addresses the first phase of the project, the first five acres. Unless TVA believes that all of the proposed resort will fit into that five acres. Where is the assessment of the remaining 86 acres. From the maps provided there were no areas outlined to show where the rest of the resort will be. How much more will be cleared? What is the impact of that clearing? Does the developer have a real plan for the property? Or, is he winging it like TVA and DEA presented. There is no way that a true environmental assessment can be made from what was presented at the meeting. (**Comment by:** *Grant Posey*)
- An area of fundamental and overweening concern with respect to the DEA is its regrettable lack of necessary specificity and quantification concerning environmental amenities that would be lost with this proposed development. It is simply not possible, from the information provided in the Environmental Assessment (EA) to form any confident conclusion as to just how much of the 91-acre tract would be cleared or otherwise altered by construction of the proposed marina and recreation facilities. The EA anticipates that the development will proceed in 5 phases, and it tells us that, "The construction of the marina would create approximately 5 acres of openings in the forest." (Page 11). This initial clearing and related excavation are described as being associated with "access road right-of-way, location of maintenance building and marina parking areas." (Page 6) But these features are only the first phase of the proposed development. There are other "resort components" to follow in four successive phases. (Page 5, first paragraph) These "resort components" include up to 200 spaces in an RV park, camping areas, a ship's store, a dry storage building, playgrounds, an office and a "specialty

restaurant...which will offer catering to large rallies, reunions and church groups.”(Appendix A, page 5). (**Comment by:** *John Crowder, Robin Burchfield*)

- Some of the marina components were shown in detail, but other areas of the resort are not. The RV camp sites, cabin sites and restaurant are merely indicated by hatched areas. No roads anywhere on the 91 acres site are indicated at all! The dredge area for the “fork lift launch” is not indicated at all. None of the individual RV sites, bathhouses, septic tank drain fields, cabins, playgrounds, restaurant, or parking lots are indicated. Nor do the plans indicate land disturbances proposed, such as vegetation removal, fills or excavations, or grading changes. Mr. Doss proposal for this hilly, 91 acres site includes: 200 RV campsites, four bathhouses, an office/maintenance “ship store” building, vehicle parking lots, cleared areas accessing fishing piers, boat ramp, boat slips, and other facilities, a large dry storage building, play grounds, hiking trails, a chalet-restaurant, an unknown number of camping cabins, a camping area, clearance for power lines & water lines, etc., clearance for septic tanks with drain fields to accommodate all of this, a paved access road from the property line to the marina and other roads leading to RV Campsites, cabins, restaurant, etc. (**Comment by:** *Charles Rose*)
- Soil Survey of Lauderdale County, Alabama informs us that all of this is to be built on land that contains “highly erodible soils”. The areas of consisting of Bodine soil type, especially on the steeper slopes (15-35 percent slope), are “severely limited” for some of the proposed uses, such as buildings, septic tank absorption fields, roads, campsites, playgrounds and trails. With all the foregoing in mind (hilly terrain, bountiful resort amenities, structures & roads, problematic soil types, etc.), Why has TVA not asked the developer, Mr. Doss, to supply “Project Plans or Drawings” that “Indicate land disturbances proposed, such as vegetation removal, fills or excavations, or grading changes” as required? Site Plans: “Some projects.....may require a separate site plan which details....proposed changes to surface topography and elevations (cut and fill, clearing, etc.), location of all proposed facilities and erosion control plans.” As I mentioned above, if this resort is built, this hilly site will require massive changes in its surface topography, grading changes, etc. “Include any development off TVA land which is part of the project.” “Other information provided should include the location of .....new access roads.....the extent of soil and vegetative disturbance....” This obviously would refer to Mr. Doss’ access road to Tract 21 which he obtained from private land owners. Where is this access road shown in any detail? (**Comment by:** *Charles Rose*)
- I obtained a “Tennessee Valley Authority Land Use Application”. Stapled together with the application were sheets explaining “TVA Land Transaction Fees”, “How to Apply for Use of TVA Land” and “Basic Information Needed for TVA Review of Land Use Request”. Contained in this “Basic Information Needed for TVA Review of Land Use Request” were the following statements (in bold), each followed by my commentary: A complete request should include: “Drawing(s) or plan(s) of any proposed construction activity or development which would result if land or landrights are granted.” Drawing and plans supplied by the developer are incomplete, contradictory and deficient. Various plans depicting the marina facilities are at odds with each other. Roads, cabin sites, septic tank drain fields, RV pads, etc., etc. , are not shown in anything close to sufficient detail; it is impossible for anyone to make any conclusions about whether Mr. Doss’ plans are realistic or viable without more

detail. Nowhere are the various resort amenities located on a topographical map.  
(comment by Charles Rose)

- Commenters wanted to see more detailed plans for the proposed development. Some of the marina components were shown in detail, but other areas of the resort are not. The RV camp sites, cabin sites and restaurant are merely indicated by hatched areas. No roads anywhere on the 91 acres site are indicated at all! The dredge area for the “fork lift launch” is not indicated at all. None of the individual RV sites, bathhouses, septic tank drain fields, cabins, playgrounds, restaurant, or parking lots are indicated. Nor do the plans indicate land disturbances proposed, such as vegetation removal, fills or excavations, or grading changes. Mr. Doss proposal for this hilly, 91 acres site includes: 200 RV campsites, four bathhouses, an office/maintenance “ship store” building, vehicle parking lots, cleared areas accessing fishing piers, boat ramp, boat slips, and other facilities, a large dry storage building, play grounds, hiking trails, a chalet-restaurant, an unknown number of camping cabins, a camping area, clearance for power lines & water lines, etc., clearance for septic tanks with drain fields to accommodate all of this, a paved access road from the property line to the marina and other roads leading to RV Campsites, cabins, restaurant, etc. (**Comment by:** *Charles Rose*)
- Soil Survey of Lauderdale County, Alabama informs us that all of this is to be built on land that contains “highly erodible soils”. The areas of consisting of Bodine soil type, especially on the steeper slopes (15-35 percent slope), are “severely limited” for some of the proposed uses, such as buildings, septic tank absorption fields, roads, campsites, playgrounds and trails. With all the foregoing in mind (hilly terrain, bountiful resort amenities, structures & roads, problematic soil types, etc.), Why has TVA not asked the developer, Mr. Doss, to supply “Project Plans or Drawings” that “Indicate land disturbances proposed, such as vegetation removal, fills or excavations, or grading changes” as required? Site Plans: “Some projects.....may require a separate site plan which details....proposed changes to surface topography and elevations (cut and fill, clearing, etc.), location of all proposed facilities and erosion control plans.” As I mentioned above, if this resort is built, this hilly site will require massive changes in its surface topography, grading changes, etc. “Include any development off TVA land which is part of the project.” “Other information provided should include the location of .....new access roads.....the extent of soil and vegetative disturbance....” This obviously would refer to Mr. Doss’ access road to Tract 21 which he obtained from private land owners. Where is this access road shown in any detail? Local Opposition: At the first public hearing held by the TVA, the developer showed up with no plans, could answer few questions, and generally was unprepared to substantiate the proposal. Under normal circumstances the failure to show the public what the plans were (or even if they existed) should have ended the whole process. For some reason the Agency let the process continue even in the face of significant opposition including petitions signed by many local residents. (**Comment by:** *Charles Rose, J. Thomas Noojin*)

**TVA Response:** The applicant has provided TVA the areas within tract XWR21PT that will be developed, and TVA has included the entire tract of XWR21PT within the “Area of Potential Effect” for the NEPA review. The applicant has provided the access road locations to TVA, and this information was made available to the public during the Open House Style Public Meetings on October 18, 2005, and February 09, 2006. Overall, the proposal has sufficient

information to enable TVA to adequately assess the environmental impacts of this project.

TVA has committed to work with the applicant through the ongoing phases of design development to incorporate development practices which would minimize potential impacts to the existing scenic value. These development practices would address designs for all potential site amenities including campgrounds and trails. Excavated areas would be sowed with seed prior to completion of construction in order to stabilize banks and prevent erosion into Elk River. During construction activities, every effort will be made to minimize the impact of construction upon the flora and fauna of the site. A final BMP plan and a vegetation management plan will be developed upon award of the easement and before construction begins. Additionally, all required permits and approvals from federal, state, county and local jurisdictions will be obtained prior to construction.

- I would like to see detailed engineering drawings of planned development. Mr. Doss thus far has failed to produce adequate plans. (**Comment by:** *Anthony Cosby*)
- Why can we not see a definite plan by Mr. Doss for this project. All he tells us is he has a few ideas. Surely there is something in black and white. Where are the sewer systems, power lines, water lines etc.? This has to be available for the public in order to make a proper comment. (**Comment by:** *Robin Burchfield*)
- In addition, it was disappointing that the plans for the development were so severely lacking in detail. How can the public be detailed in a response about plans that are so lacking in specificity? How can TVA rely on that data? For instance, the (EA) originally indicated that the cutting of trees will result in only a 5% opening. More recently, the word from Doss and TVA is that it could be 15% all the way up to 40%. It is unclear where any of these figures came from, but if the development contains the number of cabins, campsites, septic tanks, field lines, roads, and parking lots projected for all 5 phases, the figure will most assuredly be closer to 40% than 5%. Where else can one go except to TVA and receive a gift of 91 acres of waterfront property with such haphazard research? (**Comment by:** *Robert Freeman*)

**TVA Response:** A complete request for use of TVA land typically includes the following: a completed application form, location map showing the area of TVA land or land rights affected by the project, and drawings or plans of any proposed construction activity or development which would result if land or land rights were granted. When submitting to TVA a completed land use application, the applicant submits plans or drawings that includes the following information: the plans must be on paper suitable for reproduction; contain the applicant's name; stream, river or reservoir name; river mile, locator landmarks and direction of water flow, if known; existing or proposed structures or other facilities to be developed; land disturbances proposed; and any development off TVA land which is part of the project. These informational requirements were met for the proposed proposal request, and all information was made available to the public. All comments received at the public meetings were given due consideration in finalizing this EA.

The applicant has provided more detailed information to TVA which has been included in the Final EA. Final construction drawings will be produced upon

award of the easement and before construction begins. Additionally, all required permits and approvals from federal, state, county and local jurisdictions will be obtained prior to construction. The action alternatives (B and C) have been revised in the FEA to clearly show all the revisions that have been made to the proposal, since the initial application. Alternative C was added and includes additional features to minimize potential environmental impacts.

- These comments are in addition the comments of my letter of October 14, 2005. I believe you have done a good job summarizing the comments to the Joint Public Notice (Public Notice No. 05-70 Application No. 2005-01814). Nevertheless I believe that many concerns were not adequately addressed by the DEA. As one example, the DEA does not include any detailed information as to how much land will be graded, how the grading will be performed, and what plants, trees, etc. will be destroyed. (**Comment by:** *Victor Dura*)
- The first five acres of cleared land are associated with development of the marina, but NOWHERE in the EA is it stated just how much additional clearing of forest would be required to accommodate all of the proposed development. NOWHERE in the EA is there any information as to the size or locations of each of the other areas to be cleared in each of the next four successive stages of the development. NOWHERE in the EA is any ultimate limitation stated as to the maximum permissible total area of forest that may be cleared to accommodate all of the features in all of the five phases of the proposed marina and resort. All the public is given, in the form of any kind of assurance in these matters, is the developer's statement in his description of Phase III (page 4 of Appendix A), that "...careful consideration will be given not to over crowd this development, which would possibly harm the natural beauty that is present there." (**Comment by:** *John Crowder, Robin Burchfield*)

**TVA Response:** TVA has added information to the EA to describe estimated clearing for all five phases of the development.

- On page 1 of the Draft Environmental Assessment (DEA) it is stated that TVA "is considering a request for a 30-year easement" by Mr. Doss, but in Appendix A-Application Package, on its page 12, we read the following: "Elk River Resort will acquire Parcel 21 from TVA under a term easement agreement for a 40-year period". Which is it, a 30-year easement or a 40-year easement? If TVA has mitigated Mr. Doss' request for a 40-year lease and is only allowing a 30-year lease, why is it not listed with other mitigations on page 37 of the DEA? (**Comment by:** *Charles Rose*)
- 4. Both the TVA Elk River webpage at <http://www.tva.gov/environment/reports/elkriver/> and the DEA state that Mr. Doss has requested a 30-year easement, but on page 12 of his proposal he asks for a 40 year agreement. Which is it? (**Comment by:** *Charles Rose*)

**TVA Response:** The applicant requested a 40-year period as you reference in Application Package, on its page 12. However, as discussed in the section titled "TVA Decision" on page 1 of the DEA, TVA is considering an easement for a 30-year period, not a 40-year period.

- The map provided by Bubba Doss on page 20 inaccurately shows "dead end" RV campsites. The brochure given out in Rogersville on Feb 9th states the RV sites will

be “pull through” campsites. This is contradictory and misleading. Please define whether the RV park will be pull through or dead end sites. (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** The development will have both types of RV campsites.

- How can the public seriously make comments on the TVA DEA about the Elk River Marina Project. It appears it has changed from the original one issued. I am referring to the handout given to me at the Open House meeting on Feb.9. The original EA stated approx. 5 acres would be cleared, the handout says approx 40 acres will be cleared. This is quite a big difference. Was the aerial photos taken on both sides of Elk River? Did this include resident’s yards? (**Comment by:** Robin Burchfield)

**TVA Response:** The five acre clearing referenced in the draft EA was for Phase I of the proposal. TVA has added information to the EA to describe estimated clearing (40 acres of clearing within an 80-acre footprint) for all five phases of the development. Aerial Photographs were taken for the entire Elk River Watershed located within Alabama. These photographs included all land uses.

- Evidently Mr. Doss and TVA does not understand the ecological definition of a forest and the synergy of its plant community. There is a difference between a tree farm, a grassed park with large trees shading the area and a forest. We are mandated by NEPA to determine the effects of the proposed development on the viability of existing forest and plant communities, birds, salamanders, reptiles, amphibians, and other integral parts of the ecosystem that will be decimated by the Elk River Marina. Therefore, the amount of development and the determination of how much forest community will be impacted is important. The picture we get from the EA and the developer appears to be one of sporadic relict trees scattered between asphalt, power lines, cabins, campers, and other developments. (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** TVA agrees that different natural communities have different ecological values. The effects of the proposed campground and marina on ecological communities have been evaluated. These effects are minimal and insignificant.

- Further, as Senator Sessions stated upon introducing Tennessee Valley Authority board nominee, Howard Thraikill of Huntsville, at a Senate confirmation hearing February 8, 2006, “I think the people of the Tennessee Valley understand that TVA is really self-contained and does not receive federal dollars. So when money is wasted, its money that comes from the taxpayers of the Tennessee Valley. There’s no free lunch.” Senator Session could not have said it better for me. I believe the Elk River Resort Proposal is TVA’s free lunch to Bubba Doss, it’s TVA wasting money, and the money comes from me, a taxpayer of the Tennessee Valley. (**Comment by:** *Thomas Gary Wicks*)

**TVA Response:** TVA believes that the provision of recreational services at its reservoirs is an appropriate service to the public and that there are benefits to the public from recreational development. TVA no longer receives congressional appropriations to help fund its activities in navigation, flood control, environmental

research, and land management. Today all of its programs are paid for with power revenues.

## 27. ***Disagree/Dissatisfied with EA***

- On page 39 of the DEA, under List of Agencies and Persons Consulted we find the name of Mr. James W. Ware, Director, Department of Environmental Management, Montgomery, Alabama. This is odd since, I believe, Mr. Doss made application in late May, 2005, and Mr. Onis "Trey" Glenn III became director of ADEM on February 1, 2005. (**Comment by:** *Charles Rose*)

**TVA Response:** This has been corrected in the FEA.

- In the section titled Supporting Information: Mr. James H. Eblen, Contract Economist, was listed in the document. But there is little or no economic analysis or even details regarding this projects economic viability, especially any adverse impacts should this project fold. Will this information be supplied at a later date? (**Comment by:** *Eric Kelso*)

**TVA Response:** Mr. Eblen provided the population and economic data used in the recreation section to determine the projected market demand for recreational resources in the area. If the proposal is approved, TVA would monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant's expense or leaving the facilities in place and obtaining another individual to continue operation of the property.

- It was extremely disappointing that almost every issue was determined to be "an insignificant impact". In addition, it was disappointing that the plans for the development were so severely lacking in detail. How can the public be detailed in a response about plans that are so lacking in specificity? How can TVA rely on that data? For instance, the (EA) indicates that the cutting of trees will result in only a 5% opening. I don't know where that came from, but if the development contains the number of cabins, campsites, septic tanks, field lines, roads, and parking lots projected for all 5 phases, that figure is, quite frankly, impossible. (**Comment by:** *Bob Freeman, Robin Burchfield*)
- The amount of forest to be removed, through the various phases, has not been identified; therefore, it's hard to understand how a true environmental assessment can exist at this time. Will definitive plans and a revised assessment be available prior to the start of construction and is private development of these public lands really in the public's best interest? (**Comment by:** *Joe Serocki*)
- The original proposal sited 5 acres of openings. Now its 40 acres. If that amount of land had been in the original proposal, there would have been a lot more environmental impact expected. The EA needs to be redone. (**Comment by:** unsigned from Feb 9 2006 open house)

- the window for comments on the Environmental Impact Report has passed but there are glaring omissions that deserve consideration. The report finds no impact from this proposed development.
- At this meeting we were handed a double-sided sheet with additional information concerning the Elk proposed River Resort. One of the items on the sheet was this statement: “Based upon land use/land cover estimates derived from aerial photography obtained in 2005, approximately 121,300 acres of forested habitat exists within the Elk River Watershed within north Alabama. The applicant estimates approximately 40 acres of openings within the proposal area. If approved, the modified area is less than 1 percent of the total amount of forested habitat within the watershed.” This statement is puzzling to me. What are we supposed to make of it? Should we deduce that this “approximately 40 acres of openings”, this “less than 1 percent of the total amount of forested habitat” is so infinitesimal, so unworthy of our concern that we shouldn’t even question TVA’s judgment in the matter? (Comment by: Charles Rose)
- To conclude that the above “factoid” from TVA has any meaning or relevance in regard to the proposed Elk River Resort project, we also need to forget about several other troublesome items: 1. The “121,300 acres of forested habitat” within the “Elk River Watershed within north Alabama” estimate was derived from “aerial photography”. That indicates that perhaps TVA’s knowledge of the quality, viability or value as habitat of much of the 121,300 acres mentioned is minimal or non-existent. 2. A more meaningful statistic would be to show how much public land in the watershed is forested habitat. 3. Even more meaningful would be a statistic stating how much TVA land in the watershed is forested habitat and what percentage of that total the proposed Elk River Resort represents. 4. If my memory serves me correctly, I was told at the 2/7/06 open house that the “footprint” of Mr. Doss’ proposed development would be 80 acres. Would not this 80 acre “footprint” be a more meaningful figure to use. (Comment by: Charles Rose)
- True Acreage of Final Deforestation Not Disclosed: It appears that TVA based the EA on Phase I of the project. It repeatedly refers to 5 acres of clearing. The EA must conclude the disturbance of all five phases of the proposed marina. The reason is simple: if the final clearing of land is 20 or 30 acres, an environmental assessment based on 5 acres of disturbance is inaccurate and illegal. It seems that TVA is doing everything in its power, including deception in the EA, to approve this project. The EA is not clear on just how many acres will be cleared by the fifth phase of the project. Five acres is gross underestimate. Total acreage must be disclosed. This includes power line rights-of ways, roadways, (main and feeder roads), RV openings for pads, cabins, store, dry storage building, and clearing to provide the scenic views described in the EA> Page 11 of the EA, under Environmental Impacts, states “The construction of the marina would create approximately 5 acres of openings within the forest.” This statement is misleading and inaccurate. The EA did not discuss the TVA/Doss definition of forest clearing. This determination should be based on the basal area of remaining trees in relation to the basal area of the existing forest on this tract. What is the basal area of the existing forest? What will the basal area be in the affected area after completion of Phase V? TVA must include an accurate determination of affected acreage before it can make a decision on the cumulative environmental impact of all ground-disturbing activities in the project area. I go the impression from a conversation with Mr. Doss that he did not consider an area

cleared if a tree was left there with 200 RV pads interspersed between them.  
**(Comment by: Lamar Marshall, Wild South)**

- A more Accurate Estimation of Clearing: The following is more reasonable estimate of actual clearing included in the five phases of completion of the Elk River Resort as calculated by former Rust Engineering designer:
  - Roads: Road clearing for main road: 12,800 feet at 30 feet wide = 8.81 acres. Road system for 200 non pull-through RV campsites - 400 feet of road x 20 feet wide per 40 campsites = 1 acre
  - RV Campground: 200 (large pads) campsite RV Park @ 20 x 30 feet each = 2.75 acres. Clearing for proposed RV views of lake?
  - 4 modern bathhouses 20x20 = .009 acres less access roads
  - Playground - ? TVA must provide more accurate information.
  - Boat Launch Area: Boat Launch Parking 200 x 200 = .92 acres. Office/store/maintenance building = .087 acres.
  - Parking area for office/store - 100 x 200 = .46 acres
  - Dry Storage building - 7000 sq ft = .16 acres
  - Cabin area: How many? 5 cabins at 20x20 and 50 feet apart = .12 acres TVA must provide more accurate information.
  - Campsite Area: ? estimated .5 acres. TVA must provide more accurate information.
  - Restaurant: At 50 x 75 = .09 acres. Parking at 50 x 100 = .11 acres
  - Powerline ROWs: ? TVA must provide more accurate information
  - This very conservative estimate is 14.93 acres. Actual disturbance will be more. **(Comment by: Lamar Marshall, Wild South)**

**TVA Response:** TVA owns approximately 1,760 acres of property along the Elk River on Wheeler Reservoir. The Elk River Resort proposal “footprint” and anticipated clearing for recreational purposes are approximately 80 and 40 acres, respectively. This proposal occupies approximately five percent of all TVA-owned property along the Elk River. The proposal occupies less than one percent of the TVA-owned property along Wheeler Reservoir. Based upon land use/land cover estimates derived from aerial photography obtained in 2005, approximately 121,300 acres of forested habitat exists within the Elk River Watershed within north Alabama. Since the estimated 40 acres of openings within the forested tract that would be modified by the proposed project is less than 0.1 percent of the total amount of forested habitat within the watershed and is common to the area.

Additional information has been added to the FEA to clarify the amount of land to be impacted by clearing of all phases of the project and the associated impacts.

- These comments provide evidence that the EA that was done in the proposed area needs further work. The section of the EA that deals with terrestrial vertebrates (my area of expertise) appears to have been “thrown together” quickly and reflect very poorly on the professional scientists that work for TVA. I recommend that TVA go back and reassess the environmental effects of the proposed area on terrestrial vertebrates in a more scientific and responsible way. The public is depending on TVA to take its responsibility of managing its property seriously and expects that TVA

will not alter natural ecosystems without a serious scientific environmental assessment. To do less, jeopardized the credibility and respect that TVA officials will obtain from the public, from professional scientists, and even from professionals within TVA's own ranks; but even worse it could lead to the blind destruction of valuable natural resources. (**Comment by:** *Thomas Haggerty*)

**TVA Response:** See Section 3.1, which describes TVA's assessment methodology.

- We still need to address all of the above issues because of the vagueness of the EA: Dredging, Sewage, Run-off, Environmental impacts of wetlands, animal habitats, forest removal, erosion, noise, dredging of our mussel beds, cultural resources below water line and dredge area, Navigation - will over stress to the area with new Development of The Pointe Subd. across from the proposed marina site. I feel these issues were not properly evaluated by TVA. WE THE PEOPLE ARE SAYING NO MARINA. (**Comment by:** *Robin Burchfield*)

**TVA Response:** Specific answers for these issues have been addressed in the preceding sections of comment responses and additional information has been added to the EA.

- I also believe that the Draft Environmental Assessment is substantially deficient, inaccurate, and lacking in specifics in numerous regards. In my opinion, these deficiencies make meaningful comment by the public impossible. I urge TVA to revise the EA and resubmit it to the public for comment before reaching a final decision on this proposal. (**Comment by:** *Charles Rose*)
- Why be in such a hurry to give our land away? Maybe we should at the very least demand a longer review period, more information...answer all the questions. Be open and up-front.....let the sunshine in? (**Comment by:** *Loli Howard*)
- The Lauderdale County High School Meeting of 18 October 2005 did not really answer questions relative to the Draft Environmental Assessment. Will there be further opportunities to obtain specific information relative to the proposed easement and impact data based on relevant design parameters? (**Comment by:** *Joe Serocki*)
- The EA, as currently written, is materially deficient in that it fails to quantify the extent of destruction of mature terrestrial forest land that would result if the "preferred alternative" is implemented. This deficiency should be cured in a revised EA to be submitted for public review and comment before any final decision is reached on this application. In view of the material deficiencies identified above, it is patently obvious that the DEA has not adequately described and disclosed the environmental impact of the proposed marina and resort. Accordingly, I strongly urge TVA to revise the DEA to remedy these deficiencies and to publish the revised document for public review and comment prior to any decision to grant or deny the requested 30-year easement. (**Comment by:** *John Crowder*)
- I would like to see a Corrected Environmental Assessment. Current EA gives impression that only 5 acres will be effected when in fact nearly 100 will be developed. (**Comment by:** *Anthony Cosby*)

- The Environmental Assessment (EA) for this project grossly understates the scope of this project. Therefore, not only has the public been misled the findings of the EA are scientifically flawed. A complete EA should be completed and the public properly informed of the magnitude of this project. . (**Comment by:** unsigned from Feb 9 2006 open house)
- A new environmental assessment should be drafted that is much more specific as to Mr. Doss's development plans. Many details were completely omitted leaving room for development with extremely high impact on the environment. Has enough study been done on the suitability of the soil for a project of this magnitude? Most importantly, a new EA should also take into account the context of this land as a part of the whole ecosystem of the Tennessee River and it's banks. It is noteworthy that Joe Wheeler State Park, just around the way hosts an eagle retreat.....more development could not be best for eagles or ecotourism which stands to bring in much more dollars to our area than more development. (**Comment by:** *Nancy Muse*)
- TVA if it approves the Elk River Marina is destroying and polluting a wetland and nature preserve. In addition, the environmental assessment seems to be very weak in judging and scientifically determining the damage to the habitat of fowl, animal, and aquatic life. (**Comment by:** *Harriet Johnston*)

**TVA Response:** TVA has revised the EA to add information clarifying the scope of the proposal, methods used to assess terrestrial resources, and the amount of clearing. Additionally, TVA held another open house on February 9, 2006, to receive any additional comments on the proposal. Revised drawings, including buffer areas, and descriptions of areas to be cleared were presented at this open house.

- As compared to the over 250 people who openly oppose this proposal, the mere 19 who support it are either personal friends of the developer or those who stand to profit from the marina traffic. The issue of stolen petitions from local businesses remains unaddressed, so there is no true count of those who actually stand in opposition. The fact that TVA did not allow an extension for the petition deadline also skewed the numbers. (**Comment by:** *Woodfin and Carla Gregg*)
- I appreciate the fact that you published quotes in the EA from the many letters written by people pleading with you to deny this project. You have evidence that the vast majority of the "stakeholders" oppose the development. There were 259 signatures on the petition, almost 100 who wrote opposing it, and only 19 people who wrote in support of the applicant. I know some of these people that have openly supported it. The ones I know see money and have little or no regard for their neighbors that will have to live next to it. The (EA) did not address the issue of the stolen petitions from local businesses, so no one really knows the ultimate number of those opposed. The fact that TVA did not allow an extension for the petition deadline skewed the numbers. Although it does not appear that this is a significant event to TVA, it is to the people who solicited and signed those petitions. (**Comment by:** *Bob Freeman*)

**TVA Response:** Other copies of the petitions were included in the draft EA, which captured the issues raised in the alleged missing petitions.

- After looking at the environmental assessment, there are many questions that remain unanswered about this development. To allow a private development on this site in this fashion is a hasty decision and does not hold up to pure scientific reasoning. (**Comment by:** *Susan Phelan*)
- You prepared a report and published it for, apparently, justification of your project. The project/report is ill-conceived, incomplete, inaccurate, insufficient, unsubstantiated, and ill-advised. And hence, justifies nothing. (**Comment by:** *Thomas Gary Wicks*)

**TVA Response:** Comments noted.

- Research of former TVA environmental assessments on other projects has proven TVA decisions to ignore community outcry. The local residents plead with TVA not to allow local public lands to be decimated, but TVA's record favors the profiteers. Local residents lose when TVA is involved. (**Comment by:** *Woodfin and Carla Gregg*)
- One of my neighbors researched some of TVA's prior environmental assessments on other projects. He reported that they are all basically the same. The local residents plead with TVA not to do it. But they always do. For once in your life, please listen to the people who live here. The only people that want it are a few business people in the town of Rogersville, a few supporters and friends of the developer, and a very few people who think they can more easily get gas for their boats. None of those people will have to live next to it. TVA officials should, for once in their life, do something for the people who will have to live in close proximity to a new development. (**Comment by:** *Robert Freeman*)

**TVA Response:** One objective of the Plan was to help provide for a diversity of quality recreation opportunities on Wheeler Reservoir. The Plan identified four tracts (Tracts 21, 67, 88, and 91) for future commercial recreation development. The proposal for Tract 21 is consistent with the allocated use in the Plan. To reach sound land use decisions, TVA places high value on public opinions about specific land use proposals. Public participation is a vital part of the TVA land use decision-making process. Each proposal is evaluated on its own merits. Decisions are made after careful and thorough consideration of the need for balance among public-use opportunities.

- My concern with this project is the lack of adequate disclosure to the public for what they intend to actually do. The Environmental Impact Statement that's been done leaves the impression that only five acres is going to be affected, when, in fact, nearly a hundred acres are going to be affected. This flawed Environmental Impact Statement not only is flawed in terms of the science but in terms of the disclosure to the public, because it doesn't adequately describe the magnitude of the project. Mr. Doss, the developer, has not provided detailed engineering drawings to describe just what he plans to do. And the story is that he wants to get approval before he goes and does the design. Well, that's not acceptable for a number of reasons: First of all, again, the public is not properly informed of just what he plans to do. And TVA doesn't have an adequate basis for giving him an approval until he has adequately described his plan for development. So this may be a good thing; it may be a bad thing. But the fact of the matter is the public has not been adequately informed, nor

has the science associated with evaluating the true impact of the project being executed, and that is my concern. (**Comment by:** *Anthony Cosby*)

- I would like to see another public meeting with full and correct disclosure to public of planned development. (**Comment by:** *Anthony Cosby*)

**TVA Response:** The applicant has provided TVA the areas within tract XWR-21PT that are proposed to be developed, and TVA has included the entire Tract XWR-21PT and the applicant's proposed road access within the scope of the NEPA analysis. This information is located within Appendix A of the Environmental Assessment. The action alternatives (B and C) have been revised in the FEA to clearly show all the revisions that have been made to the proposal, since the initial application, including a site layout superimposed on an aerial photograph shown in Figure 2-1 and revised drawings are included in Appendix A. Alternative C was added and includes additional features to minimize potential environmental impacts. As to the disturbed acreage, TVA regrets the confusion caused by the "5 acres" reference in the Draft EA. However, TVA cleared the confusion on this point at the February 9, 2006 meeting by informing the public that 40 acres would be cleared within the 80-acre footprint of the proposal. The proposed easement covers 91 acres. The impact of this project footprint on environmental resources is assessed in the EA.

There have been numerous opportunities for public disclosure. TVA conducted public scoping on the proposal from June 26 through July 29, 2005 and continued to accept comments until August 19, 2005, held a second public scoping period in a Joint Public Notice with the US Army Corps of Engineers from August 26 through September 26, 2005, conducted an open house on October 18, 2005 to receive comments during a 30-day review period of the Draft EA from October 5 through November 7, 2005. TVA held an additional open house on February 9, 2006, to ensure the public had ample opportunity to identify issues with the proposed action and draft EA. The comment period to provide additional comments on the DEA began on January 31, 2006. The comment period closed on February 16, 2006.

- It is not possible to avoid habitat destruction and pollution in the process of such a construction project as the one proposed for the Elk River. The operation of this type of heavy-traffic, fuel bases business can only be detrimental to the life-systems in place there. A more in-depth Environmental Assessment than the one presented for the Elk River project surely would have shown this. In fact, an Environmental Impact Study should be performed. (**Comment by:** *Wild South - Lamar Marshall*)
- I am writing to request that TVA perform an Environmental Impact Study, (**Comment by:** *Kathleen Marshall*)
- The current EA is deficient in many ways. This land deserves a full scale Environmental Impact Statement. But that is a moot point, since TVA should not even consider such a lease in the first place. (**Comment by:** *Janice Barrett*)
- The existing and future impacts from the approved developments, factories, power plants, dams, and other anthropogenic sources are severe. There is no question that when combined with these, the ecological and social impacts of this proposed

development would be significantly adverse. The draft EA ignores many of these concerns and attempts to trivialize those it does address, and is woefully inadequate to support a Finding of No Significant Impact. The Center believes this project should be denied in its entirety, but if any further consideration is given, an Environmental Impact Statement (“EIS”) must be prepared pursuant to the National Environmental Policy Act (“NEPA”). 42 U.S.C. § 4321 *et seq.* (**Comment by:** *Cynthia Elkins, Center for Biological Diversity*)

**TVA Response:** TVA does not believe that an Environmental Impact Statement is warranted for this project. We believe that all of the environmental issues raised by the public have been adequately addressed in the FEA.

- Understood this piece of property is zoned as commercial recreation however the level of activity inherent with a marina is extremely high and will result in an extremely high impact on the natural environment and will result in the loss of quality of life for humans who have revered this wild area. (**Comment by:** *Nancy Muse*)

**TVA Response:** In the Wheeler Reservoir Plan, the 91 acre tract was allocated to commercial recreation and visual resource management based on data collected by resource specialists and public input. This allocation was determined to best maximize the resources present and balance competing demands for shoreline property. It is noted in the Plan that approximately one half of the tract is comprised of planted loblolly pine, which would indicate substantial human alteration had occurred in the past and that the tract has not forever remained in a natural state. Human alterations of the tract as well as the absence of sensitive resources were among the factors that led to the allocation of the tract for commercial recreation. If the applicant’s proposal for Tract 21 is approved, the approval will be subject to rigorous mitigation measures to ensure preservation of the quality of life and other values.

- This document fails to meet the legal requirements of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) and the proposed action is inconsistent with the 1995 Wheeler Reservoir Land Management Plan and the TVA Act. The Draft EA Violates the National Environmental Policy Act

**Purpose and Need**      The Purpose and Need of this Project is Vague

NEPA planning begins with an identification of the purpose and need for a project. NEPA’s implementing regulations provide that an environmental document should “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternative including the proposed action.” 40 C.F.R. § 1502.13 (emphasis added). “Agencies are afforded considerable, although not unlimited, discretion to define the purpose and need of a project.” *Northwest Ecosystem Alliance v. Rey*, 380 F. Supp. 2d 1175, 1185 (W.D. Wa. 2005). However, as the Court in *Citizens Against Burlington, Inc. v. Busey* explains, “deference does not mean dormancy, and the rule of reason does not give agencies license to fulfill their own prophecies, whatever the parochial impulses that drive them.” 938 F.2d 190, 196 (D.C. Cir. 1991). Furthermore, an agency must exercise independent judgment in defining the purpose and need of a project and cannot rely exclusively on the statements and opinions of the applicant. See *Simmons v. United States Army*

Corps of Engrs., 120 F.3d 664, 669 (7<sup>th</sup> Cir. 1997) (stating that “an agency cannot restrict its analysis to those alternative means by which a particular applicant can reach his goals”).

The purpose and need statement for this proposed action is entirely vague if not altogether missing from this EA. The EA states that the applicant applied for an easement to develop a commercial marina and the construction of this marina is allegedly consistent with the agency’s Commercial Recreation and Visual Management Plan for that region. EA at 1. The EA then concludes that TVA must decide whether or not to grant the easement. Id.

The section makes no mention of why this multi-phase development is needed in the first place. Is the construction of the marina in response to community or economic demands? This is highly doubtful considering that at least six other marina and camping facilities are located within close proximity to the proposed site, and according to the EA, are all under-utilized. See EA at 25.

Assuming there is a need, will it only be served if the marina is located at the proposed site? These and other questions must be addressed in the “purpose and need” section. NEPA requires that you thoroughly and independently investigate and define the underlying purpose and need for this project.

A clearly defined purpose and need section is critical because the purpose and need of a project necessarily dictates the range of reasonable alternatives. See *City of Carmel-By-the Sea v. Dept. of Transp.*, 123 F.3d 1142, 1155 (9<sup>th</sup> Cir. 1997). The broader the purpose, the wider the range of alternatives, and vice versa. See *Simmons*, 120 F.3d at 666 (7<sup>th</sup> Cir. 1997). Without a clearly articulated purpose and need for this project, you cannot identify a range of reasonable alternatives to the proposed action. Therefore, it is imperative that you develop a clear statement of the purpose and need for this action so as not to rule out additional, and perhaps more environmentally benign alternatives from further consideration. See *Citizens Against Burlington, Inc.*, 938 F.2d at 196. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** The decision process that led to this proposal begins with a long-standing designation of the subject tract for “commercial recreation and visual management” in the Wheeler Land Management Plan. The Wheeler Reservoir Land Management Plan (Plan) noted that the future commercial needs were being met locally for the middle and upper reaches of the reservoir. The reservoir planning team focused on the lower regions of the reservoir for potential commercial sites. Four tracts were allocated (Tract Nos. 21, 67, 88, and 91) to meet plan objectives. Since the plan was completed, the marina facilities in the area have waiting lists, increasing the demand for this type of facility. The need is expected to be even greater in the future due to population growth. Thus, a proposal responsive to this recreational designation defines TVA’s purpose and need. Additional information has been added to the FEA to clarify TVA’s purpose and need. The recreation section of the EA also contains more details on the demand for recreational facilities for the proposed action.

- **Cumulative Impacts on the Environment :** The CEQ NEPA regulations define “cumulative impact” as: “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. NEPA requires that you analyze the cumulative impacts of the proposed action in your EA. See e.g., *Florida Wildlife Federation v. United States Army Corps of Engrs.*, 2005 U.S. Dist. LEXIS 22619 (S.D. Fla. 2005)(holding that the agency failed to take a “hard look” at the cumulative effects of the proposed action in its EA); see generally *Blue Mountains Biodiversity Project*, 161 F.3d 1208, 1214 (9th Cir. 1998) (discussing importance of cumulative impact analysis in environmental assessments).

You fail to address the cumulative impacts of this project. No where in your EA do you discuss the cumulative impacts all five phases will have on the surrounding region. This is extremely important because all five phases are “cumulative actions.” “Cumulative actions are actions which hen viewed with other proposed actions have cumulatively significant impacts.” 40 CFR § 1508.27(b)(7). Courts have held that multi-phase development projects such as the proposed action are “cumulative actions” because each phase is part of a single project, announced simultaneously by the developer, are all reasonably foreseeable and have cumulatively significant impacts on the region. See *Blue Mountains*, 161 F.3d at 1215. Accordingly, the cumulative impacts of all these actions (or phases) must be analyzed in a single statement. *Id.*

Moreover, you must address how this multi-phase project, when added to other past, present, and reasonably foreseeable future actions, will impact the environment. Such actions may include past, present and reasonably foreseeable federal and non-federal projects, land grants, and development projects along the Elk River and elsewhere in the surrounding community. For instance, you must discuss how this marina when added to other marinas in the area will impact the environment. You must also analyze how this development project relates to other development projects in the area and discuss how these projects will have a cumulative impact on the environment. You must provide a “useful analysis” of these and other cumulative impacts and base your analysis on “quantified and detailed information.” *Kern v. United States Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9<sup>th</sup> Cir. 2002).

**(Comments by: Jason Totoiu and Sandra S. Nichols, Wild Law)**

**TVA Response:** New information has been added to the Final EA, to clarify that the scope of the project includes all phases of the development, and the Recreation section includes more specific information about recreational resources in the area and future demands. Additionally, individual sections address how this project, when added to other past, present, and reasonably foreseeable future actions, will impact the environment.

- **Cumulative Effects:** We are greatly concerned with the continued decline of water quality and aquatic habitat in the Elk and Tennessee Rivers, and believe the proposed easement and commercial development would contribute to existing, severe pollution problems that plague the watershed. These and other impacts are not fully disclosed or analyzed in the draft Environmental Assessment (“EA”), and

would not be mitigated to a level of insignificance according to the best management practices and other measures described. As such, the Center urges the Tennessee Valley Authority (“TVA”) to serve the public interest and protect the public trust by denying the proposed easement and commercial development of this public land.

The proposed development site is completely forested with vernal pools and wetlands, providing a relatively wild, natural area along an increasingly developed waterfront. The requested easement would allow commercial development of this public land, with a large marina, store, RV park, camp sites, cabins, restaurant, and other facilities. Taken separately, the direct, indirect, and cumulative impacts from this proposed development would certainly have the potential to “significantly affect the quality of the human environment.” 42 USC § 4332(C). However, TVA recently approved two additional, large marina developments in the near vicinity, and there are many other existing negative impacts occurring to both the terrestrial and aquatic environments. The existing and future impacts from the approved developments, factories, power plants, dams, and other anthropogenic sources are severe. There is no question that when combined with these, the ecological and social impacts of this proposed development would be significantly adverse. The draft EA ignores many of these concerns and attempts to trivialize those it does address, and is woefully inadequate to support a Finding of No Significant Impact. The Center believes this project should be denied in its entirety, but if any further consideration is given, an Environmental Impact Statement (“EIS”) must be prepared pursuant to the National Environmental Policy Act (“NEPA”). 42 U.S.C. § 4321 *et seq.*

The Cumulative Impacts Would Be Significant, Yet the Draft EA Is Utterly Silent on Them - One of NEPA’s most fundamental, and most critical, components is its requirement to analyze proposed projects within the context of existing, ongoing, and future impacts. However, such an analysis is entirely missing in the draft EA. TVA limits its analysis of environmental impacts solely to those that would occur within the immediate footprint of the proposed development, and further, never mentions the many other impacts that are occurring in the Elk and Tennessee River watersheds. In fact, the words “cumulative impact” never even occur in the draft EA, reflecting a grave oversight and lack of any true, meaningful analysis that has been afforded to this project. By failing to identify past, present, and future impacts to which this proposed development would add, TVA has provided an entirely inadequate and incomplete picture of the direct, indirect, and cumulative effects. Furthermore, by excluding reasonably foreseeable and cumulative impacts from the analysis, the potential for integration of a sufficient mitigation program is negated, the procedural and substantive mandate of NEPA is frustrated, and substantial violations of the law have occurred. §§ 1502.1, 1502.16(b), 1502.4(a), 1508.25, 1508.27(b)(7); *see also* 23 C.F.R. § 771.111(f). By way of example, TVA recently approved two additional, large marinas in the area, including a massive marina *directly* across the river from this proposed development. When combined with these marinas, the impacts of this proposed development would certainly be significant on boat traffic, safety, recreational impacts, and the like. These impacts would not occur or be felt separately, nor can they be analyzed as such. Likewise, residential development along the waterfront and within the watersheds in general has skyrocketed in the last two decades, with hundreds of additional houses sprinkling their shores, as well as septic systems, boathouses, boat ramps, driveways, and roads. Two large dams, pesticides for mosquito control, a nuclear power plant, a paper mill, and numerous factories also cause impacts that would combine with those caused by the proposed

development. All of these, together with the proposed project, would directly and/or cumulatively adversely affect the river's ability to sustain wildlife. Such impacts include, but are not limited to: fragmentation of habitat types; removal or reduction in canopy and shrub cover values; decreased floral diversity; loss or seasonal reduction of surface water flows; changes in water quality; bridges, concrete bottoms, concrete bank stabilization, and other physical changes which obstruct or alter the natural passage conformation; parallel roadways which further isolate uplands from channel habitats, or increased vehicle traffic on existing or new roads; human activities situated within or adjacent to the river which increase levels of ambient or direct light, noise, dust, polluted runoff, and dogs and cats in the habitat areas; sand and gravel mining, especially with channel diversion and groundwater pumping. The draft EA fails to address these impacts, and also remains silent on other TVA planned projects in the area. This omission is fatal and if reversed, would reveal substantial cumulative impacts that are not, and could not be, mitigated to a level of insignificance.

These are not the only impacts that would be caused by the proposed development yet are not analyzed or considered by the draft EA. Other impacts include, but are not limited to: (1) Air quality and emissions, including cumulative impacts associated with this proposed development and other TVA authorized facilities and activities;

Growth-inducing impacts;

The Elk River and Tennessee Rivers are watersheds in recovery. They are the critical life blood the region, and contribute to the quality of life for all who enjoy their beneficial uses. The proposed development significantly degrade these public trust resources and the draft EA is deficient in analyzing and/or mitigating these impacts. The Center urges TVA to reject this proposal and protect this rare piece of undeveloped public land. (**Comment by:** *Cynthia Elkins, Center for Biological Diversity*)

**TVA Response:** Cumulative effects analysis has been included in the analysis of impacts in the resource areas in the EA.

- **Mitigation:** “The discussion of steps that can be taken to mitigate adverse environmental consequences plays an important role in the environmental analysis under NEPA.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989); see also 1502.16(h) (stating that an EIS must contain “means to mitigate adverse environmental impacts”). There must be a “reasonably complete discussion of possible mitigation measures.” *Robertson*, 490 U.S. at 352. Courts have required mitigation measures to be supported by substantial evidence in order “to avoid creating a temptation for federal agencies to rely on mitigation proposals as a way to avoid preparation of an EIS.” *National Audubon Soc’y v. Hoffman*, 132 F.3d 7, 17 (2d Cir. 1997)(emphasis added).

Mitigation measures may be found insufficient when the agency fails to study the efficacy of the proposed mitigation, fails to take certain steps to ensure the efficacy of the proposed mitigation (such as including mandatory conditions in permits), or fails to consider alternatives in the event that the mitigation measures fail. *Id.*; see also *National Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 734-35 (9th Cir. 2001) (holding that the agency could not issue a FONSI based upon mitigation

measures because it “did not conduct a study of the anticipated effects of the mitigation measures, nor did it provide criteria for an ongoing examination of them or for taking any needed corrective action”); *Sierra Club v. Norton*, 207 F. Supp. 2d 1310 (S.D. Ala. 2002).

Your discussion of the proposed mitigation measures for this project is grossly inadequate. You fail to provide any sort of mitigation plan other than to list certain “best management practices” (BMPs) that the applicant should follow. For instance, in your discussion on water quality impacts, you state:

“BMPs are practices chosen to minimize soil erosion and prevent or control water pollution resulting from land disturbances such as construction sites. If properly applied, BMPs help protect the quality of receiving waters by keeping the sediment on site...The following examples of types of BMPs are not intended as specific requirements, but are provided as guidance for the applicant...” EA at 22.

You then conclude that “soil erosion and sedimentation could be minimized through selection, installation, and maintenance of BMPs.” EA at 23.

NEPA requires that you take a “hard look” at the possible mitigating measures; a “perfunctory description” is not adequate to satisfy NEPA's requirements. *Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998). A “mere listing” of mitigating measures, without supporting analytical data, also is inadequate. *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1151 (9<sup>th</sup> Cir. 1998).

In your discussion, all you provide is a list of BMPs. You do not provide any sort of mitigation plan or strategy and you leave it up to the applicant's best judgment whether or not it should follow these BMPs in its construction activities.

Moreover, this EA does not contain data that demonstrates that the BMPs -- which are generalized standards rather than standards developed specifically for this project -- would be adequate in light of the potential environmental harms.

Lastly, your summary of “proposed mitigation measures” for the entire project lists only four general ways in which the impacts of this project could be minimized. EA at 37. It fails to offer any mitigation measures for wildlife, endangered and threatened species, noise, boat and vehicle traffic, etc. and fails to include any of the best management practices you referenced in your discussion on water quality impacts. This is not the “hard look” NEPA demands.

You must go beyond simply listing a few BMPs and develop a clear and coherent mitigation plan. A hard look at possible mitigation measures is particularly important in this case because the portion of the Elk River that will be impacted by this marina is listed by the EPA as an “impaired waterway” under Section 303(d) of the Clean Water Act. EA at 21. Since “adherence to the BMPs does not automatically ensure that the applicable state standards [will be] met,” *Northwest Indian Cemetery v. Peterson*, 795 F.2d 688, 697 (9th Cir. 1986), you must examine other mitigation measures that will help ensure that the Elk River will not be further impaired by this project.

Once you discuss these and other mitigation measures and develop a thorough and comprehensive mitigation plan, you must study the efficacy of the proposed mitigation, take certain steps to ensure the efficacy of the proposed mitigation (such as including mandatory conditions in the easement), and consider alternatives in the event that the mitigation measures fail. See generally, National Audubon Soc'y, 132 F.3d at 17; National Parks & Conservation Ass'n v. Babbitt, 241 F.3d 722; Abenaki Nation of Mississquoi v. Hughes, 805 F. Supp. 234, 245 (D. Vt. 1992)(incorporating mitigation measures as mandatory conditions in permits). Only then will you have any idea whether the impacts of this project can be effectively mitigated so as to avoid a significant effect on the environment. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** The final EA specifies several mitigation measures to mitigate the impacts of this proposed action. In addition to the standard mitigation measures required as a condition of the TVA land instrument and Section 26a permit, the state stormwater permit required before construction will include specific locations for hay bales, silt fences, and other measures to minimize erosion. The proposed marina will actively partner with TVA as a leader in the Clean Marina Program, providing sewage pump out service, offering and promoting environmentally friendly nontoxic products for cleaning and maintenance, and participating in the education of boaters on sewage, fuel and bilge management. To make the proposed development visually compatible with the remaining natural landscape, visual management practices provided by TVA to the applicant will be incorporated in the final design, which will be subject to TVA approval. No future development will occur in the wetlands present on the site. Wetlands will be further protected by requiring an upland buffer to be established and as part of the project commitments the applicant will be required to limit the amount of development and construction activities both within the buffer zone and the wetland areas. A 50-foot managed buffer will be maintained along drainages located within the parcel to reduce the potential for loss of streambank vegetation which could result in erosion. Shoreline buffer zones (50 feet as measured landward from the normal summer pool elevation) will be maintained along the reservoir shoreline. The applicant will provide a vegetation management plan for the buffer areas to TVA for approval prior to construction. Suitable roost trees (live trees and snags with greater than 10 percent exfoliating bark and hollow trees) may be harvested between October 15 and March 15, provided a survey of the site by a bat biologist shows no Indiana bats to be located on the property. To widen the culvert crossing on CR 77 (Barnett Lane), the applicant has agreed to pave the two grassed shoulders (3.5 and 2.5 feet) to widen the road to 20 feet (2-10 foot lanes). The requirements in the Clean Marina guidelines as well as the requirements in the American with Disabilities Act guidelines will be followed for all facilities in the project area. Moreover, the design of the resort is intended to have a natural theme that would further aid in minimizing impacts to natural resources.

- **Substantial Public Controversy** In determining the significance of a proposed action's effects on the environment, an agency must evaluate "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. § 1508.27(b)(4).

A controversy sufficient to require preparation of an EIS occurs “when substantial questions are raised as to whether a project...may cause significant degradation of some human environmental factor, or there is a substantial dispute [about] the size, nature or effect of the major Federal action.” *Protect Our Water v. Flowers*, 377 F.Supp.2d 844, 861 (E.D. Cal. 2004)(quoting *Nat’l Parks Conservation Ass’n v. Babbitt*, 241 F.3d 722, 736 (9<sup>th</sup> Cir. 2001). A substantial dispute exists when evidence, raised prior to the preparation of an EIS or FONSI casts serious doubt upon the reasonableness of an agency’s conclusions. *Protect Our Water*, 377 F. Supp.2d at 861. “An outpouring of public protest” has been held to satisfy the requirement of “substantial dispute.” *Pub. Citizen v. Dep’t of Transp.*, 316 F.3d 1002, 1027 (9<sup>th</sup> Cir. 2003).

Once a substantial controversy arises, NEPA places a burden on the agency to come forward with a “well reasoned explanation” demonstrating why those responses do not suffice to create a public controversy. *Nat’l Parks Conservation Ass’n*, 241 F.3d at 736.

There is a substantial public controversy in this case. The public was first notified of the proposed action on June 26, 2005 and TVA accepted comments through August 19, 2005. EA at 3. TVA received comments from 93 individuals who were opposed, and only 19 who were in favor of the proposal. *Id.* A petition in opposition to the proposal was also submitted containing 259 signatures. *Id.* Over the past several months, the local newspaper has published several articles about the controversy surrounding this project. Last month, a local citizen group organized a flotilla protesting the proposed action. See Attachment. In response to the public’s concern over this project, the comment period was recently extended by TVA. An equal if not greater number of comments in opposition to the project are expected.

In view of this outpouring of public protest, a substantial dispute exists and an EIS is warranted for this project. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

- **Conclusion:** “NEPA emphasizes the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). An EIS is required of an agency in order that it explore, more thoroughly than an EA, the environmental consequences of a proposed action whenever “substantial questions are raised as to whether a project may cause significant [environmental] degradation.” *Blue Mts. Biodiversity Project*, 161 F.3d at 1216 (quoting *Idaho Sporting Congress*, 137 F.3d at 1149).

As evidenced by these comments, substantial questions have been raised as to whether this project may cause a significant impact on the environment. Therefore, you must prepare an EIS for this project. (**Comments by:** *Jason Totoiu and Sandra S. Nichols, Wild Law*)

**TVA Response:** While some neighboring residents oppose the project, others are supportive. In assessing the extent of controversy created by opposing view points, TVA has been guided by the degree to which the controversy relates to effects on the quality of the human environment. When viewed in this light, TVA

finds, after a thorough review of the public comments, that there is no substantial dispute as to the size, nature, or effect of this federal action. Despite several comments in opposition to the project, there is no scientific or objective controversy as to the effects of the proposed action. TVA has added information to the EA to allay the public's concerns as to impacts to environmental resources including common terrestrial and aquatic resources, cultural resources, wetlands, roads and traffic, and threatened and endangered species. The consideration of public comments did not reveal the existence of any scientific controversy as to the environmental impacts on these resources. Moreover, the environmental impacts as analyzed in the EA are clearly not significant. The public controversy is not substantial and does not relate to the merits of the evaluation of environmental impacts.

## **28. Financial / Lease agreement**

- Mr Doss's proposed \$15,000 annual fee to TVA seems totally inadequate compensation for such a valuable piece of shoreline property. This is essentially a proposal for public subsidy of Mr. Doss's enterprise. If TVA is determined to channel use of this land to such a purpose, then sell it to Mr. Doss at fair market value. I have little doubt that Mr. Doss will wish to pursue his project if he has to pay market value for the land. (**Comment by:** *unknown*)
- The proposed investment for development is inadequate and will not construct a 1st class facility. The proposal, is in general, optimistic and does not address what the cost of the lease will be. (**Comment by:** *Jimmy Wayne Cosby*)
- We have lived in this area for approximately 30 years. I think someone can secure a 30 year lease for \$5,000/ with out a provision for future payments on this property is almost incomprehensible. (**Comment by:** *Mrs. R. Freeman*)
- EA - "The value of making this land available to the public should be considered a large amount of compensation to TVA. This benefit along with the added five percent of gross sales is a generous amount of compensation and should be considered a part of the agreement." How about changing the EA to: "The value of destroying wildlife habitat, archaeological resources, and natural beauty should warrant Bubba Doss to compensate the public with the true value of the real estate - about three million dollars. And TVA could also say "Three million dollars and the added five percent of gross sales is still a generous dose of corporate welfare to a special interest who wants to mooch off the public dole." (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** The \$15,000 figure was merely listed in the applicant's proposal.

The requested property was appraised to determine the easement's fair market value. TVA independently reviewed the appraised value and determined the fair market value on an annual basis. The applicant will be required to remit to TVA either the easement's fair market value on an annual basis or five percent of his gross, whichever is greater.

- Another matter that was totally missing was any contingency plans for if and/or when the development fails. With the failure of so many marinas and resorts in this area, one would think that TV A would require some detail on what happens if the applicant fails. For example, the marina and restaurant on nearby Town Creek is now bankrupt. Fisherman's Resort below Wheeler Dam has been opened and closed numerous times. It recently changed hands again. The marina and restaurant in McFarland Park in the City of Florence has been in financial trouble every since it was developed. The restaurant has changed hands numerous times. The marina in Decatur has been in financial difficulty. It appears irresponsible to not have contingency plans. It appears it would be much more sensible to simply not take the risk. To be even more prudent, the applicant should consider purchasing one of the existing marinas for a bargain price. Why must we maintain the mentality of building new when the same facilities are going derelict nearby? (**Comment by:** *Bob Freeman, Woodfin and Carla Gregg* )
- I resent the "giving" of public lands to a private developer. For surely that is what it is. The estimated revenues from the marina will not even cover the cost to TVA to monitor, if in fact it is monitored, the actions of the developer. (**Comment by:** *Grant Posey*)
- If TVA does allow this marina to be built, what are the contingency plans for if and/or when the development fails? With the failure of so many marinas and resorts in this area, TVA must require some detail on what happens if the venture fails. We have had many such failures in our area. For example, the marina and restaurant on nearby Town Creek is now bankrupt. Fisherman's Resort below Wheeler Dam has been opened and closed several times, recently changing hands again. The marina and restaurant in McFarland Park in Florence, Alabama, has been in constant financial trouble. The restaurant has changed hands numerous times. The marina in Decatur has been in financial difficulty. It appears irresponsible to not have contingency plans. (**Comment by:** *Woodfin and Carla Gregg*)
- Section 3.11 states "This site would be monitored by TVA staff to make sure it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant's expense or leaving the facilities in place and obtaining another individual to continue operation of the property." Do you honestly expect the residents of the Elk River Community to believe that when this applicant busts, you are going to compel him to remove the structures he has put in place? Sea walls, a trash barrier, a wave break, paved roads and the like? Once this project is started do you honestly expect anyone to believe that it can be returned to "original condition" in our lifetimes? This prospect is highly unlikely. The reality is that once this project starts this action will definitely be "crossing the Rubicon". Once it is initiated, regardless of the commercial success or failure, there will be no turning back. When this applicant fails, TVA will be forced to seek other applicants to attempt to make this marina a going concern. (**Comment by:** *Eric Kelso*)
- I do not see a profit from 1.2 million estimated spent by Bubba in my lifetime. What if Mr. Doss passes away(God forbid he doesn't) prior to finishing this project? Who gets the lease? Does it go back to the public for an application to be applied? Can we turn back time and make it like it is now? Will TVA let someone else make the money? What if Mr. Doss decides to sell out? What happens to the lease agreement

then? Right now this land is available to the public to use as they want with no charges. TVA wants to lease to a private individual to make money and then the public will be charged to use the same land. This is not for the good of the public. I can not understand the reasoning behind this except greed. (**Comment by:** *Robin Burchfield*)

- There is land at Double Head that was developed and it was not a success. Now the restaurant is just sitting there because no one has wanted to buy it. Also the cabins are being sold to individuals at an extremely high price. What chances are you taking with this project? How much is the land being leased for? How long is the lease? What happens to the land if this folds? TVA is belongs to the people. We have a right to know. (**Comment by:** *Paul Hargrove*)
- Another matter that was totally missing was any contingency plans for if and/or when the development fails. With the failure of so many marinas and resorts in this area, one would think that TVA would require some detail on what happens if the applicant fails. For example, the marina and restaurant on nearby Town Creek is now bankrupt. Fisherman's Resort below Wheeler Dam has been opened and closed numerous times. It recently changed hands again. The marina and restaurant in McFarland Park in the City of Florence has been in financial trouble every since it was developed. The restaurant has changed hands numerous times. Just recently, the latest "owner" of this marina left town in debt to many of his creditors. You should also know that he didn't pay the City of Florence any of the percentage of income that he promised. Don't take my word for it. You can find the detailed story in the Times Daily of Florence, Alabama, dated December 27, 2005. The story is on Page One of Section B and Titled "Troubled Water: Marina has Closed - financial woes, bad blood with boaters were factors" The boat slips were full, with numerous very large boats. Now I ask you, how in the world can Bubba Doss make any money on Elk River when a marina, full with boats, within a mile of Downtown Florence can't make it? The marina in Decatur has been in financial difficulty for years. It is irresponsible to not have contingency plans. It appears it would be much more sensible to simply not take the risk. To be even more prudent, the applicant should consider purchasing one of the existing marinas for a bargain price. Why must we maintain the mentality of building new when the same facilities are going derelict nearby? (**Comment by:** *Robert Freeman*)
- There is no provision for the restoration of the site after the lease expires, which can result in a major public burden. (**Comment by:** *Jimmy Wayne Cosby*, unsigned from Feb 9 2006 open house )
- I would like to see Plan for reclamation after 30 years. (**Comment by:** *Anthony Cosby*)
- There are no provisions in the EA about how the property will be cleaned up and restored when the marina fails. (**Comment by:** unsigned from Feb 9 2006 open house)
- once the bulldozers start moving over the area it can no longer be returned to its natural state. What happens to the land if Mr. Doss is not successful in his venture? What happens to the land? (**Comment by:** *Johnny Tidwell*)
- Once the land is "developed", the damage can never be undone and the land never returned to its natural state. If developers want access to land, let them follow the rules of the free market and purchase it. I sincerely doubt if this Resort would be built

if 90 acres of waterfront land had to be purchased at current market prices.

**(Comment by: Michael Ezell)**

- Exactly what does the public get out of this...the give away...again, of our public land. Well maybe we will get a derelict campsite/marina when he goes belly up, like that derelict building/silo a little ways up the river. Or maybe TVA would just feel free to 'give it' to someone else. **(Comment by: Loli Howard)**

**TVA Response:** If approved, TVA will monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. However, if this is not completed in an agreed amount of time or if preferred, TVA can either complete the removal at the applicant's expense or leave the facilities in place and obtain another individual to continue operation of the property.

- Will this actually be able to recoup its expenses over a 5 to 50 year period? Will an environmental accident affect us for that long, yes. **(Comment by: unsigned from Feb 9 2006 open house)**
- This whole deal smells to high heaven. Somebody, somewhere at TVA must be in collusion with Doss and his rich buddies. Otherwise, this whole mess makes no sense. He will NEVER make any money on a marina on Elk River. The only logical explanation is that he wants his hands on 91 acres for river access so the rich folks can get richer building condos on the surrounding property. Just look at Bay Hill! What a mess! They are destroying that beautiful land. And why? So the developers can get rich. Now, I don't have anything against someone getting rich. The problem is that TVA is giving away public land so they can get rich. **(Comment by: Robert Freeman)**
- In the past four years, individuals who work at Joe Wheeler have stated that during staff meetings, they were shown the figures, and Joe Wheeler State Park was in the red. How is Mr. Doss going to stay in business? The beauty of the area is to be destroyed for a venture that may fail. Why? **(Comment by: unsigned from Feb 9 2006 open house)**

**TVA Response:** The market area for facilities such as the proposed resort is larger than the immediate vicinity of the project. In this case, the market area is anticipated to be not only Lauderdale County, but also seven additional surrounding Alabama counties, plus four nearby Tennessee counties. The population of these counties is estimated to be 881,568 as of 2004, an increase of about 2.8 percent, or almost 25,000, since 2000. From 1990 to 2000, the increase was about 103,000, or 13.6 percent. Projections by the University of Alabama and by the University of Tennessee show an increase to almost 984,000 by the year 2015. The projected market demand for recreational activities, including camping and motorboating, is based not only on projected population increases but also on projected increases in participation in these activities, as discussed in Section 3.7 of the Environmental Assessment. The demand for recreational facilities leads TVA to believe that this project will be economically viable.

If approved, TVA will monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is

cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant's expense or leaving the facilities in place and obtaining another individual to continue operation of the property.

- Why is Mr. Doss not buying the land? A thirty year lease based upon a 5 % royalty uncertain does not seem to be prudent even for the TVA. (**Comment by:** *J Thomas Noojin*)
- What kind of money are we talking about to only get 5% of rental income from camp sites and boat slips ? This seems like such a small return to destroy such a nice piece of land. This will only compound the problems in the future. (**Comment by:** *Joseph and Valerie Miles*)
- We see no reason for TVA to donate public lands to developers while our electric rates increase. (**Comment by:** *Woodfin and Carla Gregg*)

**TVA Response:** The requested property was appraised to determine the easement's fair market value on an annual basis. The applicant will be required to remit to TVA either the easement's fair market value on an annual basis or five percent of his gross, whichever is greater.

- What happens to the trees that are cleared. Does the developer get to collect the return on the harvested mature trees. Prophet [profit] from public lands going into the pocket of a private developer instead of public use, perhaps for some true environmental use. (**Comment by:** *Grant Posey*)
- Why hasn't the issue of developer's huge profit from the primeval timber that will be cut and sold been mentioned? TVA should also make public this amount, assessed by a forest management professional, outside of TVA itself and not hired by the developer. (**Comment by:** *Woodfin and Carla Gregg*)
- Finally, the DEA does not address the disposition of the mature trees - both hardwoods and softwoods. This resource is marketable, since the timber trees growing in these timber woodlands are largely mature trees, suitable as fiber for the manufacture of paper products and/or as saw timber. Presumably, TVA's corporate conservation ethic would dictate that such timber resources would not be merely cleared and burned. Yet nothing is said in the EA concerning the ultimate disposition of the merchantable timber that would be removed during clearing of the (as-yet-undisclosed) acreage that would be cleared for construction of developmental features. Moreover, the EA does not address the disposition of any funds that might result from sale of this timber. Would the land developer receive, as an the ancillary financial benefit, the proceeds of any such timber sales, or would TVA retain the right to contract for sale and removal of this timber, with the proceeds being made available for conservation or other public purposes? The EA should forthrightly disclose the disposition of the harvested merchantable timber from this tract, the financial beneficiary of any such timber sold on the market, and the anticipated use of the monetary proceeds resulting from any such commercial sale of this timber. (**Comment by:** *John Crowder*)

- On page 140 the 1995 Wheeler Reservoir Land management Plan, concerning Tract 21 (XWR-21PT), states, “**Both pine and hardwood have a net present value of \$1,350 per acre.**” If 40 acres are cleared (I suspect the total will be even more) that comes to \$54,000.00 in lumber. The \$1,350 per acre figure was the estimated value in 1995, surely with an additional eleven years of growth it is worth even more today. **If this tract is cleared, will TVA receive payment for this valuable timber?** (Comment by: *Charles Rose*)

**TVA Response:** The proposal is in accordance to TVA's designation of Commercial Recreation. The forest cover on this tract is not designated for Forest Management although TVA does have an investment in the current condition through past planting, monitoring and management activities. If the proposal is approved, TVA will work closely with the applicant in determining which trees can be removed. These trees will then be marketed with TVA as recipient of the revenue.

- And what a deal...I guess, from the little bit of incomplete information that I heard...newspaper article...., Tuesday, the 18th...”some try to stop TVA land swap” Gilbert “Bubba” Doss, a marine contractor from Rogersville, wants to build hi Elk River Resort on 91 acres of prime waterfront property owned by the Tennessee Valley Authority. In exchange for a 30-year lease, Doss would give TVA 5 percent of the money he earns renting campsites and boat slips.....The \$1 million-plus resort near the confluence of the Elk and Tennessee Rivers would offer up to 200 campsites and 100 boat slips, fishing piers, hiking trails, marina store and dry storage for boats.” Is that all he has to pay for the use of that prime land? Five Percent? Is that based on gross income, net profit, or nothing if he loses money for years? Exactly how is that determined? It is bad enough that TVA keeps trying to sell/trade away “our public land”, eliminate natural scenic areas, but just to give it away?
- Chapter # 3 page 33 of the Draft Environmental Assessment states that 5500 feet of Elk River shoreline are affected by this proposal and the Proposal to Lease page 12 anticipates an income of \$17,500 for TVA. This is a return on investment of about 0.34% based on the recent sale of lake front property on Lake View Dr approximately 100 feet from the proposed lease. (Comment by: *Joe Serocki*)
- The economic market value of this public land should be assessed by a non-partisan (who is agreed upon by all of the parties involved) and made public. The citizens who use this river deserve to know the probable value of the property if it were leased as-is for thirty years via public auction. The developer's appraisal indicates that 5% of the gross would be fair. However, since our government allows none of its citizens to devise their own tax assessments, why is this developer allowed to decide how much he will pay to lease government property—public property that supposedly belongs to the citizens of our country? (Comment by: *Woodfin and Carla Gregg*)
- The current proposal is for a thirty-year easement on the subject Elk River Waterfront for an uncertain rental fee from five percent of the revenues generated by the development if he builds it. The developer (Doss) proposes to do the development in phases and there is no guarantee of any certain income from the project and no firm development commitment. In an arms length transaction, the lease payments would be firm, have an escalation clause, and be based upon the capitalized, discounted future value of the land in question. Doss has long been known to have a “unique” and “close” relationship with the land management people, and this transaction

smacks of favoritism and does not take into account the economic realities of the land and location. As proposed this highly favorable, preferential rate is even uncertain as to when and how much will ever be collected by the TVA for tying up this valuable land and resource for thirty years. **(Comment by: J. Thomas Noojin)**

- Nevertheless, if the Agency persists in granting this almost unheard of concession to a private developer, the very least you can do is make the return to the Government and the public competitive with customary rates of return on the value of the land; a strict build out schedule with a market minimum rental to the TVA from day one; require a bond to be posted for environmental issues and completion of the project; and evidence in the form of a letter of credit that Mr. Doss has the capital to develop, complete and operate the project in a timely fashion. Whether he completes the project or not the rent should be based upon the appreciating value of the land plus a revenue concession should revenues ever materialize. **(Comment by: J. Thomas Noojin)**
- The entire proposed contractual agreement between the developer and TVA, including financial details, should be made public for comment prior to granting of the easement. **(Comment by: Bob Freeman)**
- If economic considerations are to be weighed against the possible negative environmental impacts that will result from this development, shouldn't the public have the right to review and comment on the economic agreement between TVA and Mr. Doss? All we have in the DEA is Mr. Doss' rather vague proposal. I was told at the TVA Open House on October 18 that the final economic agreement was still being calculated. That being the case, how can the public even make serious comment in this regard yet? **(Comment by: Charles Rose)**
- TVA seems determined to approve this project to the detriment of the many stakeholders who oppose it. If you should decide to grant the permit, then, in order to make the project safer for the people who live next to it, safer for the families and children on Barnett Road, safer for those traveling to and from the site, safer and more compatible for the wildlife, including American Bald Eagles and their habitat, and to provide protection of Indian Artifacts and Sacred Grounds and to better protect the shoreline, I implore you to make the following demands, in a written contract, on the applicant....In conclusion, the ultimate decision should be to deny the proposed project. If you can not find it in your heart to do the "right thing", then please protect my neighbors and me by imposing the requirements proposed in this letter on the applicant. It should be a written contract such as would be imposed by any party as part of a lease/easement agreement. **(Comment by: Bob Freeman)**
- In my view this project should not be approved under any circumstances, much less under the proposed terms. As stewards of the public land around the principal watersheds in the Tennessee Valley area, in my view the Agency would be negligent and irresponsible if it allows this project to proceed. Further, I don't think the terms of this transaction will pass the business judgment test nor will it withstand political scrutiny once it is brought to the attention of the current Board of the TVA nor those members of Congress who oversee the Agency. **(Comment by: J. Thomas Noojin)**
- As steward of our land, is TVA being fiscally responsible? \$17,000.00 a year rent? Why so cheap? **(Comment by: Helen Ball)**

**TVA Response:** The requested property was appraised to determine the easement's fair market value on an annual basis. The applicant will be required

to remit to TVA either the easement's fair market value on an annual basis or five percent of his gross, whichever is greater. This remittance to TVA will ensure that TVA recoups the fair market value of the land.

- Mr. Doss has proposed making payment at the rate of 5% of gross sales, which he estimates (in Phase I & II) to be \$17,500.00 (at 50% occupancy.) Does this mean that until the completion of Phase I & II there will be no payments to TVA? Other than the statement, "Construction time required for Phase I would be approximately 6 months", there is no timetable indicated. Phase III is mentioned to occur in "2008, or as required by demand." This sounds pretty vague to me. What if construction is delayed for a substantial period of time? Does that mean that TVA receives no payments on the lease of this public land? Would a private company lease a valuable piece of property with no guarantee of income? (**Comment by:** *Charles Rose*)

**TVA Response:** Regardless of the phases completed, the applicant would still be required to remit to TVA the annualized fair market value of the easement.

- Has TVA had Tract 21 appraised in order to determine the real estate value of the property? If not how can TVA make a valid judgment about whether this lease is a responsible use of public land? (**Comment by:** *Charles Rose*)

**TVA Response:** An appraisal has been completed for this proposal.

- What if development fails? What will happen to the Elk River Resort Facilities in event of its failure (bankruptcy) (**Comment by:** *Leonard E. Reid*)

**TVA Response:** If approved, TVA will monitor the site to ensure that it complies with all guidelines and conditions set forth in the easement. If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant's expense or leaving the facilities in place and obtaining another individual to continue operation of the property.

- Flooding Liability. And what about the flood zone...on the water's edge, that TVA is responsible for? Would the government be responsible for damage to the marina every time TVA raises the water level? Or a serious flood disaster occurs? Or does he just abandon it and leave us another eyesore? (**Comment by:** *Loli Howard*)

**TVA Response:** If the easement is not renewed or is cancelled by either the applicant or TVA, the applicant would be required to remove the facilities and restore the land to its original condition. If this is not completed in an agreed amount of time, TVA would have the option of completing the removal at the applicant's expense or leaving the facilities in place and obtaining another individual to continue operation of the property. The Section 26a approval would require the applicant to agree to securely anchor all floating facilities to prevent them from floating free during major floods; construct or place all portions, on average, no more than 2 feet from the existing shoreline at normal summer pool elevation, for the purposes of shoreline bank stabilization; and contact local

government official(s) to ensure that this facility complies with all applicable local floodplain regulations.

- The 10 cabins that are to be built at the Joe Wheeler will cost greater than \$3,000,000.00. That is for 10 cabins and an access road. Who will finance Mr. Doss? Prime interest rate is now 7.5%. How is Mr. Doss going to stay in business? (**Comment by:** unsigned from Feb 9 2006 open house)
- In the past four years, individuals who work at Joe Wheeler have stated that during staff meetings, they were shown the figures, and Joe Wheeler State Park was in the red. How is Mr. Doss going to stay in business? The beauty of the area is to be destroyed for a venture that may fail. Why? This will impact the environment and will go over like a lead balloon. Any one that has lived here can tell you that this venture will go under. (**Comment by:** unsigned from Feb 9 2006 open house)

**TVA Response:** The Wheeler Reservoir Land Management Plan (Plan) also noted that the future commercial needs were being met locally for the middle and upper reaches of the reservoir. The planning team focused on the lower regions of the reservoir for potential commercial sites. Four tracts were allocated (Tract Nos. 21, 67, 88, and 91) to meet plan objectives. With boat slips and dry storage nearing capacity for small craft on Wheeler Reservoir, the market appears to be strong for covered wet slips to accommodate large boats. The market also appears to be strong for covered wet slips to accommodate large boats. Many of the marinas on Wheeler Reservoir, such as Decatur Harbor, Ditto Landing, Madison County, and Joe Wheeler State Park currently have long waiting lists for owners seeking space for large boats exceeding 21 feet in length. Given this demand, TVA believes this proposal will be economically viable.

- I am certainly disturbed that Mr. Doss appears to be getting some special favor from TVA to use resources that can make him very rich if he offers the lease for sale the day after TVA grants his request. How can anyone at TVA feel like they are being good stewards of these public resources when they are favorable considering this proposal? (**Comment by:** *John L. Dumbacher*)
- I suspect that Mr. Doss paid the required fee of \$200.00 to submit his application. I wonder who paid for all of the analysis that went into the environmental studies described in 147 pages of documentation that are available on the internet regarding this proposal. All of those studies must represent several hundred thousands of dollars spent by TVA and other agencies to support this “grant” to Mr. Doss. If TVA thinks that there is a need for a resort of this sort on the Elk River, then why is the project not put out for competitive bid? A lease for 30 years with an option for 30 more years is very nearly like a sale of the land. Why was it not offered for sale at a public auction? (**Comment by:** *John L. Dumbacher*)

**TVA Response:** The application fee associated with this type of land use request is five thousand dollars. The applicant is also responsible for any additional fees that accrue in addition to the application fee. The environmental reviews associated with the draft Environmental Assessment were conducted by TVA. The applicant is responsible for all administrative charges associated with these reviews.

- I am certainly disturbed that Mr. Doss appears to be getting some special favor from TVA to use resources that can make him very rich if he offers the lease for sale the day after TVA grants his request. How can anyone at TVA feel like they are being good stewards of these public resources when they are favorable considering this proposal? (**Comment by:** *John L. Dumbacher*)
- TVA is not being a good steward of the land resources under their control (on the part of the taxpayers). The real estate and water rights that are about to be conveyed by this easement for 30 years with an option for 30 more has a value today in the neighborhood of 2 million dollars. The recent public auction of land almost directly across the river from the proposed site supports this estimate of value. Mr. Doss is about to get control of that land and he offers to pay TVA 5% of the “gross income from the sales generated by the resort”. In his application he states that “this is a generous amount of compensation”. TVA must have someone who is a business manager who would want to evaluate whether or not this is adequate income for the value of the property that is about to be conveyed. Further the definition of “gross sales” must be defined so that TVA can claim their due income from the property. There can be boat sales, fuel sales, marine store sales, and food and drink sales in addition to the rental of campsites and launch fees. It is my feeling that Mr. Doss has somehow incurred special favor with TVA in order for this proposal to be given the apparent support that TVA is giving to it. (**Comment by:** *John L. Dumbacher*)

**TVA Response:** The requested property was appraised to determine the easement’s fair market value on an annual basis. The applicant will be required to remit to TVA either the easement’s fair market value on an annual basis or five percent of his gross, whichever is greater. Throughout the valley, TVA implements a consistent approach to determine gross incomes associated with businesses located on TVA property.

- Who will finance Mr. Doss? Prime interest rate is now 7.5%. How is Mr. Doss going to stay in business? (**Comment by:** unsigned from Feb 9 2006 open house)
- I would like to see Economic analysis proving that the funding Mr. Doss has proposed will in fact be adequate to complete the project. (**Comment by:** *Anthony Cosby*)
- The applicant’s “plan” provides insufficient detail to show it is a sound business proposal. I can’t imagine a bank loaning money on the basis of such scant financial rationale. I’m concerned that Mr. Doss will field a nonprofitable operation that will fail in a few years and we’ll be left with a spoiled resource. (**Comment by:** *unknown*)

**TVA Response:** As part of TVA’s land / land rights use request process, the applicant is subject to a credit evaluation and analysis in order for TVA to determine his/her creditworthiness. TVA considers many factors including, but not limited to, financial statements, rating agency reports (if available), bank information, credit references, legal name, state of incorporation, shareholder ownership schedule (if available) and company brochure.

- TVA goes to great lengths to justify its position to develop this tract of public land. The same amount of space should be used to calculate the loss of public benefits by the development. Let us consider the inverse? How much, in dollars and intangible

assets, is lost to the public, by the loss of the ecological services provided by this property if left in its natural condition? (**Comment by:** *Lamar Marshall, Wild South*)

**TVA Response:** Because of the qualitative nature of environmental benefits, such projects do not lend themselves to a formal quantitative cost benefit analysis. Project costs are discussed in the applicant's proposal in Appendix A. The EA provides qualitative descriptions of the recreational benefits and the environmental impacts.

- The 91 acres in Tract XWR-21PT would remain in TVA ownership, but they would not be "public lands" in any other substantive sense of that term. They would be lands under sole control of a private operator, no longer available without cost to the using public sector, including fishermen, hunters, equestrians, hikers or others who now use and enjoy this truly public land for recreation. (**Comment by:** *Robin Burchfield*)

**TVA Response:** If a term easement is granted to the applicant, TVA would require that all facilities and services must be made available to all members of the general public without discrimination or distinction because of race, color, national origin, age or handicap. Many of the national and state parks charge fees for day use of public land. Joe Wheeler State Park charges for their day use area which includes swimming beach, picnicking, pavilions, tennis courts and bank fishing inside this designated area. Many of the USACE lake access areas charge for boat launching. Moreover, TVA is not allowing this land to be used for private development; rather, the land would be used to build resort facilities that would be available to the general public for recreational uses, such as fishing, camping, hiking, and boating.