



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303 - 8960

RECEIVED
2006

July 27, 2006

Colonel Charles O. Smithers
District Engineer
U.S. Army Corps of Engineers – Memphis District
Attn: Roger S. Allan
167 North Main Street, Room B-202
Memphis, TN 38103-1894

SUBJ: Public Notice #MVM-2004-857 (RSA), Tennessee Department of Transportation, State Route 21 road widening/new Reelfoot Spillway & bridge construction, Lake and Obion Counties, Tennessee

Dear Colonel Smithers:

This letter is in response to your request for comments regarding the above referenced public notice dated March 27, 2006. The Environmental Protection Agency (EPA) understands that your office held a public hearing on July 10, 2006, and is still accepting public comments.

The proposed project involves the widening of a portion of State Route 21, closure of the existing Reelfoot Lake spillway, construction of a new spillway and channel, and construction of a new bridge across the spillway channel. The proposed construction sequence would be as follows: 1) install erosion control measures, including turbidity barrier/screen; 2) construct temporary run-around for bridge construction; 3) construct haul road for channel work; 4) construct bridge, spillway, and channel (south of spillway); 5) excavate channel on the lake-side of the bridge (haul road would be removed as channel is constructed); 6) remove run-around road and finish excavation in front of the spillway; 7) excavate the "plug" under the new bridge; 8) fill the area in front of the existing spillway; and 9) remove the turbidity barrier screen. Overall, approximately 15.14 acres of wetlands would be permanently impacted, approximately 7.66 acres of wetlands would be temporarily impacted and approximately 4,096 linear feet of stream and an approximately 400 foot section of the existing spillway channel would be permanently impacted by this project. The applicant plans to mitigate permanent wetland impacts by restoring wetlands on or near the project area. Two prospective sites have been identified, however, specific details regarding the proposed mitigation is unavailable at this time. Should on-site mitigation not be practicable, the applicant proposes to debit 30.28 acres of credit (a 2:1 ratio) from the Obion County Mitigation Bank.

In order to receive a Department of Army Section 404 permit an applicant must comply with the Clean Water Act's Section 404(b)(1) Guidelines (Guidelines) (Title 40 of the Code of Federal Regulation (CFR), Section 230) which regulate the discharge of dredged or fill materials into waters of U.S., including wetlands. To be in compliance with the Guidelines, the applicant must demonstrate that the discharge is unavoidable and the least environmentally-damaging practicable alternative that will fulfill the basic project purpose has been selected. Generally, projects that avoid or minimize discharges of dredged or fill material into waters of the U.S., including wetlands, are presumed to have less adverse impact to the aquatic environment.

To demonstrate compliance with the Guidelines, the applicant must perform an analysis of practicable alternatives [40 CFR 230.10(a)]. Initially, an analysis must consider practicable alternatives that do not require a project to impact waters of the U.S., including "special aquatic sites," [wetlands, mudflats, coral reefs, riffle-and-pool complexes (streams), vegetated shallows, and sanctuaries and refuges, 40 CFR 230.40-230.45]. If such alternatives are unavailable, a further analysis compares the adverse impacts of the proposed discharge at the selected site against those of all available practicable alternatives and clearly demonstrates that the proposal's adverse impacts are less severe to the aquatic ecosystem. Consequently, the applicant should take all steps necessary to avoid and minimize impacts to aquatic resources to the maximum extent practicable. The quality and quantity of wetlands and/or streams for all alternatives should be discussed as well as other relevant environmental considerations.

The information included in the public notice is not sufficient to determine whether the proposed project is the least environmentally-damaging practicable alternative. The applicant must demonstrate that an analysis of alternatives has been conducted to satisfy the Guidelines. As discussed above, the applicant should demonstrate that the proposed design of the road widening, spillway, bridge, etc., has less adverse impacts to the aquatic ecosystem than all other available project designs. With the proposed permanent loss of functions and values associated with approximately 15.14 acres of wetlands and 4,096 linear feet of stream, the applicant should insure that the project design could not be refined to further reduce impacts to aquatic resources. It was also difficult to distinguish project impacts to aquatic resources and possible opportunities for further avoidance and minimization based on the site drawings provided in the public notice.

The final sequencing step in the Guidelines requires that once all efforts have been taken to avoid or minimize impacts to the aquatic environment, then compensatory mitigation must be provided for any remaining unavoidable impacts. The applicant should submit a detailed mitigation plan, once the first two sequencing steps in the Guidelines are satisfied. The proposed mitigation mentioned in the public notice does not address the functions and values associated with permanent loss of 4,096 linear feet of stream. This should be addressed in the final mitigation plan.

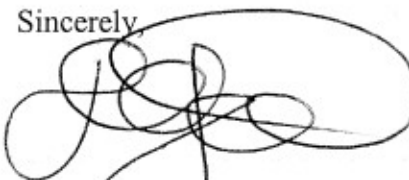
Additionally, Title 40 CFR Section 230(c) prohibits discharges that cause or contribute to significant degradation of waters of the U.S. Significant degradation can include individual, cumulative impacts, or secondary impacts, to human health and welfare; fish and wildlife; ecosystem diversity, productivity, and stability; and recreational, aesthetic, or economic values. All feasible means should be incorporated to reduce storm water runoff and siltation during and

after the construction phase, including but not limited to the use of silt fences and barriers, and storm water detention facilities where appropriate. Non-point source pollution associated with project construction can often cause erosion/sedimentation problems downstream. All appropriate steps should be taken to address potential impacts to water quality within streams and wetlands and to avoid adversely impacting the continued existence of critical habitat for endangered or threatened species in accordance with 40 CFR Section 230.10(b) and (c). There are also concerns with flooding that may occur upstream or downstream of the proposed project as a result of managing lake levels from operation of the new proposed spillway. These would be considered "secondary impacts" which are impacts that occur beyond direct discharges of dredged or fill material from the project itself. Storm water runoff and Best Management Practices requirements should be addressed by contacting the Tennessee Department of Environment and Conservation at (615) 532-0708. For information concerning endangered or threatened species, the U.S. Fish and Wildlife Service, Cookeville Office, should be contacted at (931) 528-6481.

In summary, EPA has determined that this project does not comply with the Section 404(b)(1) Guidelines regarding avoidance, minimization, compensatory mitigation, and significant degradation and we believe that the project, as proposed, is not approvable at this time. The applicant should submit a more complete and detailed alternatives analysis and mitigation plan. The applicant should also address whether lake management from operation of the new proposed spillway will cause significant degradation upstream or downstream from the project location.

Thank you for the opportunity to review this public notice. Should you have any questions regarding our comments, please contact Darryl Williams at (404) 562-9297.

Sincerely,

A handwritten signature in black ink, appearing to be "Ronald J. Mikulak", written over a large, loopy scribble.

Ronald J. Mikulak, Chief
Wetlands Regulatory Section

cc: See Enclosed List

CC List:

Dr. Lee Barclay, Field Supervisor
U.S. Fish and Wildlife Service
446 Neal Street
Cookeville, TN 38501

Dan Eager, Manager
Tennessee Department of Environment
& Conservation
Division of Water Pollution Control
7th Floor, L&C Annex
Nashville, TN 37243-1534

Gary Myers, Executive Director
Tennessee Wildlife Resources Agency
Ellington Agricultural Center
P.O. Box 40747
Nashville, TN 37771-0465

Recd - 9/15/06 - FOIA Request CORP



Al Hamilton
Chairman of the Board

Tennessee Clean Water Network

706 Walnut St, Suite 200
Knoxville, TN 37902

office: 865-522-7007
cell: 731-446-8234
fax: 865-329-2422

Mailing Address: PO BOX 1521
Knoxville, TN 37901

al@tcwn.org
www.tcwn.org