

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

(File No. 2006-00511)
Applicant: Mr. Barry McIntosh

PROPOSED COMMERCIAL MARINA EXPANSION, DREDGING, FILL FOR WAVE BREAK,
FLOATING COVERED BOAT SLIP FACILITIES, RIPRAP, AND EXISTING CONCRETE
LAUNCHING RAMP AT MILE 64.8 LEFT BANK, TENNESSEE RIVER (KENTUCKY LAKE), IN
HENRY COUNTY, TENNESSEE

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

Prepared by:

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June 30, 2006
Date

Table of Contents

1. Proposed Activity

- 1.1 Description/Project Purpose
- 1.2 Decision Required
- 1.3 Other Approvals Required
- 1.4 Site Inspection

2. Public Involvement Process

- 2.1 General

3. Environmental and Public Interest Factors Considered

- 3.1 Introduction
- 3.2 Physical/Chemical Characteristics and Anticipated Changes
- 3.3 Biological Characteristics and Anticipated Changes
- 3.4 Human Use Characteristics and Anticipated Impacts
- 3.5 Cumulative and Secondary Impacts

4. Alternatives

- 4.1 Introduction
- 4.2 Description of Alternatives
- 4.3 Comparison of Alternatives
- 4.4 Alternatives not Considered in Detail

5. Findings

- 5.1 Consideration of Comments
- 5.2 Clean Air Act General Conformity Rule Review
- 5.3 Environmental Justice
- 5.4 Water Quality
- 5.5 404(b)(1) Guidelines Determination
- 5.6 Findings of No Significant Impact
- 5.7 Public Interest Determination

Appendixes

- A. Site Inspection and Photographs
- B. Public Notice
- C. Public Responses
- D. TVA 26a and Water Quality Permits
- E. Section 404(b)(1) Guidelines Compliance

1.0 Proposed Activity

1.1 Description/Project Purpose. The proposed work consists of dredging approximately 30,000 cubic yards of material from Kentucky Lake for a boat access channel and marina facility. The material will be removed by a hydraulic dredge and deposited above Elevation 376.0 on the applicant's property. Elevation 359.0 is the normal summer pool (NSP) elevation for Kentucky Lake. The excavation would allow adequate water depth to access the proposed marina facility. The proposed activity would also require the discharge of fill material below the NSP of 359.0 for a wave break. The fill material will be placed on an existing road bed. The proposed work will raise the road bed elevation from the existing 357.0 elevation to 362.0 elevation. Riprap will be placed on both sides of this structure and will measure approximately 1200 linear feet. The marina would consist of 3 docks-30 floating covered boat slips each. This facility will be secured by spud poles. A 60' x 60' floating office/fuel dock will also be constructed and attached to the proposed water use facilities. An existing concrete launching ramp is present at this location. The ramp is 20' wide and 60' long.

1.2 Decision Required. Section 10 of the Rivers and Harbors Act of 1899 prohibits the alteration or obstruction of any navigable waters of the United States unless authorized by the Secretary of the Army acting through the Chief of Engineers. The Tennessee River at Mile 64.8 a navigable water of the United States as defined by 33 CFR Part 329. A DA permit under Section 10 is required for the work. Therefore, the Corps of Engineers (Corps) must decide on one of the following:

- 1.2.1 issuance of a permit for the proposal
- 1.2.2 issuance of a permit w/modifications or conditions
- 1.2.3 denial of the permit

1.3 Other Approvals Required.

1.3.1 In accordance with provisions of the Tennessee Water Quality Control Act of 1977 (T.C.A. § 69-3-101 et seq), an Aquatic Resources Alteration Permit (ARAP) is necessary from the Tennessee Department of Environment and Conservation (TDEC) for the discharge of dredged or fill material associated with the dredging, wave break and riprap.

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

1.4 Site Inspections. I conducted an inspection of the site on March 21, 2006. A copy of the report with a picture is included under Appendix A.

2.0 Public Involvement Process

2.1 General. On 13 March 2006, the Corps issued Joint Public Notice (JPN) No. 06-31 to advertise the proposed work (Appendix B). The JPN was distributed to a wide list of interested parties that included federal, state, and local agencies, elected officials, private/public organizations, news agencies, commercial navigation interests, adjacent property owners, and individuals. The Tennessee Historical Commission (THC), Tennessee Wildlife Resources Agency (TWRA) and U.S. Fish and Wildlife Service (USFWS) commented to the public notice. Also, a copy of a TVA internal comment was obtained. The comments have been summarized and a copy included in Appendix C. Where appropriate, a response follows the comment and consideration of the same is discussed (See Section 5.1). No public hearings were requested.

3.0 Environmental and Public Interest Factors Considered

3.1 Introduction. 33 CFR 320.4(a) states that the decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. All factors that may be relevant to the proposal must be considered (for full list see Public Notice 03-31, Appendix B). The following sections describe the relevant factors identified and provide a concise description of the probable impacts of the proposed action. The baseline data discussed in this section has been obtained from numerous sources, including the Corps site investigation.

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

(x) substrate - Observed substrate in the affected area consists mainly of silt and sand. The proposed action would result in the elimination of approximately 250,000 square feet (SF) of these materials. Since the affected area constitutes a very small fraction of the total bottom area available in this lake, impacts would be relatively minor.

(x) currents, circulation or drainage patterns - The proposed action would have negligible effects on river channel currents or water circulation due to the location. A minor eddy effect could be experienced inside the recessed shoreline, but accretion should be minimal.

(x) suspended particulates, turbidity – Increased turbidity levels would result from the resuspension of bottom sediments and organic matter during the dredging processes. However, the effect would be temporary, and river currents would dissipate it quickly.

(x) water quality (temperature, color, odor, nutrients, etc) – According to the TVA Reservoir Ecological Health web page Kentucky Lake rated "good" in 2003. The ecological health score for Kentucky Lake has consistently been similar to previous years. TVA rates the condition of each reservoir based on five ecological indicators: dissolved oxygen, chlorophyll, fish, bottom life, and sediment. Dissolved oxygen rated good near the dam and poor at Big Sandy Embayment (site vicinity). Chlorophyll levels were high as in previous years and rated poor. Monitoring revealed a fair number and variety of fish.

Bottom life rated good at two sites and fair at the remaining two monitoring locations. There are no state advisories against swimming in this area of Kentucky Lake. Dredging would result in minimal, short-term water quality impacts. Also, minor inadvertent spillages of petroleum products would occur from the recreational craft moored at the dock. River currents would quickly disperse these products in the water column.

- (x) flood control functions – No issues for this project location.
- (x) storm, wave, and erosion buffers-No issues for this project location.
- (x) shore erosion and accretion patterns - Shoreline erosion is not expected to occur.
- (x) baseflow- No issues for this project location.

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

(x) special aquatic sites (wetlands, mudflats, pool and riffle areas, vegetated shallows, sanctuaries, and refuges, as defined in 40 CFR 230.40-45) - No special aquatic sites exist within the permit area.

(x) habitat for fish and other aquatic organisms – The near-shoreline area along the applicants' property is relatively unproductive for fish spawning purposes. The dredging activities would eliminate a small benthic community. However, this impact would be relatively minor and temporary since aquatic organisms would soon start recolonizing the area after construction completion.

(x) wildlife habitat – The work site is located in a recessed embayment of the Tennessee River bordered by a densely vegetated area. The existing shoreline consists of gently sloping terrain towards the lake at approximately a 15° angle. Because of the extent of human activity in the general vicinity, wildlife habitat values are relatively low. Considering the mobility and adaptability of species that may occupy this area, the proposed action would result in minimal short- and long-term wildlife impacts.

(x) endangered or threatened species – Based on information obtained from TVA and the response from the USFWS, we have determined that the proposal would have no effect on federally listed or proposed threatened or endangered species or on designated critical habitat.

(x) biological availability of possible contaminants in dredged or fill material - No contaminants are known or suspected to occur in the proposed dredging area.

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

(x) existing and potential water supplies; water conservation - A search of our permit database did not reveal the presence of any municipal or industrial potable water supply intake in Kentucky Lake downstream of the project site. The proposed action would not affect the availability of water or opportunities to reduce demand and improve efficiency.

(x) water-related recreation – Kentucky Lake, a Tennessee River main-stem reservoir, is approximately 184 miles long with 160,300 acres of surface area, and 2,064 miles of shoreline. Typical normal summer and winter pool target levels are Elevation 359 and 354, respectively. Several marinas, resorts, state/municipal parks, and camping areas exist along the shores of Kentucky Lake. The nearest commercial boat dock, Paris Landing Marina, is located at TRM 66.0 L. The nearest public boat ramp is located at project site TRM 64.8 L. The proposed work would provide the applicant substantial recreational opportunities such as boating, fishing, skiing, and swimming. Because the proposed marina expansion, dredging, fill for wave break, floating covered boat slips, and riprap is located in an embayment area, the proposed action would not adversely affect other recreational waterway users.

(x) aesthetics – The construction of the marina facilities would not result in any change in the general visual characteristics of the area. Previous Marina operations at this location. However, the work would be compatible with upstream and downstream uses related to moorage practices. The aesthetic impact would be minimal.

(x) traffic/transportation patterns - The long-term effect of the proposal on traffic/transportation patterns or waterborne traffic would be minimal.

(x) energy consumption or generation-No issues for this project location.

(x) navigation – The proposal is located on in an embayment with historical marina operations TRM 64.6 L, in Henry County, Tennessee. Most of the bank contains rock outcrops, and a rocky bluff exists on the upstream end. The embayment is approximately 1,400' wide at this location. One nun (red) buoy delimits the right ascending channel boundary at the mouth of the embayment. The proposed facility would extend into the embayment approximately one-third of the cove width.

(x) safety - This factor can be equated with navigational and recreational safety. As indicated in the navigation paragraph above, the proposal could, for briefs periods, result in potential conflicts with waterway users during boat moorage operations, ingress, or egress of the embayment. Overall, safety impacts would be relatively minor.

(x) air quality – The proposed action would only result in minimal direct emissions. A conformity applicability determination pursuant to regulations implementing Section 176(c) of the Clean Air Act has been made in Section 5.1.

(x) noise – Noise levels would increase slightly above background values mainly during the construction phase. Impacts would be minimal.

(x) historic properties and cultural values – no National Register of Historic Places (NRHP) listed or eligible property would be affected by the undertaking

(x) land use classification- No issues for this project location.

(x) conservation- No issues for this project location.

(x) economics – There would be a short-term stimulus to the local economy from the sale of goods and services in support of construction activities. With the proposed water use facility and shoreline improvements, the applicants' property values would likely increase.

(x) food and fiber production-No issues for this project location.

(x) general environmental concerns – This is a broad factor almost synonymous with the area's quality of life. All the relevant issues falling under this heading have been evaluated in this document. No public/private agency, group, or individual expressed concerns for the proposed activities. Special conditions have been added to minimize the unavoidable adverse environmental impacts identified.

(x) mineral needs-No issues for this project location.

(x) consideration of private property - The proposal would not result in the conveyance of property rights (in either real estate or material), granting of any exclusive privileges, or injury or invasion of rights to neighboring private properties. The proposed marine railway/lift, boat storage, excavation/dredging, and private irrigation intake would not affect the rights of adjacent property owners to protect their own properties from erosion and to access navigable waters of the U.S.

(x) floodplain values –The proposed action is located within the 100-year floodplain as mapped by FEMA. Excavation, dredging, and small water-use facilities are typical repetitive actions compatible with uses for which the floodplain is suitable. We are satisfied that potential impacts to or within the floodplain have been minimized to the extent practicable. The applicant would remove the excess excavated/dredged material from the waterway, place it above the 100-year flood contour, and properly stabilize it to prevent reentry into the waterway. Therefore, the work as proposed would comply with Executive Order 11988 (Floodplain Management).

3.5 Cumulative and Secondary Impacts. The Council on Environmental Quality regulations define cumulative impact as “the environmental impact which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” The Corps considers every DA permit application on its own merits and assesses its environmental impacts within the proper scope of review for NEPA purposes.

The scope of analysis for this DA permit application is limited to the Permit Area (i.e., shoreline and near-shoreline areas directly impacted by excavation, dredging, construction of the boat storage and marine railway structures, and installation of a private water intake). The Permit Area impacts described in this document would result in minimal adverse cumulative impacts on areas within our NEPA scope of review. A discussion of these impacts has been presented in Section 3 above. If a decision were made to issue the DA permit, special permit conditions would be incorporated to further minimize on-site impacts. When considering the impacts from past, present, and reasonably foreseeable future proposals, the cumulative and secondary impacts from this proposal are considered minor.

4.0 Alternatives

4.1 Introduction. This section discusses alternatives as required by 33 CFR 320.4(a)(2). The relevant environmental issues identified in Section 3.0 were used to formulate the alternatives. The alternatives considered in detail are described in Section 4.2 and their impacts compared in Section 4.3. Other alternatives not considered in detail are discussed in Section 4.4.

4.2 Description of Alternatives.

4.2.1 No Action. This alternative is one that results in no construction or work requiring a Corps permit. No Action may be brought by (a) the applicant electing to modify its proposal to avoid jurisdictional work, i.e., excavation, dredging, and structures in waters of the United States, or (b) by denial of the permit.

4.2.2 Applicant's Proposed Action. This alternative consists of the proposal described in Section 1.1.

4.2.3 Applicant's Proposed Action with Added Special Conditions. This alternative consists of the Applicant's Proposed Action identified in Section 4.2.2 above with the inclusion of special conditions to further minimize/mitigate unavoidable environmental impacts to the maximum extent practicable.

4.3 Comparison of Alternatives.

4.3.1 No Action. This alternative would result if no work or structures occurs in waters of the United States. No Action would be brought about by a denial of the DA permit. The potential environmental impacts described in Section 3.0 would not occur. Conversely, the expected socioeconomic benefits also described in that section would not be achieved. No Action would not satisfy the applicant's stated purpose and need.

4.3.2 Applicant's Proposed Action. The proposed action described in Section 1.1 would potentially have various adverse and beneficial environmental and socioeconomic effects. These potential effects have been listed in Section 3.0 above.

4.3.3 Applicant's Proposed Action with Added Special Conditions. This alternative would result in similar impacts and benefits to the alternative described in Section 4.3.2 above. Special permit conditions have been developed and recommended (see below). The recommended conditions are reasonably enforceable and would afford appropriate and practicable environmental protection. Conditions have been specifically added to minimize adverse impacts on commercial and recreational navigation and the aquatic environment.

The following recommended special permit conditions are necessary to satisfy legal and public interest requirements. Some of these conditions help clarify the permit application and afford appropriate and practicable environmental protection.

- The work must be in accordance with any plans attached to this permit. *Justification: Clarify the permit application.*
- You must have a copy of this permit available on the site and ensure all contractors are aware of its conditions and abide by them. *Recommended at 33 CFR 325, Appendix A.*
- Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States. *Recommended at 33 CFR 325, Appendix A.*
- You must institute and maintain a strict erosion and sediment control program for the life of the project and ensure that all disturbed areas are properly seeded, ripped, or otherwise stabilized as soon as practicable to prevent erosion. *Minimize impacts on water quality and the aquatic environment.*
- The disturbance to riparian vegetation shall be kept to a minimum during construction. *Minimize impacts on wildlife habitat, water quality, and the aquatic environment.*
- All excess excavated material shall be removed upland above Elevation 376.0 and properly contained and stabilized to prevent re-entry into the waterway. *Minimize impacts on water quality and the aquatic environment.*
- You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address: Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana 70130, (504) 589-6277. *Public interest requirement and recommended at 33 CFR 325, Appendix A.*
- You hereby recognize the possibility that the structure permitted herein may be subject to damage by wave wash and possible collision damage from passing vessels. No part of the facilities may extend beyond one-third of the cove width. The issuance of this permit does not relieve you from taking all proper steps to ensure the integrity of the structure and the safety of vessels moored thereto from possible damage and you shall not hold the United States liable for any such damage. *Public interest requirement (navigation safety).*
- This permit also authorizes the periodic maintenance dredging of the recessed channel area in front of the approved facilities, which may be performed under this permit for 10 years from the date of issuance of this permit.

You must advise this office in writing at least one month before you intend to undertake any maintenance dredging. *Recommended at 33 CFR 325, Appendix A.*

5.0 Findings

5.1 Consideration of Comments.

Comments were received from the SHPO, TWRA, TVA navigation and USFWS. The comments were evaluated for consideration of the permit decision and addition of permit conditions. The comments resulted in additional correspondence with the applicant, subsequent information being furnished and minor adjustment to the permit proposed operation. Mr. McIntosh provided written responses to the issues raised and all comments were satisfactorily addressed.

5.1.1 THC responded to the public notice by letter dated June 28, 2006 stating that based on the information submitted no National Register of Historic Places (NRHP) listed or eligible property would be affected by the undertaking.

5.1.2 By letter dated 10 April 2006, TWRA responded to the notice stating that based on the best evidence available at the present time no federally-listed or proposed threatened or endangered species are known to occur in the impact area. TWRA did state that the applicant should mitigate for permanent loss of shallow water habitat and construct spawning benches in the vicinity. By email dated May 19, 2006, TWRA stated that the applicant had satisfied the request and provided mitigation of the same.

5.1.3 On 21 March 2006, TVA's Navigation and Hydraulics Engineering Division stated it would recommend issuance of the 26a permit contingent to the following conditions: a) No part of the facilities may extend beyond one-third of the cove width. The applicant should be made aware that the facility is in a location subject to wave wash and/or possible collision damage from passing vessels. We agree with TVA's protective conditions concerning navigation and plan to incorporate similar language in our own permit.

5.1.4 By letter dated 13 April 2006, USFWS responded to the notice stating that based on the best evidence available at the present time no federally-listed or proposed threatened or endangered species are known to occur in the impact area. Therefore, the requirements of Section 7 of the Endangered Species Act are fulfilled. USFWS stated the applicant should mitigate for permanent loss of shallow water habitat and construct spawning benches in the vicinity. The applicant satisfied this request and provided mitigation of the same.

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

5.3 Environmental Justice. Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The proposed site does not lie adjacent to low-income communities, and therefore, minority and low-income populations would not be disproportionately impacted by the project. Through our public involvement process (Section 2), we have offered adjacent property owners, local groups, community leaders, elected officials, agencies, and general public (includes low-income and minority populations) an opportunity to express their views. No one identifying himself/herself as a low-income person indicated any objection to the proposal. Therefore, the requirements and provisions of EO 12898 have been met.

5.4 Water Quality Certification. A water quality certification by the Tennessee Department of Environment and Conservation was issued on June 9, 2006 (Appendix D).

5.5 404(b)(1) Guidelines Determination. The purpose of Section 404(b)(1) of the CWA is to restore and maintain the chemical, physical, and biological integrity of the waters of the US through the control of discharges of fill material, as published in 40 CFR 230. Section 230.10 requires that the discharge of fill material into waters of the US associated with the proposed work meet certain restrictions in order to be authorized. Based on the probable minimal impacts addressed in this document, compliance with the restrictions, and information concerning the fill materials to be used, the proposed work complies with the Guidelines and the intent of Section 404(b)(1) of the CWA. An evaluation of the guidelines is attached in Appendix E.

5.6 Findings of No Significant Impact. After fully considering the relevant environmental factors discussed in this document, information obtained from the applicant, interested public, and cooperating federal and state agencies, I have concluded that issuance or denial of the requested permit would not constitute a major federal action that would significantly affect the quality of the human environment. This constitutes a Findings of No Significant Impact (FONSI). Therefore, the preparation of an Environmental Impact Statement is not required. This FONSI was prepared pursuant to paragraph 7a of Appendix B, 33 CFR 325.

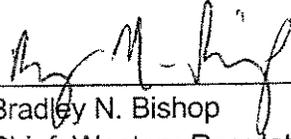
5.7 Public Interest Determination. I have reviewed the application, responses to the PN, and the Environmental Assessment. The "Proposed Action with Added Special Conditions" would only result in relatively minor environmental and socioeconomic impacts. Specifically, special permit conditions have been added to address the potential commercial and recreational navigation problems that could result. The proposal would provide the applicant substantial economic and recreational benefits. Having weighed the potential benefits that may be accrued against the reasonably foreseeable detrimental effects, I conclude that permit issuance would not be contrary to the public interest.

File No. 2006-00511

FOR THE COMMANDER:

6/30/06

Date



Bradley N. Bishop
Chief, Western Regulatory Section
Regulatory Branch
Operations Division

Appendix A
Site Inspection and Photographs

MEMORANDUM FOR RECORD

March 22, 2006

Purpose: Document Findings of 22 March 2006 Onsite Inspection

File No: 2006-00511

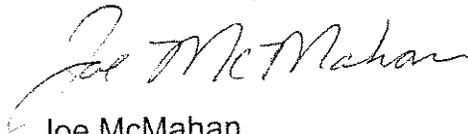
Applicant: Breakers of Swan Bay-PN # 06-31

Work Location: Adjacent to Tennessee River Mile 64.8 L, Henry County, Tennessee

Attendees: Joe McMahan-USACE

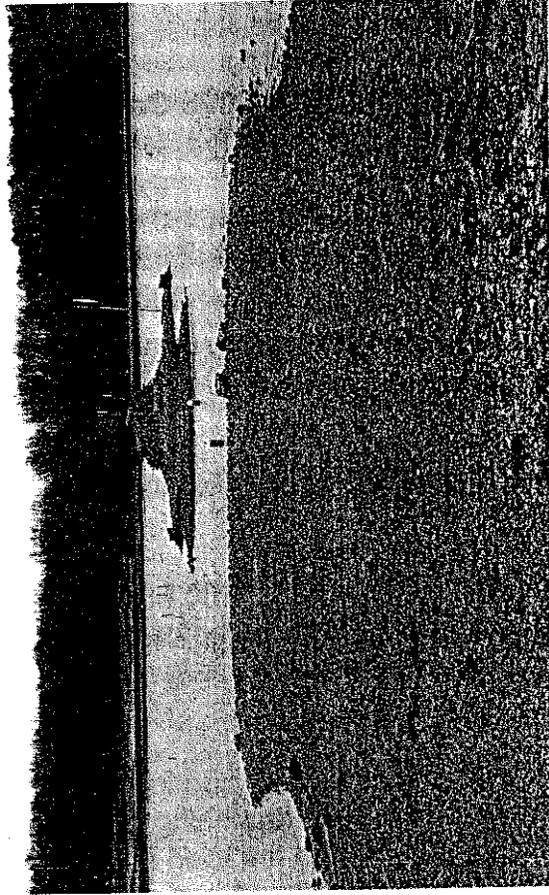
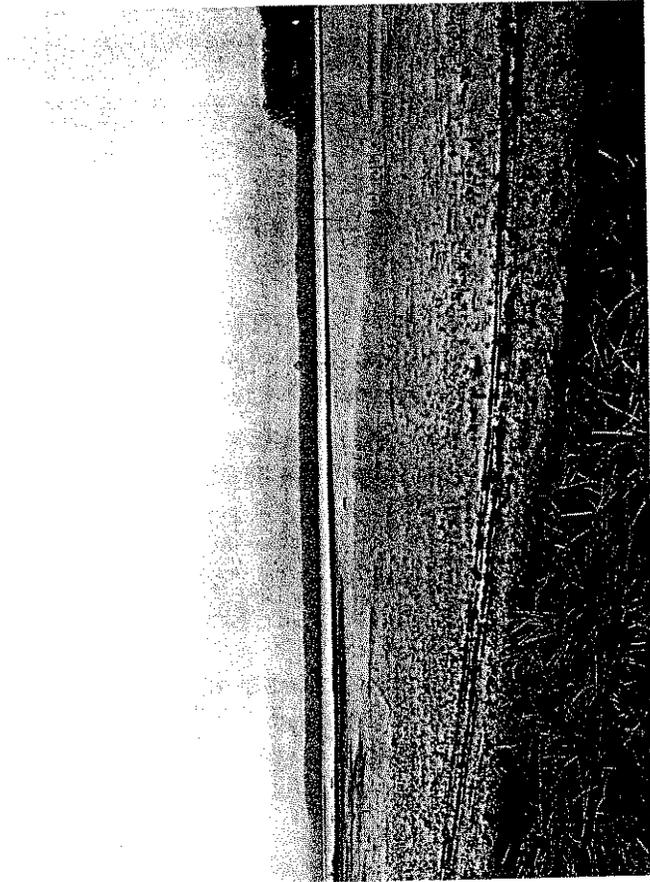
SUBJECT: Inspection of Proposed at Marina Expansion

1. On March 22, 2006, at approximately 1100 hours I went to the subject location to gather additional information and take photos of the area. The proposed activities consist of marina expansion; dredging, deposition of fill material and riprap.
2. The existing facilities consist of a small floating house boat, a dilapidated fixed dock; small concrete retaining wall, launching ramp and office building. There is also some grading work adjacent to the road entrance with silt fencing and a 36-inch CMP with riprap. The existing road bed extends on both sides of the cove with an opening cut that is approximately 80-feet wide. This opening acts as the navigation channel for vessel traffic to the main reservoir.
3. Photographs of the existing facilities were taken and are attached. The cove has a width of approximately 1400-feet near the existing road bed. This measurement was taken using a range finder. The back of the cove narrows to approximately 500-feet; which is outside the proposed project area.



Joe McMahan
Project Manager
Operations Division

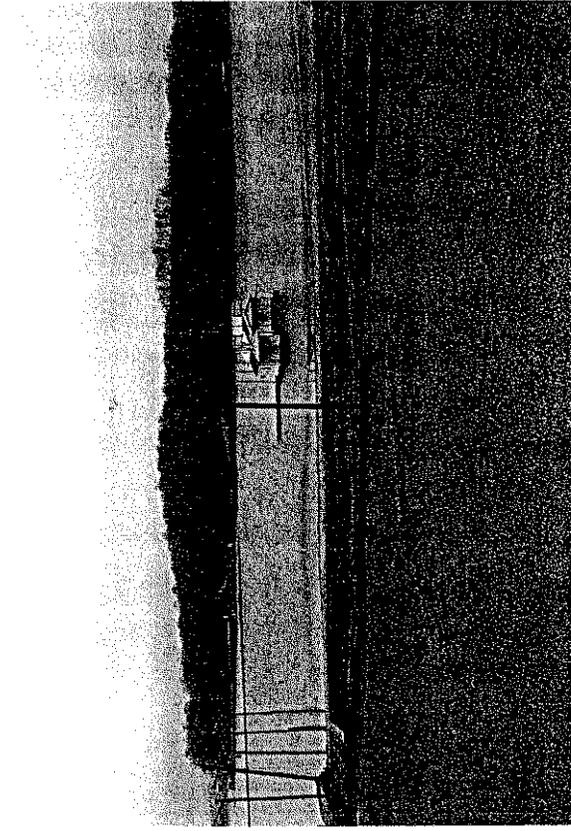
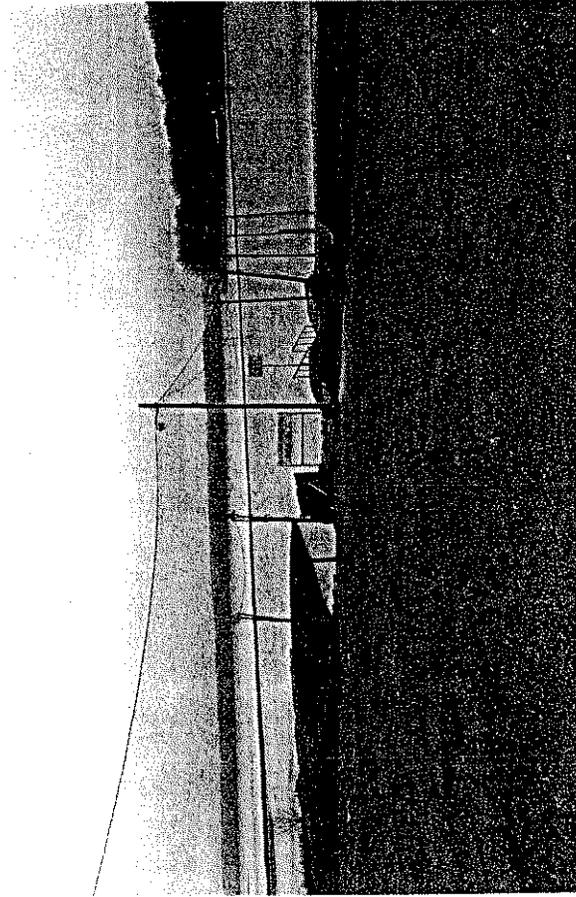
File Number 2006-00511; Proposed Breakers at Swan Bay: TRM 64.8 L, Henry County, Tennessee (McMahan-1/22/06)



Photos show existing road bed. Proposed activities sill include fill material on top of this existing road to act as a wave break. Riprap will be placed on both sides of road area.

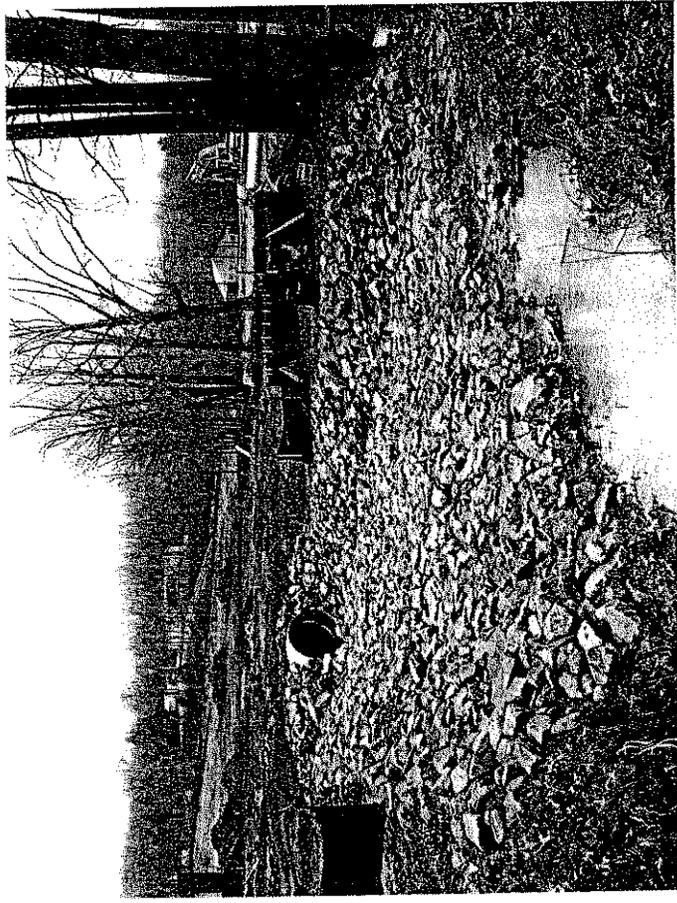
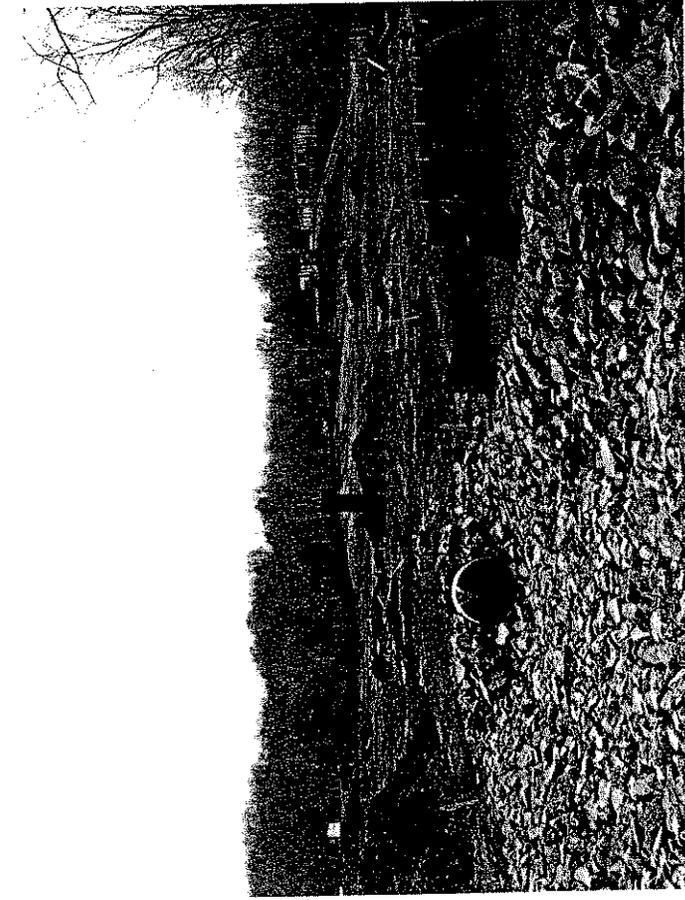
Water elevation @ 355.06
per TVA website

File Number 2006-00511; Proposed Breakers at Swan Bay: TRM 64.8 L, Henry County, Tennessee (McMahan-1/22/06)



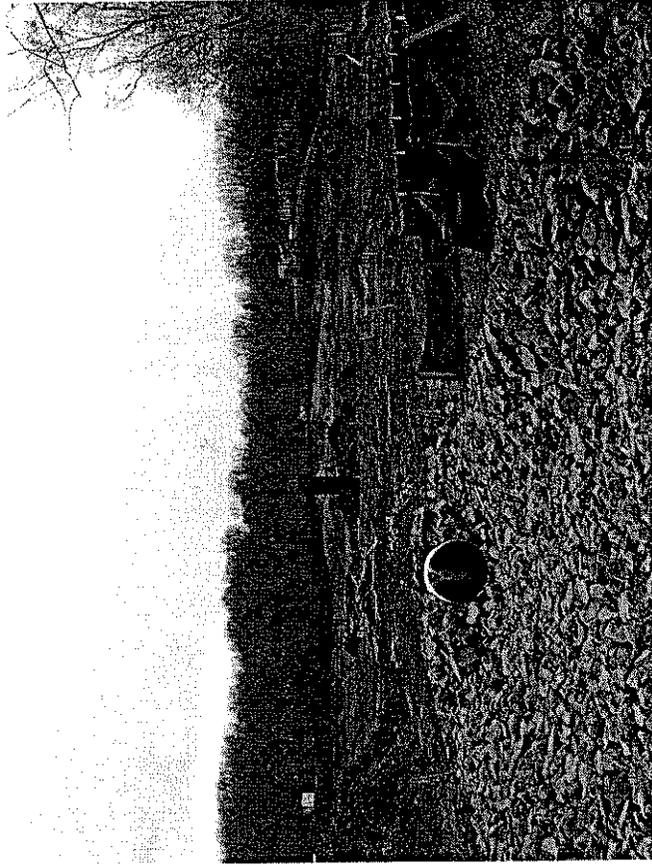
Photos show proposed marina area.

File Number 2006-00511; Proposed Breakers at Swan Bay: TRM 64.8 L, Henry County, Tennessee (McMahan-1/22/06)



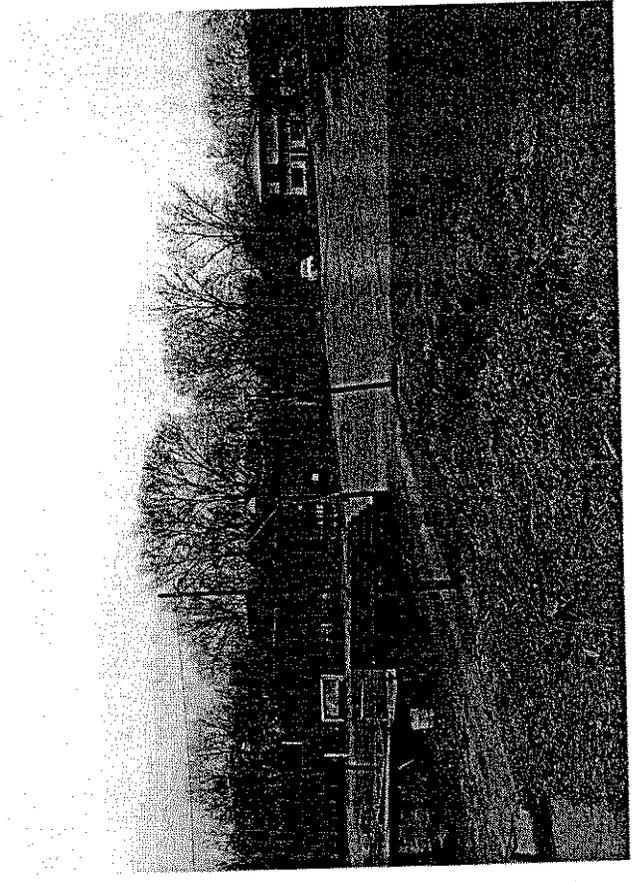
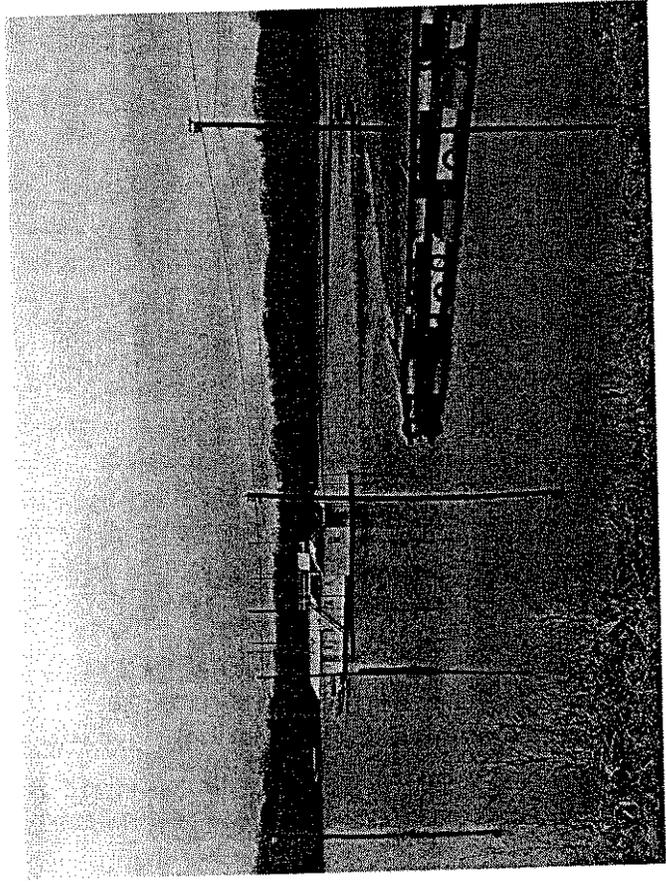
Photos show proposed dredge spoil area, located approximately 500-feet from NSP.

File Number 2006-00511; Proposed Breakers at Swan Bay: TRM 64.8 L, Henry County, Tennessee (McMahan-1/22/06)



Proposed dredge disposal area located on site.

File Number 2006-00511; Proposed Breakers at Swan Bay: TRM 64.8 L, Henry County, Tennessee (McMahan-1/22/06)



Photos show existing facilities

Appendix B
Public Notice



**US Army Corps
of Engineers®**

Nashville District

Public Notice

Public Notice No. 06-31

Date: March 13, 2006

Application No. 2006-00511

Expires: April 12, 2006

Please address all comments to:
U.S. Army Corps of Engineers, Regulatory Branch
Attn: Joe McMahan
3701 Bell Road, Nashville, TN 37214-2660

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

SUBJECT: Proposed Commercial Marina Expansion, Excavation and Dredging, Fill for Wave Break, Floating Covered Boat Slip Facilities, Riprap and Existing Concrete Launching Ramp at Tennessee River Mile 64.8, Left Bank, Kentucky Lake, Henry County, Tennessee

TO ALL CONCERNED: The application described below has been submitted for a Department of the Army (DA) Permit pursuant to **Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA) and a Tennessee Valley Authority (TVA) permit pursuant to Section 26a of the TVA Act.** Before a permit can be issued, certification must be provided by the State of Tennessee, Division of Water Pollution Control, Department of Environment and Conservation, pursuant to section 401(a) (1) of the Clean Water Act, that applicable water quality standards will not be violated.

APPLICANT: Mr. Barry P. McIntosh, Jr.
575 Anderson Drive
Paris, Tennessee 38242

LOCATION: Tennessee River Mile 64.8, Left Bank, Kentucky Lake, in Henry County, Tennessee, Lat 36° 27' 53", Long 88° 05' 00", Paris Landing-TN, USGS Quad Map.

DESCRIPTION: The proposed work consists of excavating approximately 30,000 cubic yards of material from Kentucky Lake for a boat access channel and marina facility. The material will be removed by a hydraulic dredge and deposited above Elevation 376.0 on the applicant's property. Elevation 359.0 is the normal summer pool (NSP) elevation for Kentucky Lake. The excavation would allow adequate water depth to access the proposed marina facility.

The proposed activity would also require the discharge of fill material below the NSP of 359.0 for a wave break. The fill material will be placed on an existing road bed. The proposed work will raise the road bed elevation from the existing 357.0 elevation to 362.0 elevation. Riprap will be placed on both sides of this structure and will measure approximately 1200 linear feet.

The following is a description of the proposed commercial water use facilities. The marina would consist of 3 docks-30 floating covered boat slips each. This facility will be secured by spud poles.

(3) Docks – 240' x 66' with 30' slips for 30 boats

A 60' x 60' floating office/fuel dock will also be constructed and attached to the proposed water use facilities. An existing concrete launching ramp is present at this location. The ramp is 20' wide and 60' long.

Plans of the proposed work are attached to this notice.

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

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

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

The National Register of Historic Places has been consulted and no properties listed in or eligible for the National Register are known which would be affected by the proposed work. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. Copies of this notice are being sent to the office of the State Historic Preservation Officer.

Based on available information, the proposed work will not destroy or endanger any federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act. Therefore, we have reached a no effect determination and initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

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

- a. Tennessee Valley Authority (TVA) approval under Section 26a of the TVA Act. In addition to other provisions of its approval, TVA would require the applicant to employ best management

practices to control erosion and sedimentation, as necessary, to prevent adverse aquatic impacts.

- b. Water quality certification for the State of Tennessee's Department of Environment and Conservation in accordance with section 401(a) (1) of the Clean Water Act.

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

Written statements received in this office on or before April 12, 2006, will become a part of the record and will be considered in the determination. Any response to this notice should be directed to the Regulatory Branch, Attention: Joe McMahan, at the above address, telephone (615) 369-7511. It is not necessary to comment separately to TVA since copies of all comments will be sent to that agency and will become part of its record on the proposal. However, if comments are sent to TVA, they should be mailed to Ms. Rachel Terrell, P.O. Box 280, Paris, Tennessee 38242.

(30) 12x30 slips

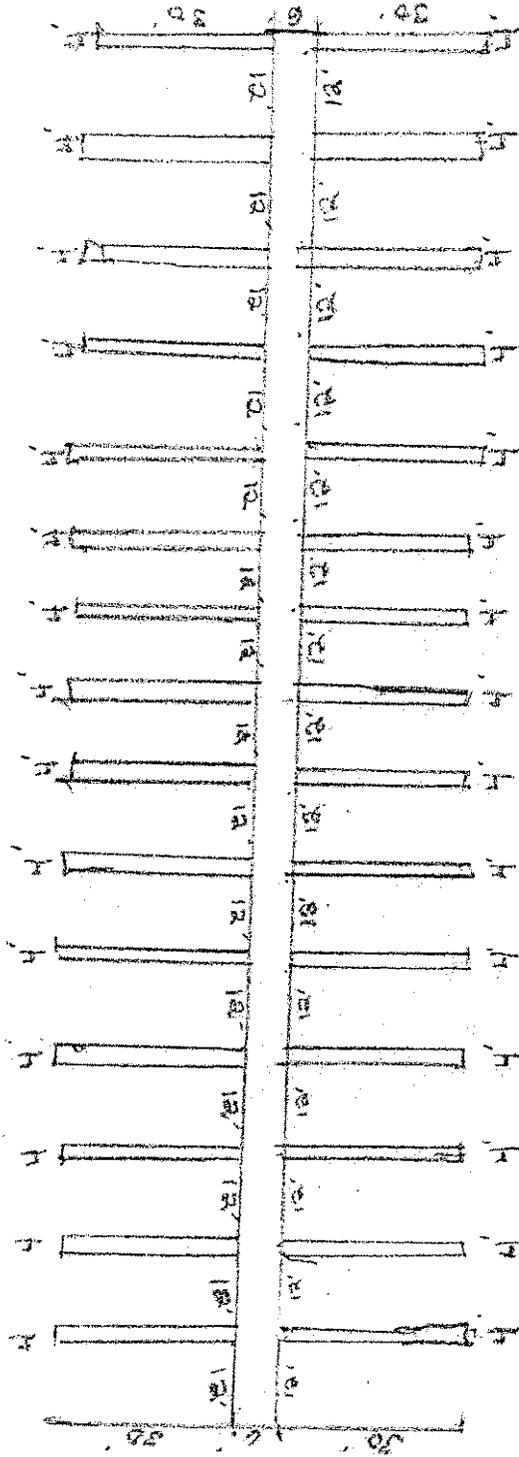


EXHIBIT F

FN: 2006-00511

PN 06-31

Spa Deck, Transit Parking, Accessibility Move Assets

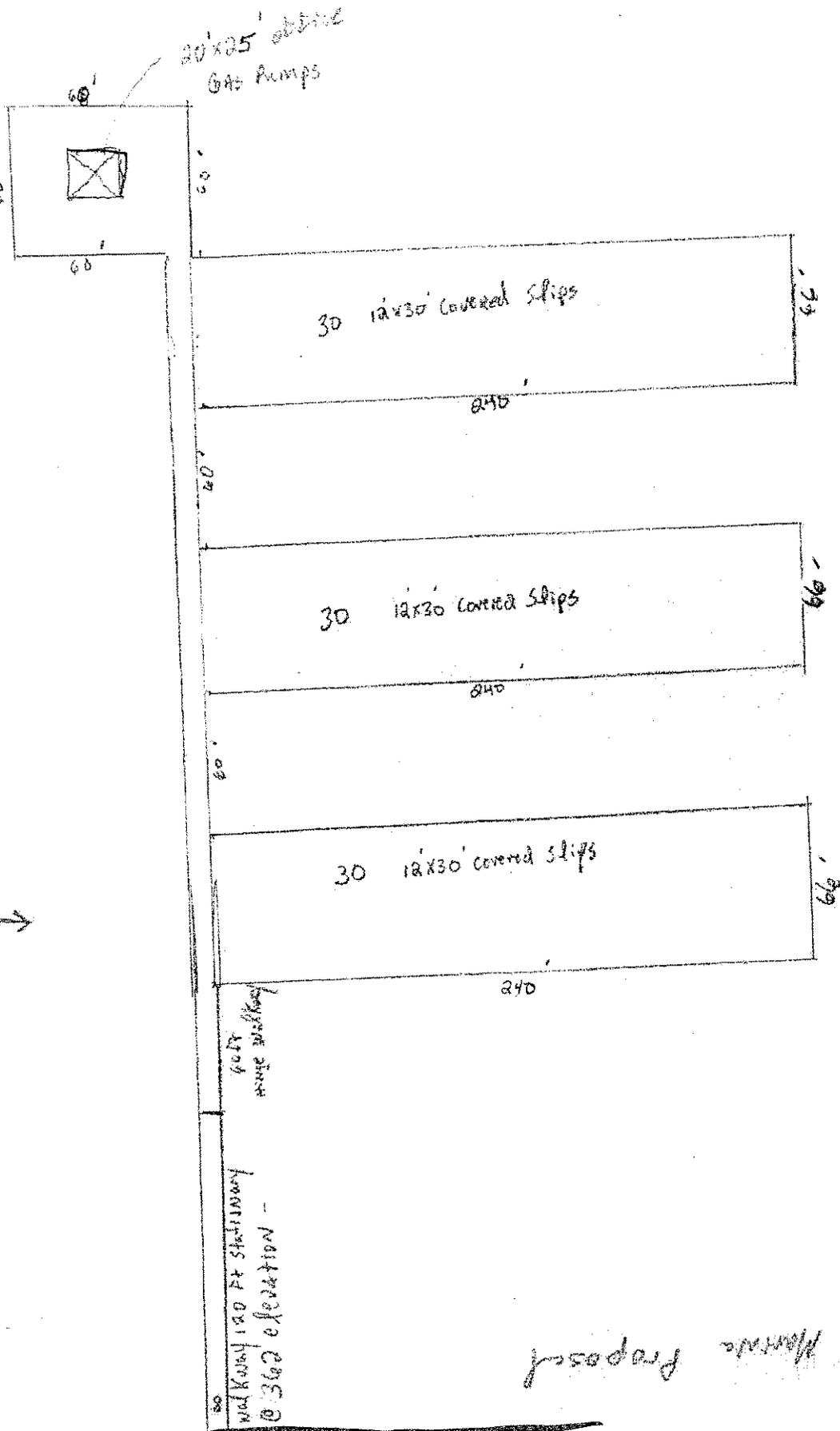
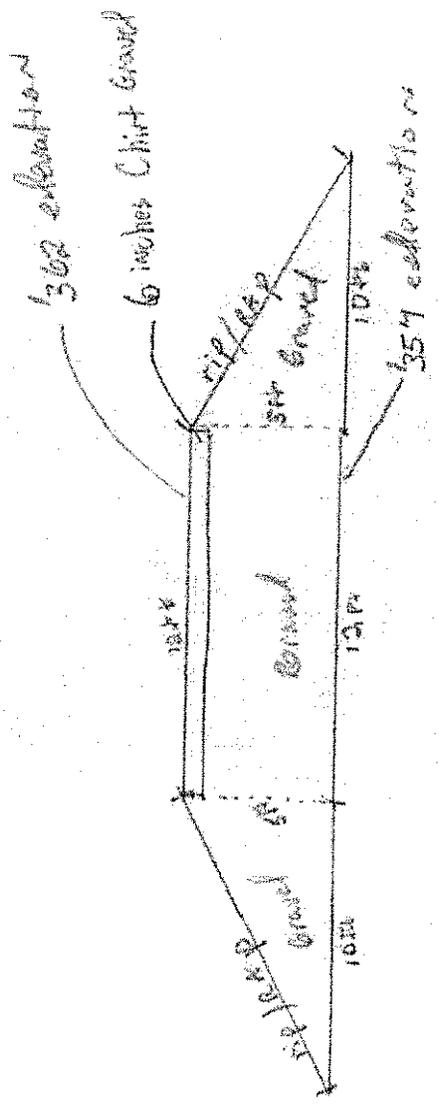


EXHIBIT E
FN: 2006-00511 PN 06-31

Mountain Proposal



**EXISTING ROAD BED
PROPOSED WAVE BREAK**

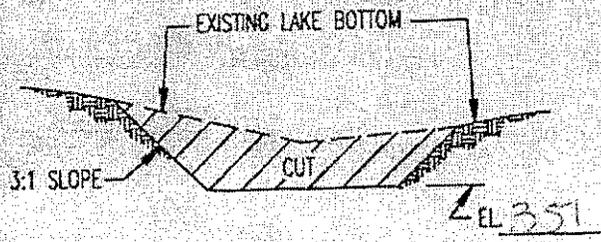
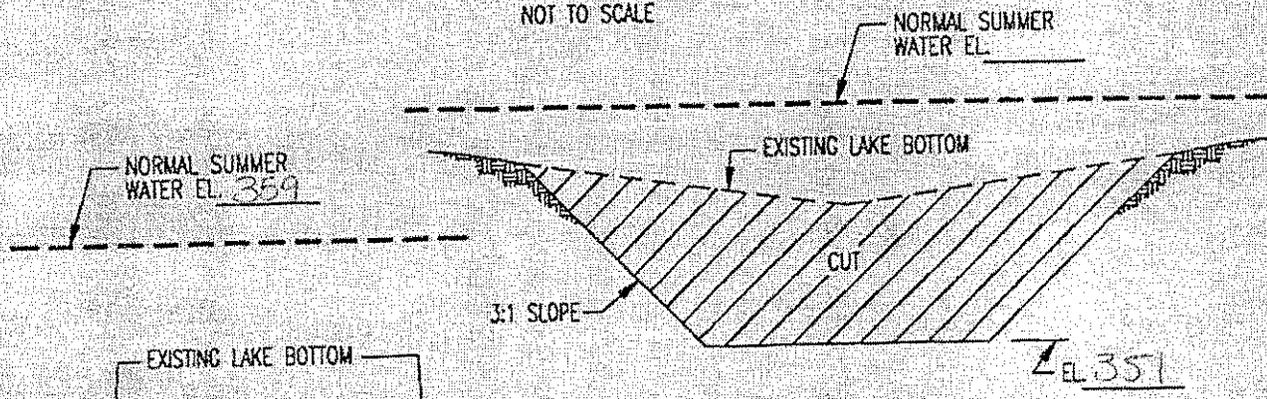
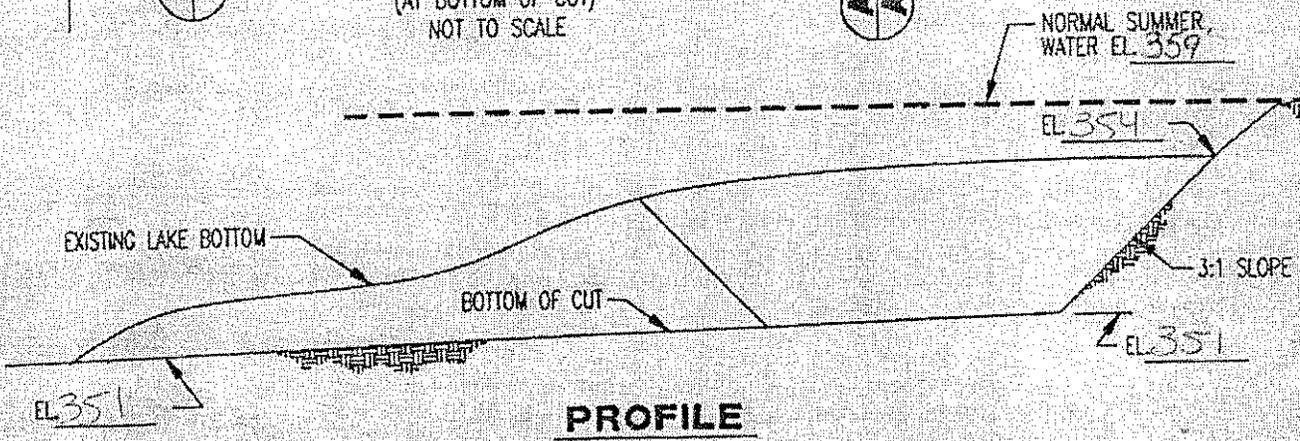
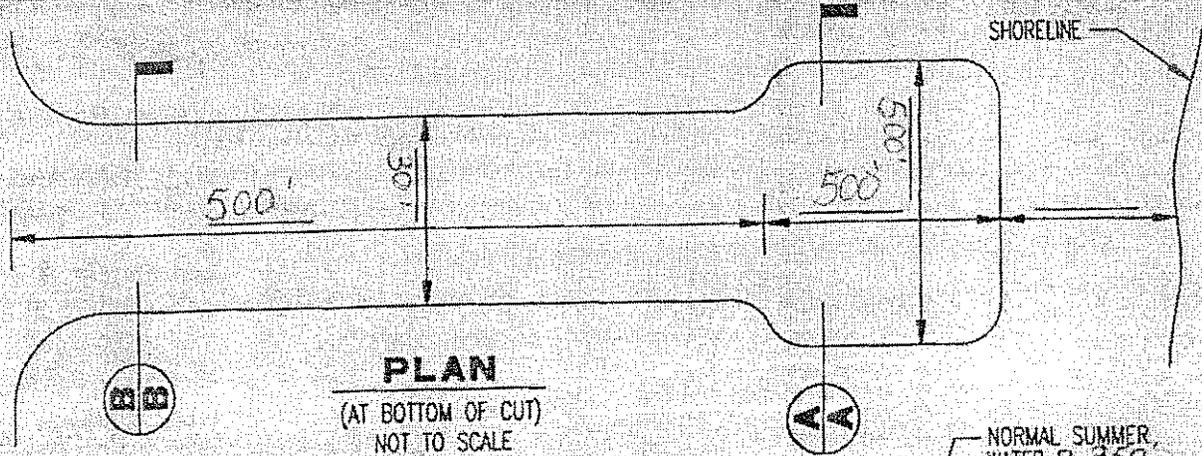
EXHIBIT D

FN: 2006-00511

PN 06-31

EXHIBIT C

PN 06-31
FN: 2006-00511



THE NORMAL SUMMER WATER LEVEL IS:

ESTIMATED CU. YDS. OF SPOIL TO BE REMOVED: 29,445
Cubic yards of spoil

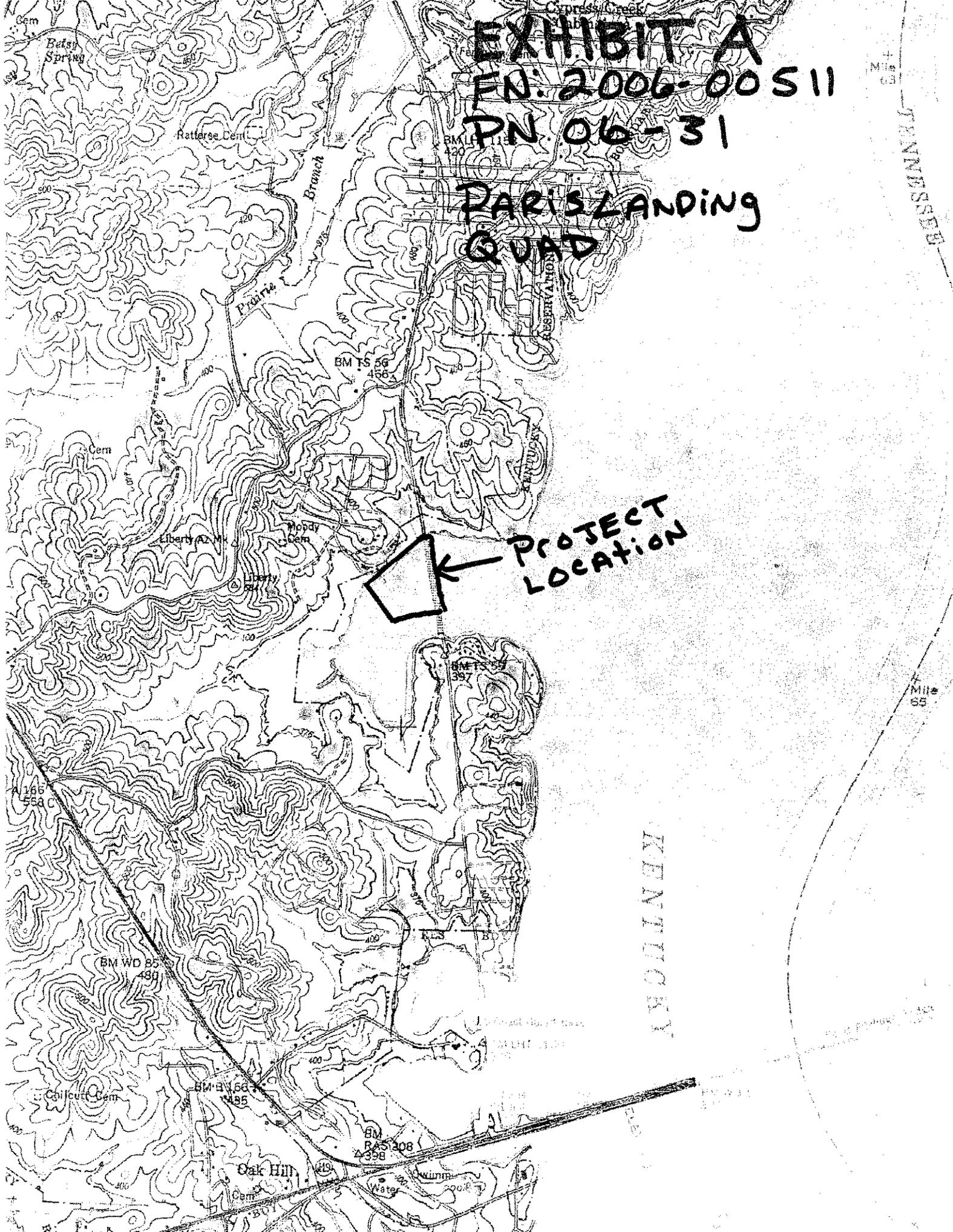
EXAMPLE OF PROPOSED CHANNEL AND HARBOR DREDGE	
PROJECT LOCATION INFORMATION:	
STREAM NAME <u>TN River</u>	RESERVOIR NAME <u>Kentucky</u>
MILE MARKER <u>64.8L</u>	MAP NO. <u>71D</u>
(APPLICANT'S NAME)	

NOTE:
INCLUDE ALL DIMENSIONS AND ELEVATIONS WHERE INDICATED.

EXHIBIT A
FN: 2006-00511
PN 06-31

PARIS LANDING
QUAD

PROJECT
LOCATION



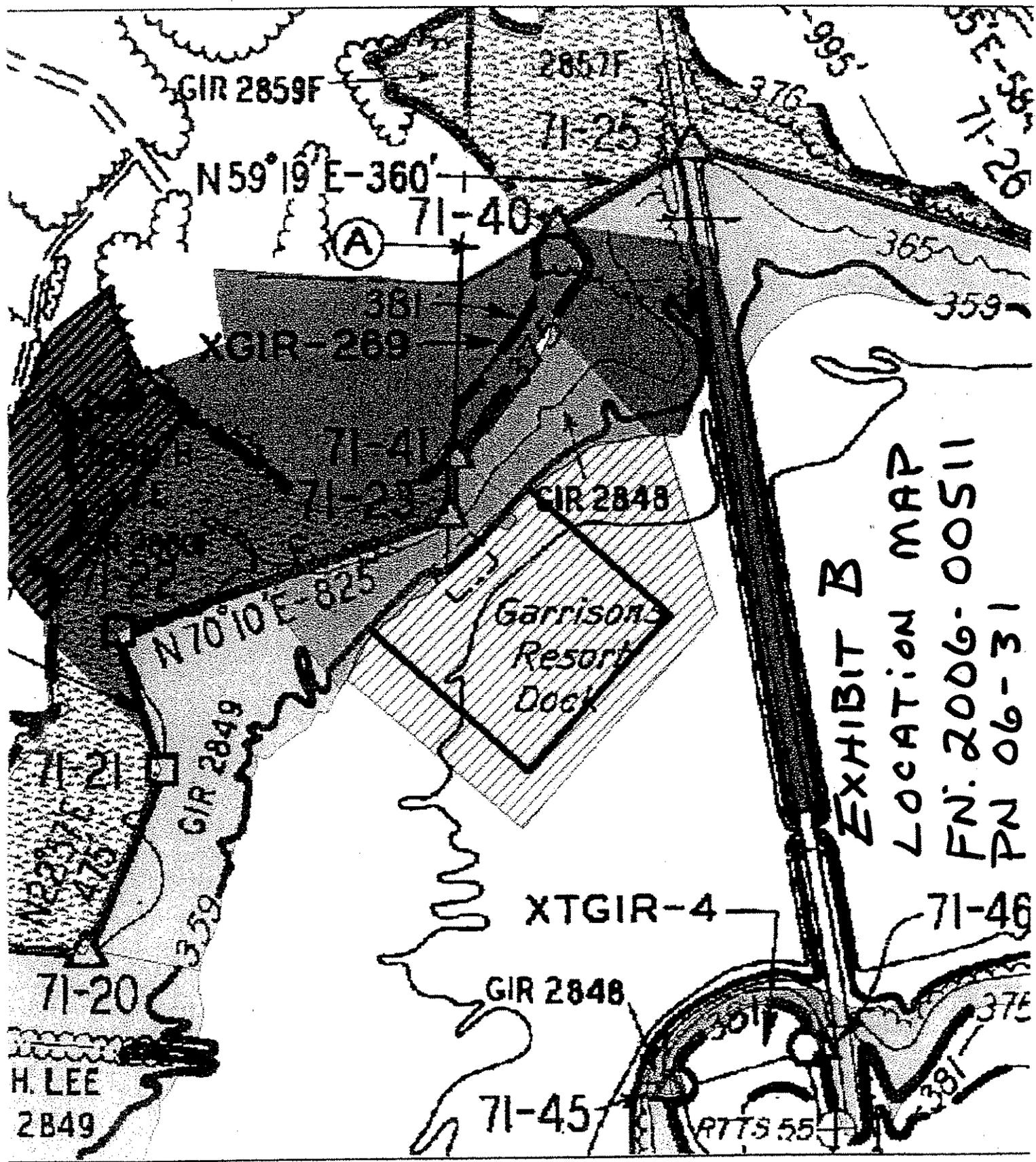
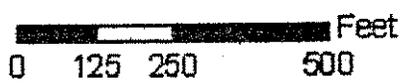


EXHIBIT B
 LOCATION MAP
 FN: 2006-00511
 PN 06-31

or Limits
 used additional license area
 te Property
 the map Element



The Breakers of Swan Bay

Appendix C
Public Responses



United States Department of the Interior

FISH AND WILDLIFE SERVICE
446 Neal Street
Cookeville, TN 38501

April 13, 2006

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

Attention: Mr. Joe McMahan, Regulatory Branch

Subject: Public Notice No. 06-31. Barry McIntosh, Jr. Proposed Commercial Marina,
Kentucky Lake, Henry County, Tennessee.

Dear Colonel Roemhildt:

Fish and Wildlife Service personnel have reviewed the subject public notice. The proposed project would involve the construction of three floating boat docks measuring 66 feet wide by 240 feet long, and a floating office/fuel dock at Tennessee River Mile 64.8L, Kentucky Lake, Henry County, Tennessee. In addition to the dock construction, the applicant proposes to dredge approximately 30,000 cubic yards of material from the lake bottom for the proposed marina and boat access to the facility. The material would be removed by a hydraulic dredge and deposited at an upland location on the applicant's property. The proposal would also require the discharge of fill material below the normal summer pool elevation for a 1,200-foot wave break. The material would be placed on an existing road bed and stabilized with riprap. The following constitute the comments of the U.S. Department of the Interior, provided in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Endangered species collection records available to the Service do not indicate that federally listed or proposed endangered or threatened species occur within the impact area of the project. We note, however, that collection records available to the Service may not be all-inclusive. Our data base is a compilation of collection records made available by various individuals and resource agencies. This information is seldom based on comprehensive surveys of all potential habitat and thus does not necessarily provide conclusive evidence that protected species are present or absent at a specific locality. However, based on the best information available at this time, we believe that the requirements of section 7 of the Endangered Species Act of 1973, as amended, are fulfilled. Obligations under section 7 of the Act must be reconsidered if (1) new information reveals impacts of the action that may affect listed species or critical habitat in a manner not previously considered,

APR 17 2006

(2) the action is subsequently modified to include activities which were not considered during this consultation, or (3) new species are listed or critical habitat designated that might be affected by the action.

Our agency is becoming concerned with the increasing number of proposals to dredge shallow-water habitat, which are also public resources, in order to accommodate proposed marina facilities. Shallow water is an important nursery and forage area for most fish species. The continued loss of these shallow-water areas could eventually cause adverse impacts to the fisheries that utilize them. Therefore, we recommend that the applicant mitigate this loss by the placement of spawning benches and other enhancement techniques near, but outside of, the proposed project area. Personnel with the Tennessee Wildlife Resources Agency can provide the applicant with plans of spawning benches, spacing and amount required, and also other enhancement techniques. Assuming the applicant agrees to the above recommendation, the Service would have no objection to the issuance of a permit for the work described in the subject public notice.

Thank you for this opportunity to review the subject notice. Please contact Robbie Sykes of my staff at 931/528-6481 (ext. 209) if you have questions about these comments.

Sincerely,


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

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

McMahan, Joseph A LRN

From: Rob Todd [Rob.Todd@state.tn.us]
Sent: Friday, May 19, 2006 3:26 PM
To: McMahan, Joseph A LRN
Cc: Lance Rider
Subject: Mitigation of Shallow Water Impacts Associated with PublicNotice 06-31

Joe:

The following is from an e-mail sent to me by Lance Rider, Coordinator of Project ECHO in TWRA Region I:

" On Friday, May 12, 2006 approximately 250 shumard, white oak, persimmon trees, choke cherry and indigo bushes were planted at Paris Landing State Park. These trees were planted along a watershed corridor that has been an ongoing project with TVA and the Tennessee State Parks.

Park Superintendent, Ed Knobles, along with TWRA Commission Thomas Edwards, were there aiding in this endeavor. Gary Jenkins with the TVA also gave his blessing on this project."

Mr. McIntosh has satisfied our request for mitigation of impacts to shallow water habitat that will occur during the excavation of material associated with Public Notice 06-31. TWRA withdraws our objection to the issuance of this permit since the mitigation has occurred.

Thank you for your cooperation in this matter. If you need anything else from me, let me know.

Robert M. Todd
Tennessee Wildlife Resources Agency
Environmental Services Division
Ellington Agricultural Center
P.O. Box 40747
Nashville, TN 37204
Phone: 615-781-6572
Fax: 615-781-6667
E-mail address: Rob.Todd@state.tn.us



TENNESSEE WILDLIFE RESOURCES AGENCY

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

April 10, 2006

Joe McMahan
Nashville District Corps of Engineers
Regulatory Branch
3701 Bell Road
Nashville, TN 37214

Re: Public Notice #06-31
Applicant: Barry P. McIntosh, Jr.
Proposed Excavation of Approximately 30,000 Cubic Yards of Material from Kentucky
Lake for a Boat Access Channel and Marina Facility
Tennessee River Mile 64.8, Left Bank, Kentucky Lake
Henry County, Tennessee

Dear Mr. McMahan:

The applicant proposes to excavate approximately 30,000 cubic yards of material from Kentucky Lake in Henry County for a boat access channel and marina facility. The Tennessee Wildlife Resources Agency continues to have concerns about the cumulative loss of shallow water habitat due to excavation for boat access and marina facilities. There appears to be an increasing number of these requests for excavation. Shallow water habitat is the most productive habitat in lentic waters. Shallow water habitat is utilized as nursery areas for fish and foraging areas for turtles and wading birds. The excavation for this marina would result in a permanent loss of shallow water habitat.

It is the opinion of the Tennessee Wildlife Resources Agency that the applicant should mitigate for the permanent loss of shallow water habitat. Enhancement activities such as the establishment of water willow beds (similar to TWRA's project ECHO) and the construction and placement of spawning benches would partially mitigate for the loss of the shallow water habitat by partial replacement of function. If enhancement activities are to be employed for this mitigation, we recommend a 4:1 ratio by acreage.

The Tennessee Wildlife Resources Agency requests that this permit be held in abeyance until the applicant agrees to mitigate for the permanent loss of shallow water habitat. If the applicant fails to agree to the above condition, we request that the permit be denied.

Thank you for the opportunity to comment.

The State of Tennessee

AN EQUAL OPPORTUNITY EMPLOYER

Sincerely,

Robert M. Todd

Robert M. Todd
Fish and Wildlife Environmentalist

cc: Steve Seymour, Region I Habitat Biologist
Jerry Strom, Region I Assistant Manager
USFWS, EPA, WPC



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

June 21, 2006

2 3 JUN 2006

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

RE: COE-N, PN# 06-31/THE BREAKERS OF SWAN BAY, UNINCORPORATED,
HENRY COUNTY

Dear Mr. McMahan:

The Tennessee State Historic Preservation Office has reviewed the above-referenced undertaking received on Friday, June 16, 2006 for compliance by the participating federal agency or applicant for federal assistance with Section 106 of the National Historic Preservation Act. The Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739).

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

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

Sincerely,

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

HLH/jmb



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

March 20, 2006

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

RE: COE-N, PN# 06-31/THE BREAKERS OF SWAN BAY,
UNINCORPORATED, HENRY COUNTY

Dear Mr. McMahan:

The above-referenced undertaking received on Monday, March 20, 2006 has been reviewed with regard to National Historic Preservation Act compliance by the participating federal agency or its designated representative. Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739).

In order to complete our review of this undertaking, this office will need to receive from you the review comments and recommendations of your agency's cultural resources staff regarding this undertaking's potential to affect historic properties.

Upon receipt of the additional information, we will complete our review of this undertaking as expeditiously as possible. Until such time as this office has rendered a final comment on this project, your Section 106 obligation under federal law has not been met. Please inform this office if this project is not funded or canceled by the federal agency. Questions and comments may be directed to Jennifer M. Barnett (615) 741-1588, ext. 17.

Your cooperation is appreciated.

Sincerely,

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

HLH/jmb

McMahan, Joseph A LRN

From: Carnes, Mark LRN
Sent: Tuesday, March 21, 2006 2:11 PM
To: McMahan, Joseph A LRN
Subject: FW: 26a 170909 - opp. TRM 64.8L - old Shamrock Marina

Its yours..

From: Hammond, Kelie H. [mailto:khhammond@tva.gov]
Sent: Tuesday, March 21, 2006 1:16 PM
To: Carnes, Mark LRN
Subject: 26a 170909 - opp. TRM 64.8L - old Shamrock Marina

Mark,

I wasn't sure if you had this or not, but here are my comments for the application for modifications to the old Shamrock Marina submitted by Barry McIntosh.

Thanks,
Kelie

Entered in ENTRAC on 03/21/06

SECTION 26a FILE 170909, CEC 12224 – MODIFICATIONS TO EXISTING SHAMROCK MARINA – BARRY MCINTOSH, THE BREAKERS AT SWAN BAY - OPPOSITE TENNESSEE RIVER MILE 64.8L - KENTUCKY RESERVOIR - D-STAGE MAP 71D

Barry McIntosh has submitted plans to perform extensive upgrades to the existing Shamrock Marina opposite Tennessee River Mile 64.8L. The modifications include changing the name to The Breakers of Swan Bay, increasing the size of the harbor limits, excavation, raising of the existing road to serve as a breakwater and pedestrian walkway, new marina slips, and continued use of the existing gas pumps. The existing harbor limits, according to the previous drawings were approximately 500' by 500'. The proposed harbor limits will extend approximately 600' lakeward from the southwest end of the property; then extend approximately 700' towards the north, parallel with the shoreline; then cut back to the northern end of the property, parallel with the roadway. The proposed marina facilities include three sets of 30- 12'x30' covered boatslips that extend from the main walkway. Each set of boatslips extends approximately 240 feet upstream and perpendicular with the walkway. The main walkway extends approximately 558' into the reservoir from the normal summer pool elevation 359. The gas pump and office dock is approximately 60' long by 60 feet wide and is located at the end of the walkway. Transient parking will be available on the downstream side of the walkway between the gas dock and the shoreline.

This site is located upstream of an old road bed and only smaller watercraft can access the area. From a navigation standpoint, we have no conflicts with the proposed modifications as long as the facilities do not extend more than one-third of the way across the embayment. The applicant should be advised that locating the gas dock at the end of the walkway would make it susceptible to large amounts of wave wash from passing vessels. This could be reduced significantly if the gas dock was placed closer to the shoreline while still providing transient parking on either side. We, therefore, recommend issuance of the requested permit contingent upon the following conditions:

1. The maximum length of the marina facilities should not exceed 558 feet from the normal summer pool elevation 359.
2. The marina facilities should not extend more than one-third of the way across the embayment.
3. The applicant is advised in writing that the facility and any moored boats will be vulnerable to wave wash and possible collision damage from passing vessels. The applicant should consider moving the gas dock closer to the shoreline to help reduce the impact of wave wash on the dock and its customers.

Appendix D

Other Agency Permits

JUN 23 2006



TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
7th FLOOR L & C ANNEX
NASHVILLE, TENNESSEE 37243-1534

June 9, 2006

Mr. Barry McIntosh, Jr.
575 Anderson Drive
Paris, TN 38242

Subject: Aquatic Resource Alteration Permit **NRS 06.076**

Dear Mr. McIntosh:

We have reviewed your application for the proposed excavation and dredging for a marina extension. Pursuant to the *Tennessee Water Quality Control Act of 1977* (T. C. A. § 69-3-101 et seq.) and supporting regulations, the Division of Water Pollution Control is required to determine whether the activity proposed will violate applicable water quality standards.

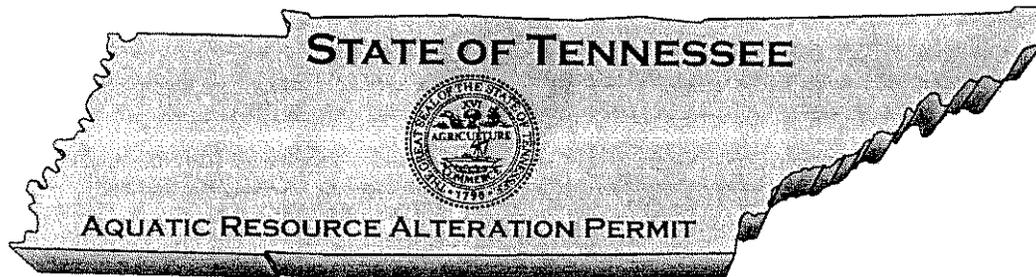
Subject to conformance with accepted plans, specifications and other information submitted in support of application NRS 06.076, the state of Tennessee hereby issues an aquatic resources alteration permit (enclosed). Failure to comply with the terms of this permit or other violations of the *Tennessee Water Control Act of 1977* is subject to penalty in accordance with T.C.A. § 69-3-115.

It is the responsibility of the permittee to ensure that all contractors involved with this project have read and understood the permit conditions before the project begins. If you need any additional information or clarification, please contact Brian Canada at 615-532-0660 or by e-mail at brian.canada@state.tn.us.

Sincerely,

Brian Canada,
Natural Resources Section

Cc: Jackson Environmental Field Office
U.S. Army Corps of Engineers, Nashville District
TVA
file copy



NRS 06.076

Pursuant to the *Tennessee Water Quality Control Act of 1977* (T.C.A. § 69-3-101 et seq.) and supporting regulations, the Division of Water Pollution Control is required to determine whether the activity described below will violate applicable water quality standards.

Subject to conformance with accepted plans, specifications and other information submitted in support of application NRS 06.076, the state of Tennessee hereby authorizes the activity described below.

PERMITEE: Barry McIntosh, Jr.

AUTHORIZED WORK: Excavation of ~30,000 cu. Yards of material for marina extension.

LOCATION: Tennessee River Mile 64.8, Left Bank, Kentucky Lake, Henry County

EFFECTIVE DATE: 6-9-06

EXPIRATION DATE: 6-9-09

PERMIT CONDITIONS:

1. The work shall be accomplished in conformance with the accepted plans, specifications, data and other information submitted in support of the above application and the limitations, requirements and conditions set forth herein.
2. No impacts to any waters of the state by this project, other than those specifically addressed in the plans and this permit, are allowed. All streams, springs and wetlands shall be fully protected prior, during and after construction until the area is stabilized. Any questions, problems or concerns that arise regarding any stream, spring or wetland either before or during construction, shall be addressed to the Division of Water Pollution Control, Jackson Field Office, 731-512-1301. Wetlands outside of the proposed area of impact shall not be used as storage or staging areas for equipment.
3. All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 1200-4-3-.03 of the Rules of The Tennessee Department of Environment and Conservation. This includes but is not limited to the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 1200-4-4. These uses include fish and aquatic life, livestock watering and wildlife, recreation, irrigation, industrial water supply, domestic water supply and navigation.

4. Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills must be reported to the appropriate emergency management agency, and measures shall be taken immediately to prevent the pollution of waters of the state, including groundwater.
5. Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat is prohibited.
6. This permit does not authorize impacts to cultural, historical or archeological features or sites.
7. It is the responsibility of the applicant to convey all terms and conditions of this permit to all contractors. A copy of this permit, accepted plans, and any other documents pertinent to the activities authorized by this permit shall be maintained on site at all times during periods of construction activity.

This does not preclude requirements of other federal, state or local laws. In particular, work shall not commence until the applicant has received the federal §404 permit from the U. S. Army Corps of Engineers, a §26a permit from the Tennessee Valley Authority or authorization under a Tennessee NPDES Storm Water Construction Permit where necessary. This permit may also serve as a federal §401 water quality certification (pursuant to 40 C.F.R. §121.2) since the planned activity was reviewed and the division has reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards (T.C.A. § 69-3-101 et seq. or of § § 301, 302, 303, 306 or 306 of *The Clean Water Act*).

The state of Tennessee may modify or revoke this permit or to the seek modification or revocation should the state determine that the activity results in more than an insignificant violation of applicable water quality criteria or violation of the act. Failure to comply with permit terms may result in penalty in accordance with T.C.A. §69-3-115.

An appeal of this action may be made to the Water Quality Control Board. In order to appeal, a petition requesting a hearing before the Board must be filed within 30 days after receipt of the permit. In such petition, each contention should be stated in numbered paragraphs that describe how the proposed activity would be lawful and the action of the state is inappropriate. The petition must be prepared on 8½" x 11" paper, addressed to the Water Quality Control Board and filed in duplicate at the following address: Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Any hearing would be in accordance with Tennessee Code Annotated Section 69-3-110 and 4-5-301 et seq.

Paul E. Davis, P.E.
Director, Division of Water Pollution Control

Categorical Exclusion Checklist for Proposed TVA Actions

Categorical Exclusion Number Claimed	Organization ID Number RLR170909	Tracking Number (NEPA Administration Use Only) 12224
Form Preparer Rachel V Terrell	Project Initiator/Manager Rachel V Terrell	Business Unit RSOE - Resource Stewardship
Project Title 26a Category 3 RLR170909 Mr. Barry P. McIntosh Jr. Kentucky Reservoir		Hydrologic Unit Code
Description of Proposed Action (Include Anticipated Dates of Implementation) <input checked="" type="checkbox"/> Continued on Page 3 (if more than one line) For Proposed Action See Attachments and References		
Initiating TVA Facility or Office Kentucky Watershed Team	TVA Business Units Involved in Project RSOE - Resource Stewardship	
Location (City, County, State) For Project Location see Attachments and References		

Parts 1 through 4 verify that there are no extraordinary circumstances associated with this action:

Part 1. Project Characteristics

Is there evidence that the proposed action—	No	Yes	Information Source
1. Is major in scope?			
2. Is part of a larger project proposal involving other TVA actions or other federal agencies?			
*3. Involves non-routine mitigation to avoid adverse impacts?			
4. Is opposed by another federal, state, or local government agency?			
*5. Has environmental effects which are controversial?			
*6. Is one of many actions that will affect the same resources?			
7. Involves more than minor amount of land?			

* If "yes" is marked for any of the above boxes, consult with NEPA Administration on the suitability of this project for a categorical exclusion.

Part 2. Natural and Cultural Features Affected

Would the proposed action—	No	Yes	Per- mit	Commit- ment	Information Source for insignificance
1. Potentially affect endangered, threatened, or special status species?	X		No	No	Jenkins G. D. 03/20/2006
2. Potentially affect historic structures, historic sites, Native American religious or cultural properties, or archaeological sites?	X		No	No	For comments see attachments
3. Potentially take prime or unique farmland out of production?					
4. Potentially affect Wild and Scenic Rivers or their tributaries?	X		No	No	Pflueger R. L. 03/03/2006
5. Potentially affect a stream on the Nationwide Rivers Inventory?	X		No	No	Pflueger R. L. 03/03/2006
6. Potentially affect wetlands, water flow, or stream channels?	X		No	No	Jenkins G. D. 03/20/2006
7. Potentially affect the 100-year floodplain?		X	No	Yes	For comments see attachments
8. Potentially affect ecologically critical areas, federal, state, or local park lands, national or state forests, wilderness areas, scenic areas, wildlife management areas, recreational areas, greenways, or trails?	X		No	No	Jenkins G. D. 03/20/2006
9. Contribute to the spread of exotic or invasive species?	X		No	No	Jenkins G. D. 03/20/2006
10. Potentially affect migratory bird populations?	X		No	No	Jenkins G. D. 03/20/2006
11. Involve water withdrawal of a magnitude that may affect aquatic life or involve interbasin transfer of water?	X		No	No	Jenkins G. D. 03/20/2006
12. Potentially affect surface water?	X		No	No	Jenkins G. D. 03/20/2006
13. Potentially affect drinking water supply?					
14. Potentially affect groundwater?					
15. Potentially affect unique or important terrestrial habitat?	X		No	No	Jenkins G. D. 03/20/2006
16. Potentially affect unique or important aquatic habitat?	X		No	No	For comments see attachments

Part 3. Potential Pollutant Generation

Would the proposed action potentially (including accidental or unplanned)---	No	Yes	Per- mit	Committ- ment	Information Source for Insignificance
1. Release air pollutants?					
2. Generate water pollutants?					
3. Generate wastewater streams?					
4. Cause soil erosion?					
5. Discharge dredged or fill materials?	X		No	No	Jenkins G. D. 03/20/2006
6. Generate large amounts of solid waste or waste not ordinarily generated?					
7. Generate or release hazardous waste (RCRA)?					
8. Generate or release universal or special waste, or used oil?					
9. Generate or release toxic substances (CERCLA, TSCA)?					
10. Involve materials such as PCBs, solvents, asbestos, sandblasting material, mercury, lead, or paints?					
11. Involve disturbance of pre-existing contamination?					
12. Generate noise levels with off-site impacts?					
13. Generate odor with off-site impacts?					
14. Produce light which causes disturbance?					
15. Release of radioactive materials?					
16. Involve underground or above-ground storage tanks or bulk storage?					
17. Involve materials that require special handling?					

Part 4. Social and Economic Effects

Would the proposed action---	No	Yes	Committ- ment	Information Source for Insignificance
1. Potentially cause public health effects?				
2. Increase the potential for accidents affecting the public?				
3. Cause the displacement or relocation of businesses, residences, cemeteries, or farms?				
4. Contrast with existing land use, or potentially affect resources described as unique or significant in a federal, state, or local plan?				
5. Disproportionately affect minority or low-income populations?				
6. Involve genetically engineered organisms or materials?				
7. Produce visual contrast or visual discord?				
8. Potentially interfere with recreational or educational uses?	X		No	Pflueger R. L. 03/03/2006
9. Potentially interfere with river or other navigation?	X		No	For comments see attachments
10. Potentially generate highway or railroad traffic problems?				

Part 5. Other Environmental Compliance/Reporting Issues

Would the proposed action---	No	Yes	Committ- ment	Information Source for Insignificance
1. Release or otherwise use substances on the Toxic Release Inventory list?				
2. Involve a structure taller than 200 feet above ground level?				
3. Involve site-specific chemical traffic control?				
4. Require a site-specific emergency notification process?				
5. Cause a modification to equipment with an environmental permit?				
6. Potentially impact operation of the river system or require special water elevations or flow conditions??				

Description of Proposed Action (Include Anticipated Dates of Implementation) Continued from Page 1

Parts 1 through 4: If "yes" is checked, describe in the discussion section following this form why the effect is insignificant. Attach any conditions or commitments which will ensure insignificant impacts. Use of non-routine commitments to avoid significance is an indication that consultation with NEPA Administration is needed.

An EA or EIS will be prepared.

Based upon my review of environmental impacts, the discussions attached, and/or consultations with NEPA Administration, I have determined that the above action does not have a significant impact on the quality of the human environment and that no extraordinary circumstances exist. Therefore, this proposal qualifies for a categorical exclusion under Section 5.2. _____ of TVA NEPA Procedures.

Project Initiator/Manager Rachel V Terrell		Date
TVA Organization RSO&E	E-mail rvterrel@tva.gov	Telephone

Site Environmental Compliance Reviewer

Final Review/Closure

Signature

Signature

Other Review Signatures (as required by your organization)

Ember F. Anderson

Signature

Signature

Signature

Signature

Signature

Signature

Attachments/References

Description of Proposed Action

Facility(s): Boat Slips - Floating - Covered 250(L) 66(W) Harbor Limits 600(L) 700(W) Bridge - Pedestrian 1200(L) 32(W) Excavation 500(L) 500(W) Electric Pole/Service/Light 0(L) 0(W) Applicant(s): Mr. Barry P. McIntosh Jr. 134 Briarwood Court Paris TN 38242

Project Location

County, State: Henry, TN Land Tract(s): X GIR 269 GIR 2848 GIR 2849 Map Sheet(s): 19 NE Quad Sheet 71 C/D Stage Streams(s): Tennessee R RM 64.8 C/D Stage

CEC General Comment Listing

1. completed application
By: ALIS Added Comment
Files: 170909ap.pdf 02/22/2006 268,674 Bytes
2. marina, excavation, etc. plans
By: ALIS Added Comment
Files: 170909drw.pdf 02/22/2006 1,007,620 Bytes
3. Site Map. Shows where disposal site is for the excavation
By: ALIS Added Comment
Files: 170910_map_2.pdf.jpg 02/22/2006 615,592 Bytes
4. site photo
By: ALIS Added Comment
Files: Shamrock_1.jpg 02/22/2006 592,103 Bytes
5. site photo
By: ALIS Added Comment
Files: Shamrock_2.jpg 02/22/2006 602,038 Bytes
6. site photo
By: ALIS Added Comment
Files: Shamrock_3.jpg 02/22/2006 604,168 Bytes
7. site photo
By: ALIS Added Comment
Files: Shamrock_4.jpg 02/22/2006 625,329 Bytes
8. site photo
By: ALIS Added Comment
Files: Shamrock_5.jpg 02/22/2006 621,132 Bytes
9. site photo
By: ALIS Added Comment
Files: Shamrock_6.jpg 02/22/2006 610,618 Bytes
10. site photo
By: ALIS Added Comment
Files: Shamrock_7.jpg 02/22/2006 583,866 Bytes
11. site photo
By: ALIS Added Comment
Files: Shamrock_8.jpg 02/22/2006 599,575 Bytes
12. site photo
By: ALIS Added Comment
Files: Shamrock_9.jpg 02/22/2006 607,238 Bytes
13. site photo
By: ALIS Added Comment
Files: Shamrock_10.jpg 02/22/2006 613,606 Bytes
14. site photo
By: ALIS Added Comment
Files: Shamrock_11.jpg 02/22/2006 622,307 Bytes
15. PROJECT OVERVIEW. Applicant further explains his proposal in the attached drawings.
By: ALIS Added Comment
Files: Project Overview doc 02/22/2006 20,480 Bytes

CEC Comment Listing

Part 2 Comments

CEC Comment Listing

2. Location has been surveyed and two archaeological sites exist within the APE; neither are significant.
By: J. Bennett Graham 03/01/2006
7. See attached response.
By: Roger A. Milstead 04/25/2006
Files: 170909ken.doc 04/25/2006 46,080 Bytes
16. Agreed upon modifications.
By: Gary D. Jenkins 03/20/2006
Files: McIntosh_CEC.doc 03/20/2006 22,016 Bytes
16. I have reviewed this application package, as well as the TVA Heritage and NWI Databases for the project location. No significant resource indicators were found for this site. Therefore, with the modifications attached in a separate document and the implementation of the 26a Standard Conditions 6a,b,d,e,f,g,h, and i, I concur with the approval of this permit.
By: Gary D. Jenkins 03/20/2006

Part 4 Comments

9. Please see attached document.
By: Kellie H. Hammond 03/21/2006
Files: 170909ken - 26a - opp. TN River Mile 64.8L - Barry McIntosh.doc 03/21/2006 28,672 Bytes

CEC Commitment Listing

Part 2 Commitments

7. The applicant will remove all of the dredged material located below elevation 375.0, relocate this material to existing ground above elevation 375.0, and return the area to pre-project conditions within six months or less of the completion of the dredging project.
By: Roger A. Milstead 04/25/2006

Appendix E

Evaluation of Compliance with Section 404 (b)(1) Guidelines (40 CFR 230.10)

1) Alternatives test:

Yes No i) Based on the alternatives discussion, are there available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into waters of the U.S. or at other locations within these waters?

Yes No NA ii) Based on the alternatives discussion, if the project is in a special aquatic site and is not water dependent, has the applicant clearly demonstrated that there are no practicable alternative sites available?

2) Special restrictions. Will the discharge:

Yes No i) Violate state water quality standards?

Yes No ii) Violate toxic effluent standards (under Section 307 of the Act)?

Yes No iii) Jeopardize threatened or endangered species or their critical habitat?

Yes No iv) Violate standards set by the Department of Commerce to protect marine sanctuaries?

Yes No v) Evaluation of the above information indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s).

(X) based on the above information, the material is not a carrier of contaminants.

() the levels of contaminants are substantially similar at the extraction and disposal sites and the discharge is not likely to result in degradation of the disposal site and pollutants will not be transported to less contaminated areas.

() acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the boundaries of the disposal site.

3) Other restrictions. Will the discharge contribute to significant degradation of waters of the U.S. through adverse impacts to:

Yes No i) Human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife, and special aquatic sites?

Yes No ii) Life states of aquatic life and other wildlife?

Yes No iii) Diversity, productivity and stability of the aquatic ecosystem, such as loss of fish or wildlife habitat, or loss of the capacity of wetlands to assimilate nutrients, purify water or reduce wave energy?

Yes No iv) Recreational, aesthetic and economic values?

4) Actions to minimize potential adverse impacts (mitigation).

Yes No i) Will all appropriate and practicable steps (40 CFR 230.70-77) be taken to minimize the potential adverse impacts of the discharge on the aquatic ecosystem?



DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
3701 Bell Road
NASHVILLE, TENNESSEE 37214-2660

REPLY TO
ATTENTION OF:

June 14, 2006

Regulatory Branch

SUBJECT: File No. 2006-00511; Proposed Commercial Marina Expansion, Excavation and Dredging, Fill for Wave Break, Floating Covered Boat Slip Facilities, Riprap and Existing Concrete Launching Ramp at Tennessee River Mile 64.8, Left Bank, Kentucky Lake, Henry County, Tennessee

Mr. Herbert Harper, Director
Tennessee Historical Commission
Deputy State Historic Preservation Officer
2941 Lebanon Road
Nashville, TN 37243-0442

Dear Mr. Harper:

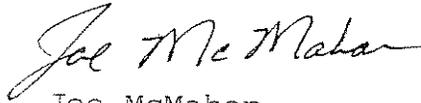
The U.S. Army Corps of Engineers, Nashville District (Corps), is in receipt of an application for a Corps permit pursuant to **Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA)**. A public notice for the proposed project was provided to your office for review (Public Notice 06-31, dated March 13th, 2006). The project consists of excavating approximately 30,000 cubic yards of material from Kentucky Lake for a boat access channel and commercial marina facility. The Corps has determined the Area of Potential Effect to be the entire project area.

In compliance with requirements of Section 106 of the National Historic Preservation Act, a records search and file review was conducted by the Nashville District Regulatory Archaeologist at the Tennessee Division of Archaeology (TNDOA) on May 24th, 2006. One site was located within the project area. Site 40HY143 is listed as an open prehistoric lithic scatter which was exposed on a large mud flat during winter draw down. The Corps has obtained information that the project area was subject to an archaeological survey by TVA staff and was signed off by J. Bennett Graham on March 3, 2006 as a site with no potential for listing on the National Register.

Based on the file search and review at the TNDOA and the limited potential for impact to intact cultural materials within the water pool of the project area it is the finding of the Corps that no historic properties listed on or eligible for listing on the National Register of Historic Places will be affected by this project.

The Corps requests your concurrence with our finding that no historic properties will be affected by this undertaking. If you have any questions or need additional information, please contact me at (615/369-7511) or Kyle Wright, Archaeologist (615/736-2553).

Sincerely,

A handwritten signature in cursive script that reads "Joe McMahan".

Joe McMahan
Project Manager, Regulatory Branch
Nashville District
US Army Corps of Engineers