UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

South Carolina Electric & Gas Company Project No. 516-417

ORDER MODIFYING AND APPROVING APPLICATION FOR
NON-PROJECT USE OF PROJECT LANDS AND WATERS

(Issued October 10, 2006)

1. On January 10, 2006, South Carolina Electric & Gas Company (SCE&G), licensee for the Saluda Hydroelectric Project No. 516, filed an application requesting Commission authorization to issue a permit to LAB Investors, L.L.C. (LAB) to use project lands and waters for the construction of a 100-slip docking facility on Lake Murray, in Lexington County, South Carolina. In this order, we grant the authorization, as modified to be consistent with project requirements.

Background

2. Lake Murray is the reservoir created by the 206-megawatt Saluda Project, which is located on the Saluda River, 10 miles west of Columbia, South Carolina.[1] Lake Murray extends approximately 41 miles upstream of the Saluda Project dam, and is roughly 14 miles across at its widest point. It has a maximum depth of about 200 feet near the intake towers, a surface area of 50,000 acres, and a full pool elevation of 360 feet mean sea level (msl). Deep coves and prominent peninsulas characterize the lake's 650 miles of shoreline. The lake is a major recreational resource for the region and is used for boating, water-skiing, jet-skiing, fishing, swimming, picnicking, and camping.

3. The Saluda license includes a standard provision (Article 30) authorizing the licensee to grant permission for certain types of non-project use and occupancy of project lands and waters without prior Commission approval. However, the marina facilities

[1] The Saluda Project was originally licensed in 1927 and relicensed in 1984. 27 FERC ¶ 61,332 (1984). The license will expire August 31, 2010. *See South Carolina Electric and Gas Co.*, 105 FERC ¶ 61,226 (2003).

proposed by LAB are not within the scope of uses set forth in the standard article, and thus can only be permitted if the Commission approves an application to amend the license to allow the facilities and uses in question.

4. SCE&G's consideration of requests for permission to use its project shoreline and waters is guided by its Lake Murray shoreline management plan (SMP), which is updated every five years.[2] The plan has five classifications of land uses within the project boundary: (1) easement; (2) recreation; (3) project operation; (4) forest and game management; and (5) future private development. Each classification in the plan is subject to specified land use controls, such as minimum construction setbacks, buffer zones, restrictions on clearing, and maintenance of wildlife habitat. The proposed boat dock facilities and excavations are located in an area classified as recreational under SCE&G's current shoreline plan.

5. As part of the SMP, SCE&G has established procedures and requirements for commercial multi-use dock applications submitted under its shoreline management program.[3] These include general requirements for multi-use docks;[4] specific requirements for a baseline water quality monitoring plan;[5] and specific terms and conditions that applicants must meet to receive a commercial dock permit from SCE&G. These procedures and requirements are contained in SCE&G's "Commercial Multi-Use Dock Application Procedure" (hereinafter referred to as Application Procedures).[6]

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[2] The plan was first approved in 1981. *South Carolina Electric and Gas Co*., 16 FERC ¶ 62,479. In 2004, the Commission approved the most recent update. *See South Carolina Electric and Gas Co*., 107 FERC ¶ 62,273 (2004), *order clarifying and modifying order and denying reh'g*, 109 FERC ¶ 61,083 (2004).

[3] Many of the requirements for boat docks were included in the 1991 update to the SMP. *See* SCE&G's filing of December 29, 1989, in P-516-080, seeking to update and amend the project's SMP. (1989 Update.) The Commission approved the update in 1991. *South Carolina Electric and Gas Company*, 56 FERC ¶ 62,194 (1991).

[4] A multi-use dock is defined as a dock that will accommodate five or more watercraft simultaneously and for which a user fee or maintenance fee is charged. *See* 1989 Update, *supra* n. 3, at Exhibit 28.

[5] *Id.*, Exhibit 29.

[6] *See* the Commercial Multi-Use Dock Application Procedures, which are attached as Exhibit 5 to SCE&G's August 27, 2003 application filed in Project No. 516-379.

Description Of The Proposal

6. SCE&G proposes to permit LAB to use almost 2.0 acres of project lands that lie below the 360-foot-msl-contour (full pool elevation) to construct a 100-slip docking facility and a boat launch for the residents of Pintail Point subdivision in Lexington, South Carolina. The proposed docking facility would include three 5-foot-wide and 160-foot-long piers connected by 3-foot-wide, 35-foot-long boardwalks. The proposed boat launch would be 14 feet wide and 125 feet long. To construct the boat launch, LAB would place approximately 400 cubic yards of topsoil, 300 cubic yards of gravel, rock, and stone, and 35 cubic yards of concrete at the site. For boaters using the boat launch, LAB proposes to construct a courtesy dock consisting of a 5-foot-wide, 160-foot-long fixed pier with a 3-foot-long, 35-foot-wide ramp that leads to a 10-foot-wide, 20-foot-long floating dock.

7. LAB would excavate approximately 9,200 cubic yards of material from the lakebed as part of its proposal.

8. The Commission issued public notice of SCE&G's application on January 25, 2006. In response, the U.S. Department of the Interior's (Interior) Office of Environmental Policy and Compliance filed comments objecting to the proposal and recommending that the dock facility be reconfigured to avoid the need for excavation. Interior's Bureau of Indian Affairs (BIA) filed comments stating that the Saluda Project is located in an area that holds religious and cultural significance for members of the Catawba Indian Tribe and possibly other Tribes. Protests were filed by George S. King, Ronald L. Sweatt, and the Lake Murray Association (Association). Motions to intervene opposing the proposal were filed by two local citizen's groups, Lake Murray Homeowners Coalition (Coalition) and Lake Murray Watch (Lake Watch), and the following local residents who either have homes on Lake Murray or live nearby and use the lake for recreation: George and Donna Belcher; Ginger and Louis Browder; Douglas M. Shakelford; Robert Gene Lee; Jeffrey M. Shealy; and Sam Turner.[7]

9. Generally, those opposing the LAB proposal argue that the proposed dock would adversely affect the cove's water quality, shoreline stability, fish and wildlife habitat, recreational uses and navigation, the quality of life and aesthetics of adjacent residents,

[7] The Coalition, George and Donna Belcher, and Douglas M. Shakelford filed late motions to intervene, which have been granted. All other motions to intervene were timely and unopposed, and therefore granted automatically, pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1)(2006).

and property values. They also contend that the proposed excavation to construct the dock violates the SMP.

10. On March 23, 2006, the Commission's staff issued a draft Environmental Assessment (EA), analyzing the potential impacts of constructing and using the proposed dock and launching facilities. Interior's Fish and Wildlife Service (FWS) and several intervenors filed comments on the draft EA. FWS is concerned that the docking facility may have potential cumulative impacts on resources near the proposed development, such as water quality and shoreline vegetation. Lake Watch is concerned that the proposed facilities will have significant long-term impacts on wildlife, riparian habitat, navigation, and scenic values. These comments are addressed in the final EA, which is attached to this order.

Discussion

11. We have reviewed the application pursuant to the Federal Power Act's (FPA) comprehensive development standard, as informed by the SMP,[8] relevant license terms, public and agency comments on the non-project use, and the EA. As discussed below, the record indicates that, with certain modifications to the proposal (including the denial of any excavation), constructing and operating the proposed facilities would not interfere with project purposes, such as public safety, public recreation, and the protection of environmental values.

A. SMP Requirements

1. Proposed Excavation

12. Several commenters oppose LAB's proposal, arguing that the proposed excavation is not consistent with SCE&G's shoreline plan. In addition, Interior and FWS state that they normally recommend that boat slips, especially at commercial marinas, be installed a sufficient distance from the shore to avoid the need for excavation.

[8] The primary goals of the shoreline plan are to: (1) provide lake management policies for maintaining and conserving the area's natural and man-made resources; (2) comply with the terms of the Saluda Project license and the Commission's regulations and orders; and (3) provide a balance between recreation, environmental protections, and development control.

13. The SMP requires that multi-slip docks be located in an area where water depths are adequate for dock development without requiring any excavation.[9] LAB's proposal requires the excavation of 9,200 cubic feet of material over 2.01 acres of land.

14. On May 18, 2006, the Commission's staff sent a letter to SCE&G, asking the licensee to explain how the proposal meets the requirements of the SMP and why the proposal should be granted, given the restrictions of the SMP. On May 30, 2006, SCE&G filed a response, stating that the restriction was designed to prevent construction in the back end of shallow coves and was not intended to apply to the type of construction contemplated in this proceeding. In addition, SCE&G stated that the restriction is not contained in the SMP itself, but only in the Application Procedures document, which is not part of the approved SMP.

15. Contrary to SCE&G's contention, the excavation restriction is indeed a requirement of the SMP. As explained above, the SMP establishes procedures and requirements for commercial multi-use dock applications submitted under its shoreline management program.[10] Many of the requirements for boat docks were included in SCE&G's 1989 update to the SMP, wherein the licensee explained that it had developed procedures to enhance its ability to control activities around the reservoir and asked the Commission to approve the revised procedures as part of the project's updated SMP.[11] In fact, SCE&G specifically asked the Commission to approve Exhibit 28, which contains the excavation requirement.[12] The Commission approved the update with modifications not related to this issue.[13]

16. SCE&G stated in its May 30, 2006 response that the proposed excavation would optimize the development by allowing year-round use, even during times of low pool elevations, but it also stated that the proposed dock would be "adequate for the development of the project without requiring any excavation." Because the SMP prohibits excavation for multi-use docks, and SCE&G has not presented any information

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[9] *See* 1989 Update, *supra* n. 3, at Exhibit 28, Section IV.A.8.

[10] *See* n. 3, *supra*.

[11] *See* 1989 Update, *supra* n. 3, at pp. 17-18 and 46.

[12] *See id.* Exhibit 28, Section IV.A.8.

[13] *South Carolina Electric and Gas Company*, 56 FERC ¶ 62,194 (1991).

that would support a waiver of this requirement, we will approve the application without the proposed excavation.

2. Dock Measurements

17. Several commenters argue that the proposed development violates the SMP's restriction of one dock for every 100 feet of shoreline. Application of this restriction would require that the proposed development use a minimum of 10,000 linear feet of undeveloped shoreline to accommodate the 100 additional boat slips. However, the requirement for a lot width of 100 feet along the 360 contour applies to individual waterfront residential docks, not multi-use docks.[14] Since the proposed development is for multi-use docks, the 100-foot-width requirement does not apply.

18. FWS contends that the proposed development exceeds the limits established in SCE&G's SMP requiring that marinas extend no more than one-third the width of the cove. The application did not provide sufficient information on this issue, so in the draft EA staff estimated the distance and concluded that the docks may exceed the one-third-width requirement. On April 10, 2006, SCE&G filed a response to the draft EA in which it included detailed field measurements for the proposal. The measurements show that the facility, as proposed, complies with the SMP's cove-width requirement.[15]

B. Water Quality

19. Several commenters express concern that the proposed docking facilities would significantly affect water quality. As explained in the EA,[16] the proposed construction of the docking facility and launching lane would have localized, short-term impacts on water quality due to increased turbidity and sedimentation. Moreover, to the extent that the proposed docks are constructed on shore and floated into place, construction-related impacts on water quality would be further minimized. In addition, the SMP provides that construction of multi-use docks must in no way be detrimental to the existing water quality.[17] To this end, and to provide information that will assist in assessing any long-

[14] *See* 1989 Update, *supra* n. 3, at Exhibit 28, Section I.A.1.

[15] *See* Final EA Section 5.2.1, Figure 6.

[16] Final EA Section 5.1.

[17] *See* 1989 Update, *supra* n. 3, at Exhibit 28, Section IV.A.9.

term changes in water quality,[18] under the SMP, SCE&G will require that LAB monitor baseline water quality and aquatic biology data in the vicinity of the proposed dock and launching lane before construction of these marina facilities begins. Baseline sampling must be conducted on a weekly basis during the month of August prior to any construction, and monitoring of water quality would continue annually for a minimum of five years after construction is completed and all the boat slips are occupied.[19] In addition, LAB must comply with any applicable federal, state, and local regulations. These measures will ensure that the water quality in the vicinity of the proposed docks is not adversely affected by the facilities.[20]

C. Cumulative Impacts

20. The FWS is concerned about the cumulative effects of shoreline development on fish and shallow-water habitats, and wildlife and vegetated-cove habitats. The FWS states that shoreline development activities that include large lake-bed excavations, such as proposed here, cumulatively result in the loss of: (1) shallow-water habitats that are particularly important for fish and invertebrate spawning and rearing; and (2) shoreline habitats that are vital to a variety of wildlife species, including migratory birds, game and non-game mammals, reptiles, and amphibians. Lake Watch and the Association also express similar concerns.

21. The areas to be excavated around the proposed facilities would permanently displace shallow-water habitat and contribute to cumulative effects on important spawning and rearing habitat. However, since we are not approving the proposed excavation, we find that cumulative effects on fish and wildlife and their habitat would be

[18] SCE&G also collects water quality data at numerous sampling stations around the lake. The number of sampling locations is site-specific and is determined by the appropriate agencies in consultation with the licensee. The data obtained by these stations, along with data obtained per the SMP, will be used by SCE&G and the South Carolina Department of Health and Environmental Control to support the long-term assessment of cumulative impacts of human activities, including boat docks, on and around the lake.

[19] *See* 1989 Update, *supra* n. 3, at Exhibit 29.

[20] To the extent that commenters remain concerned about the overall effectiveness of SCE&G's water quality monitoring program, it may raise that issue most appropriately in the upcoming relicensing proceeding for the Saluda Project. The current license for the project expires August 10, 2010.

minimal. The land use restrictions and mitigation measures included in the SMP, combined with other federal, state, and local regulations, also help to minimize the cumulative impacts of shoreline development. Moreover, the project will be up for relicensing in four years, and potential cumulative impacts will be one of the issues that will be analyzed at that time. We consider the relicensing process to be the appropriate forum for comprehensively addressing potential cumulative impacts at the project.

D. Public Safety and Navigation

22. Several commenters express concern that the additional boat slips will increase boat traffic and congestion in the cove where Pintail Point is located, resulting in public safety and navigation concerns.[21]

23. As explained in the EA,[22] the proposed docks would extend 383 feet into Lake Murray, and would cover an area 238 feet wide. The facility would extend exactly one-third the distance between the shoreline and an island located 1149 feet from the shoreline and exactly one-third the distance from the shoreline to an adjacent peninsula located 856 feet from the shoreline. In complying with the SMP requirement that the docks do not extend more than one third of the way into the cove, sufficient room (a minimum of one-third of the cove) will remain for navigation. Furthermore, while the traffic generated by the proposed docking facility would moderately increase the number of boats in this portion of Lake Murray, the additional traffic generated by the proposed facility will be dispersed temporally throughout the day and geographically throughout the lake as each boat or jet ski travels to its preferred destination. Boats will return into the cove in an equally diffuse manner. Further, the mouth of the cove is wide enough to accommodate the expected increase in boat traffic.

24. For these reasons, we conclude that the proposed facilities would have a minor adverse impact on boating congestion and public safety only in the immediate area of the

[21] They also contend that boating congestion will have a negative impact on property values. However, waterfront property tends to appreciate in value, and the commenters provide no information to support their claim that the proposed facilities would have a negative impact on property values. To the contrary, it is possible that LAB's proposed development will provide a valuable asset to the residents of the Pintail Point development, thereby potentially increasing property values in the surrounding area. Finally, for the reasons discussed in this order, we conclude that the docks will have only a minor adverse impact on boating congestion in the cove.

[22] Final EA Section 5.2.1.E.

marina site, but would not create adverse impacts on navigational safety and boating use overall on the Lake Murray reservoir.

E. Impacts on Scenic Views and Aesthetics

25. The commenters state that the proposed facilities will result in adverse impacts to the scenic and aesthetic values of the cove, including the aesthetic views of nearby landowners. In addition, the Coalition argues that the proposal is inconsistent with standard Article 30 of the license, alleging that the article requires that permitted uses of project lands and waters protect and enhance the scenic, recreational, and other values of the project.

26. The proposed boating facilities may have a minor impact on the visual character and scenic quality of the cove. Landowners living along the shoreline should have no realistic expectation that their environs would remain undisturbed, whether by additional residences and their associated docks or by commercial developments built to serve the growing recreational boating market.[23]

27. The Coalition argues that LAB's non-project use proposal fails to protect and enhance environmental values and thereby violates the requirements of Article 30. We disagree. Article 30 requires that the non-project use be consistent with the project's purposes of protecting and enhancing environmental values. Staff's analysis in the final EA supports our conclusion that the approved non-project use will not interfere with the licensed project purposes, including public safety and environmental values. The proposal's adverse impacts are minor and insignificant and therefore, the proposal is not inconsistent with the project's purposes of protecting and enhancing environmental values. We note, in any event, that this order requires SCE&G to include in any permit it issues to LAB the following conditions adapted from Article 30 of the project license:

> 1. LAB's permitted use and occupancy of project lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with the project's overall purposes, including public recreation and resource protection.
>
> 2. LAB shall take all reasonable precautions to ensure that the permitted use of project lands and waters shall occur in a manner that will protect the scenic, recreational, and other environmental values of the project.

[23] *See Duke Energy Corporation*, 113 FERC ¶ 61,070 (2005); and Grand River Dam Authority, 105 FERC ¶ 61,100 (2003).

F. Cultural Resources

28. In its comments, BIA states that the Saluda Project is located within an area that is part of the aboriginal territory of several Indian Tribes and may have religious and cultural significance for them. The BIA further states that the proposed excavation could unearth previously unknown archaeological and cultural sites that currently lie under and around Lake Murray. The BIA therefore asks that the Commission include in its approval requirements for an on-site archaeologist during excavation and for work to cease immediately and coordination to be initiated with the State Historic Preservation Office if any artifacts or remains are discovered. Since BIA's request for an on-site archaeologist was based on the proposed excavation, which we are not approving, we consider its request for the on-site archaeologist moot.

29. There are no known historic properties in the area of potential effect, but there is the possibility that archaeological or historical resources could be discovered during construction of the proposed facilities. Accordingly, SCE&G shall include as a requirement of any permit it issues that, if any archaeological or historic artifacts are discovered during the permitted work, LAB shall take appropriate steps, including stopping work and consulting with the South Carolina Historic Preservation Officer and Indian tribes that may be concerned.

G. Alternatives to the Proposed Action

30. The Coalition and the Association recommend that review of LAB's application be deferred until a comprehensive assessment is completed as part of the relicensing process.

31. We see no reason at this time to delay consideration of the application until relicensing.[24] We have sufficient information available to act at this time. The record shows that there will be no adverse impacts associated with the proposal, and the proposal, as modified, is consistent with the shoreline management plan, which is

[24] As noted above, the license for the Saluda Project will expire in four years. The relicensing process will require the prospective licensee to prepare a license application that is supported by extensive environmental study and ultimately an environmental document that satisfies the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 (2000).

updated every five years to ensure that any changes are taken into consideration. We therefore deny the request to delay approval of LAB's proposal until relicensing occurs.[25]

Conclusion

32. Without the proposed excavation, there will be minor impacts on water quality, aquatic and terrestrial resources, fisheries, shoreline stability and erosion, recreation, navigation, public access, aesthetics, and scenic views. We accordingly conclude that construction and operation of the proposed facilities, without excavation of 9,200 cubic yards of material, will not constitute a major federal action significantly affecting the quality of the human environment, will not interfere with the licensed project purposes, and will be consistent with the statutory standards by which we regulate hydropower projects. Accordingly, we approve SCE&G's application to permit the proposed use of project lands and waters, as modified by this order.

The Commission orders:

(A) South Carolina Electric & Gas Company's application for non-project use of project lands and waters of the Saluda Project No. 516, filed on January 10, 2006, is approved, as modified to exclude the excavation proposed for construction of the boat docking facility, and as conditioned in Ordering Paragraphs (B) through (D) below.

(B) South Carolina Electric & Gas Company shall include the following conditions in the permit issued to LAB Investors, L.L.C., as approved in Ordering Paragraph (A) above:

1. LAB Investors, L.L.C.'s permitted use and occupancy of project lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with the project's overall purposes, including public recreation and resource protection; and

2. LAB Investors, L.L.C. shall take all reasonable precautions to ensure that the permitted use of project lands and waters shall occur in a manner that will protect the scenic, recreational, and other environmental values of the project.

[25] During the expected relicensing proceeding, the Commission will fully consider, after a comprehensive environmental analysis of the entire project and input from public and private entities, including recreationists and private landowners, the long-term need for shoreline development and the re-balancing of developmental and non-developmental lands at Lake Murray.

(C) South Carolina Electric & Gas Company shall reserve the right in the permit to supervise and control LAB Investors, L.L.C.'s marina-development activities to ensure that all permit conditions are implemented to South Carolina Electric & Gas Company's satisfaction, including mitigation measures required by this order and the U.S. Army Corps of Engineers and South Carolina Department of Health and Environmental Control permits.

(D) South Carolina Electric & Gas Company shall include in the permit a condition requiring LAB Investors, L.L.C. to notify the licensee in the event any archaeological or historic properties are discovered during construction of the facilities covered by the permit. In such event, the permittee shall immediately stop construction activities in the vicinity of the discovered materials. The licensee shall consult with the South Carolina State Historic Preservation Officer and any Native American tribes that may attach traditional religious or cultural values to the discovery in order to determine the steps to be taken to evaluate the materials and to protect any resources found to be significant. The licensee shall notify LAB Investors, L.L.C. as to when, and under what conditions, the permitted work may resume.

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.713 (2006).

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

ENVIRONMENTAL ASSESSMENT

Application for Non-Project Use of Project Lands and Waters

South Carolina Electric & Gas Company
Lexington County, South Carolina

Saluda Project
FERC Project No. 516-417

Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Administration and Compliance
Washington, D.C.

September 2006

ENVIRONMENTAL ASSESSMENT

Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Administration and Compliance

Saluda Project
FERC Project No. 516-417

1.0 APPLICATION

Application Type:	**Non-Project Use of Project Lands and Waters**
Date filed:	**January 10, 2006**
Licensee:	**South Carolina Electric & Gas Company**
Water Body:	**Lake Murray**
County and State:	**Lexington County, South Carolina**

2.0 PURPOSE AND NEED FOR ACTION

On January 10, 2006, South Carolina Electric & Gas Company (SCE&G), licensee for the Saluda Project, FERC No. 516, filed an application requesting Federal Energy Regulatory Commission (Commission) authorization to issue a permit to LAB Investors, L.L.C. (LAB Investors) for the use of project lands and waters to construct a community docking facility with 100 slips and a courtesy dock/launching facility in Lexington County, South Carolina. Figure 1 shows the location of Lexington County, South Carolina.

Figure 1: Map of South Carolina showing Lexington County in black.

The Commission has conducted an environmental review of the proposal to determine whether and under what conditions SCE&G's application should be approved. This Environmental Assessment (EA), which addresses the relevant issues raised in this proceeding, will be used to support the Commission's decision on SCE&G's application.

3.0 PROPOSED ACTION AND ALTERNATIVES

3.1 Proposed Action

LAB Investors proposes to construct a community docking facility with 100 slips and a community boat launching facility for the residents of Pintail Point subdivision and their guests (see figures 2 and 3). The proposed docking facility would consist of three five-foot wide piers connected by three-foot by 35-foot branching boardwalks. One pier will accommodate 28 boats, one pier will accommodate 38 boats, and one pier will accommodate 34 boats.

Construction of the proposed docking facility would include the excavation of approximately 9,200 cubic yards (c.y.) of material from 2.01 acres above the 348-foot contour to afford adequate depths for watercraft using the docking facility.[1] The excavated material would be placed above the 360-foot contour and the applicant would utilize best management practices to ensure that none of the excavated material reenters the waters of Lake Murray. The docking facility would not provide fuel services or pump-out facilities as no boats with marine sanitary devices will be allowed to be berthed at the docks.

Construction of the community boat launching facility, which would be 14 feet by 125 feet, would require placing approximately 400 c.y. of topsoil, 300 c.y. of gravel/rock/stone, and 35 c.y. of concrete to create a structure covering 0.04 acre. A courtesy dock consisting of a five-foot by 160-foot fixed pier with a three-foot by 35-foot ramp leading to a 10-foot by 20-foot floating dock would be constructed for boaters utilizing the community boat launching facility. Other improvements, including the Pintail Point clubhouse and pool, will be constructed outside the project boundary.

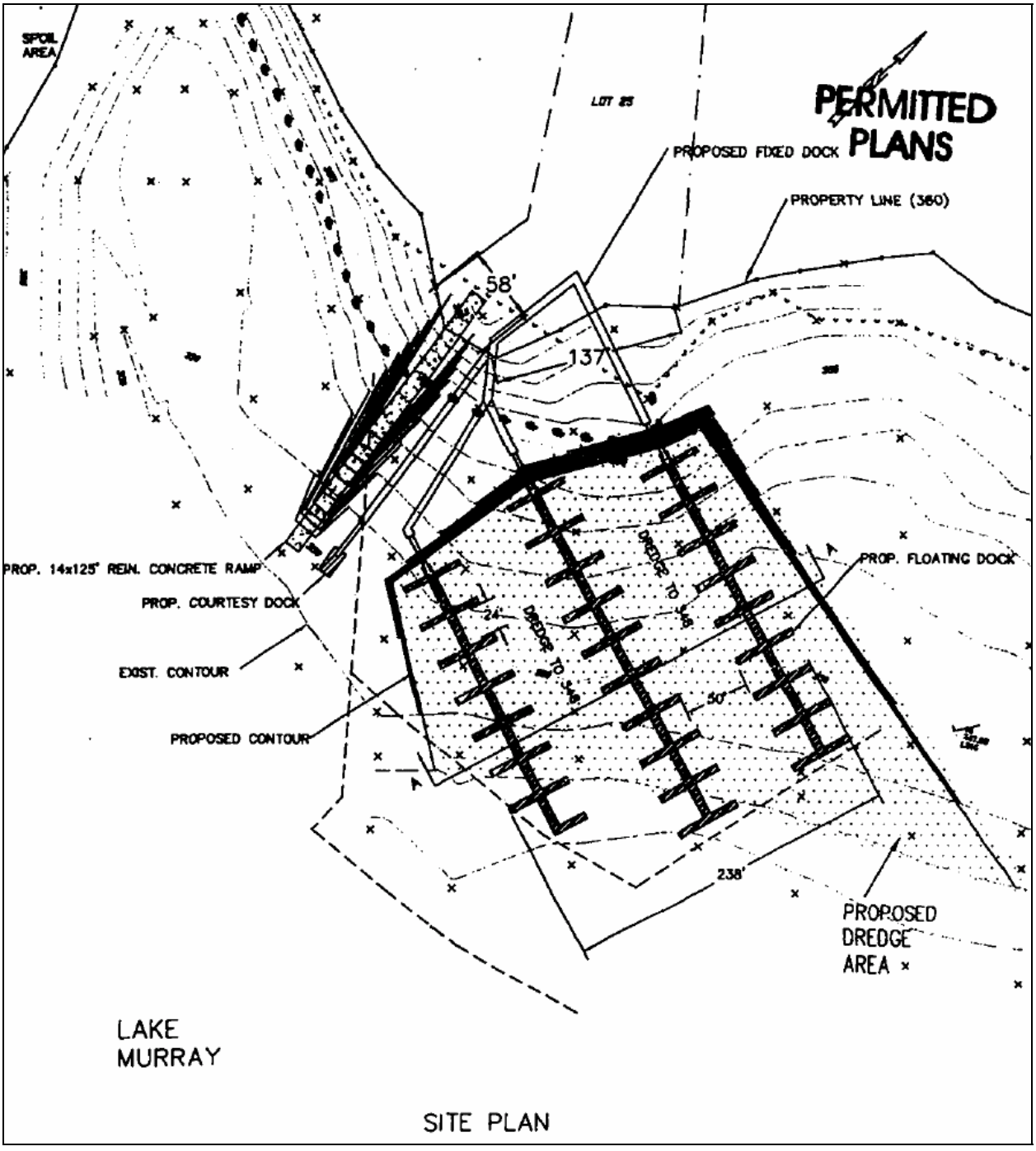

Figure 2: Site Plan for proposed docking facility and courtesy dock

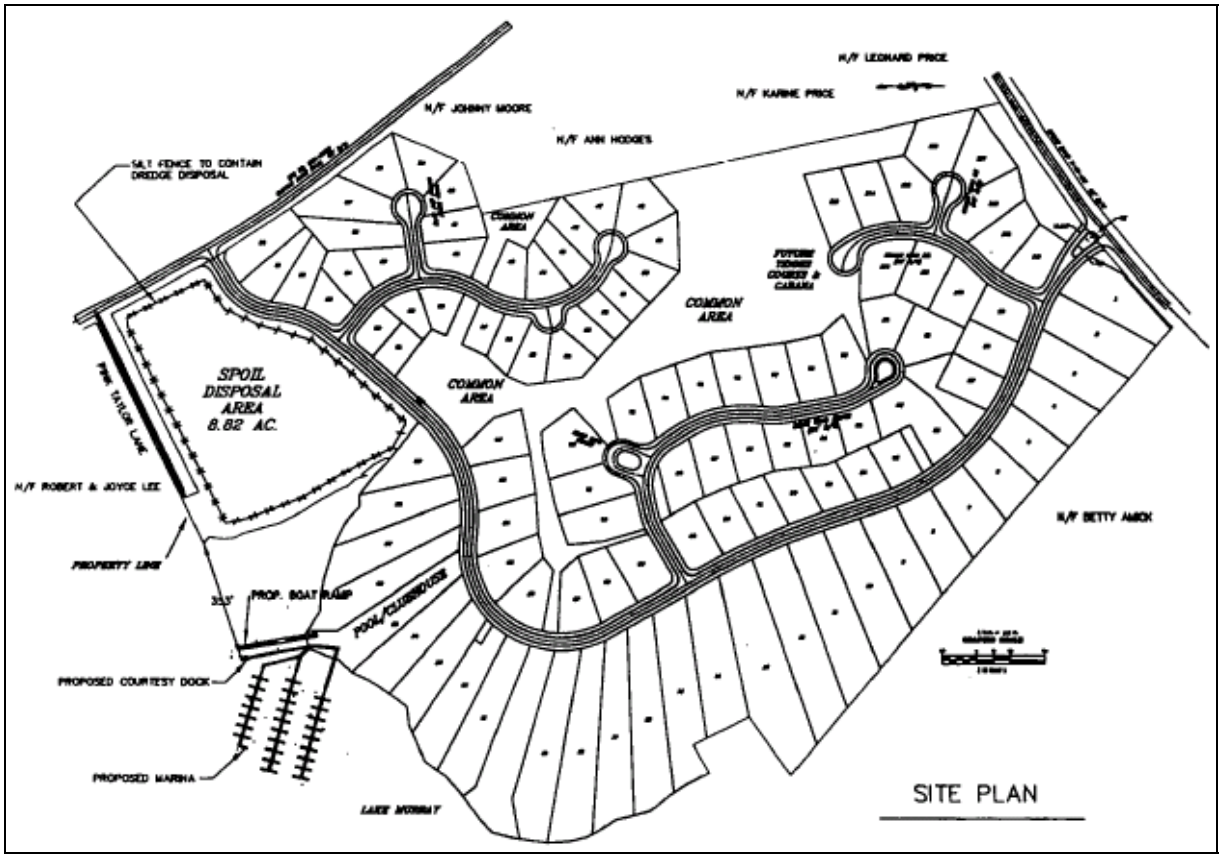

Figure 3: Pintail Point subdivision

3.2 Action Alternative

The Commission issued a draft EA on March 23, 2006, which included two action alternatives that modified the proposal by decreasing the total number of slips and reconfiguring the facility, respectively. As described below, Beam, Shannon & Associates responded to the draft EA on April 10, 2006. The response provided accurate field measurements that indicated the facility, as proposed, complied with the shoreline management plan requirement that docks and marinas do not extend more than one-third the distance of a cove or waterway. Figure 6, located in Section 5.2.1. of this EA, was included in the April 10, 2006 comments. As such, the action alternatives are moot and no further discussion is needed.

Lake Watch recommends that the Commission consider an alternative which would eliminate the 100 proposed slips but allow boat launching ramps and up to ten courtesy docks for off-lake lot owners. While this alternative would decrease the number of docks in the area of the proposed marina, it would likely result in each of the lake front lots installing docks out in front of each lot, which would have a greater impact on the shoreline. Since the marina proposal will have less of an impact on the shoreline and

allow all the lot owners access to the lake, there is no need to further consider Lake Watch's proposed alternative.

3.3 No-Action Alternative

Under the no-action alternative, the Commission would deny SCE&G's non-project use application for the proposed development activities. As a result, LAB Investors would be precluded from constructing the proposed dock facility and courtesy launching facility at Pintail Point on Lake Murray.

4.0 AGENCY CONSULTATION AND PUBLIC INVOLVEMENT

LAB Investors consulted with the various federal and state agencies to obtain comments on the proposed development. Table 1 lists the correspondence received by LAB Investors from the consulted agencies.

Table 1. Agency correspondence received by LAB Investors

Agency	Permit/Letter Date
County of Lexington	December 16, 2005
U.S. Army Corps of Engineers (USACE)	November 10, 2005
South Carolina Department of Health and Environmental Control (DHEC)	June 23, 2005

The County of Lexington issued a zoning permit on December 16, 2005. The November 10, 2005, USACE letter included Department of the Army Permit #2004-1W-287. The permit contains six general conditions and eight special conditions. The general conditions set a time limit for completing the work; require that the development be maintained in good condition; require that the USACE be notified immediately if any previously unknown historic or archeological remains are discovered; require that if the property is sold, the signature of the new owner be obtained and a copy of the permit forwarded to the USACE; require compliance with the conditions in the water quality certification, if issued; and require USACE representatives be allowed to inspect the development at any time. The special conditions require that the permittee provide all contractors with a copy of the permit and drawings, and that a copy of the permit will be available at the construction site at all times; a signed compliance certification be submitted to the USACE within 60 days following completion of the authorized work; if future operations by the United States require the removal, relocation, or other alteration, the permittee will be required, upon due notice, to remove, relocate, or alter the structural work or obstructions, without expense to the United States; all excavation must be done in the dry when the lake is drawn down; prior to beginning excavation and/or construction activities, appropriate erosion control measures be implemented between the

excavation area and any adjacent wetlands or waterbodies; excavated materials must be disposed of at an approved upland site; all efforts to protect existing native riparian vegetation adjacent to the project area be made; and excavation activities must not occur during the months of March, April, May, and June because of potential impacts to spawning fishes.

In the June 23, 2005 letter, the DHEC indicate that there is a reasonable assurance that the development, subject to 13 conditions, will be conducted in a manner consistent with the certification requirements of section 401 of the Federal Clean Water Act. The 13 conditions require that the applicant implement best management practices that will minimize erosion and migration of sediments; prior to beginning excavation and/or construction activities, appropriate erosion control measures be placed between the excavation area and any adjacent wetlands or waterbodies; all excavations be performed in the dry when the lake is drawn down; all efforts be made to protect existing native riparian vegetation; the excavated area be sloped such that the rear is no deeper than the front and the front is no deeper than the adjacent water body to maintain water circulation; excavation activities not occur during the months of March, April, May, and June because of impacts to spawning fishes; excavated material be disposed of at the designated spoil disposal area; LAB Investors comply with the approved county erosion and sediment control and/or storm water ordinances; upon completion of construction activities, all disturbed areas which are not paved be restored to their original contours and be permanently stabilized with vegetative cover; care be taken to avoid disturbance to the buttonbush, river birch, and willow present within the project area; the applicant restore any cleared vegetation in the back of the cove by re-planting buttonbush, willow trees and other native vegetation as appropriate; all necessary measures be taken to prevent debris and pollutants from entering the adjacent waters or wetlands; and finally, once the project is initiated, it be carried to completion in an expeditious manner.

On January 25, 2006, the Commission issued a public notice of SCE&G's application, with a deadline of February 27, 2006 for comments. Also on January 25, 2006, Commission staff initiated consultation pursuant to section 106 of the National Historic Preservation Act. Table 2 lists the comments received pursuant to the public notice.

Table 2. Comments generated by the public notice and Section 106 consultation

Entity	Response Date	Response Type
Ginger and Louis Browder	February 16, 2006	Motion to Intervene
Robert Gene Lee	February 16, 2006	Motion to Intervene
U.S. DOI, Bureau of Indian Affairs	February 21, 2006	Comments
State Historic Preservation Office	February 23, 2006	Comments
Douglas M. Shackelford	March 2, 2006	Motion to Intervene

Jeffrey M. Shealy	February 27, 2006	Motion to Intervene
The Lake Murray Association	February 27, 2006	Protest
U.S. DOI, Office of Environmental Policy and Compliance	February 27, 2006	Comments
Sam Turner	February 27, 2006	Motion to Intervene
Lake Murray Watch	February 26, 2006	Motion to Intervene in Opposition
Lake Murray Homeowners Coalition	February 28, 2006	Motion to Intervene in Opposition
George and Donna Belcher	March 1, 2006	Motion to Intervene
South Carolina Electric & Gas Company	March 1, 2006	Reply and Clarifying Comments

Ginger and Louis Browder, Robert Gene Lee, Jeffery M. Shealy, Sam Turner, George and Donna Belcher, and Douglas M. Shackelford live in the vicinity of the proposed docking facility, and have concerns about the location and scope of the proposal, including its effect on boat traffic and property values. The Lake Murray Association is concerned about the effect of the docking facility on water quality and the ecosystem, and suggests the use of ramps and day docks to accommodate the storage of boats out of the water during times of non use. Lake Murray Watch states that the facility will block public use of the project lands and waters, pollute the lake, and further degrade the project's aesthetic and scenic values. Lake Murray Homeowners Coalition recommends that the Commission defer review of the application until a comprehensive assessment is completed as part of the relicensing process.

On March 23, 2006, the Commission issued a Draft Environmental Assessment (DEA) analyzing the environmental impacts of SCE&G's application, with a deadline of April 24, 2006 for comments. Table 3 lists the comments received pursuant to the DEA.

Table 3. Comments generated by the DEA

Entity	Response Date	Response Type
Beam, Shannon & Associates	April 10, 2006	Comments
George S. King	April 20, 2006	Comments
Ronald L. Sweatt	April 24, 2006	Comments
Lake Murray Watch	April 24, 2006	Comments
U.S. DOI, Fish and Wildlife Service	May 8, 2006	Comments
Ginger and Louis Browder, and others	April 25, 2006	Comments
Ginger and Louis Browder	May 8, 2006	Photograph

The comments from Beam, Shannon & Associates provide specific distances with respect the location of the docks and surrounding areas that were not available to Commission staff while preparing the DEA.

George S. King comments that he is concerned with the proposed excavation and construction due to the impacts on water quality and the environmental balance in that area of the lake. Ronald L. Sweatt's comments state that the increased usage cannot be supported, and that the proposal is not in the best interest of the lake or its current residents.

Lake Murray Watch comments that the proposal could have significant impacts to water quality, and requests that the Commission assess past records of the marina water quality monitoring to determine the effectiveness of the program. Lake Murray Watch also comments that they disagree with the assessment that the excavation would have minimal impacts on existing fish populations. Lake Murray Watch also disagrees that there would be minor, short term adverse impacts to wildlife and riparian habitat, and minor long term adverse effects on navigation.

The U.S. DOI, Fish and Wildlife Service (FWS) is concerned with the excavation of 9,200 c.y. of lake bottom sediment, and the impact to surrounding fish and wildlife resources. The comments recommend exploring alternative locations that would not require excavation, and maintain that the excavation would result in the net loss of shallow cove habitat that is important to fish spawning and maturation habitat. Additionally, the FWS believes the proposed facility is too large for the proposed location, and states that the proposed action is in violation of the project's shoreline management plan, which does not allow docks or marinas to extend more than one-third the distance of a cove or waterway. The FWS is of the view that the Action Alternatives A and B, while reducing the size of the facility, will still significantly contribute to increased navigation and boating hazards. Increased boat traffic will contribute to erosion activity due to boat wakes, and water quality degradation. The FWS recommends accepting the "No Action" alternative described within the DEA. In addition, the FWS recommends authorization for projects such as this to occur when shoreline development issues are addressed through the relicensing process.

Ginger and Louis Browder, and others reiterate their concerns with regard to navigational hazards, excavation, fisheries, and scenic value. Specifically, the group states that they wish to avoid the overdeveloped and overcrowded conditions on the southern shores of the lake that are present on the northern shores. The group also questions if excavation of the area would create a bowl effect because the cove is shallow. The group also expresses concerns about the destruction of fish habitat, and decreases to scenic value. Photographs filed by Ginger and Louis Browder show the area

where excavation is proposed and the area between the island and shoreline where the facility would be located.

By letter issued May 18, 2006, Commission staff notified the licensee that the application is not consistent with the provision of the shoreline management plan that requires that multi-use docks be located in areas where water depths are adequate for development without requiring excavation, and requested information on how the proposal complies with the shoreline management plan stipulation. The response from SCE&G, filed May 30, 2006, states that the restriction in the plan was designed to prevent construction in the back end of shallow coves. As such, the licensee says the restriction has been successful in carrying out its intended purpose, but was never intended to apply to the type of construction contemplated in the current proceeding. The response from SCE&G attributes the language to inartful draftsmanship. The May 30, 2006 letter from SCE&G does, however, state that the proposed facility would be adequate for development without any excavation, but the excavation would optimize the development to allow year round use.

5.0 ENVIRONMENTAL ANALYSIS

5.1 Affected Environment

General Setting:

Lake Murray is a reservoir located on the Saluda River in central South Carolina, 10 miles west of the city of Columbia, South Carolina. The lake was formed in 1930 when the Saluda Hydroelectric Project was created by damming the Saluda River. The Saluda River, a major tributary of the Santee River basin, lies in the Lower Piedmont physiographic province of South Carolina.

Lake Murray is approximately 40 miles long, has a maximum width of 14 miles, and a maximum depth of about 200 feet near the intake towers. The surface area of the lake is 50,000 acres at a full-pool elevation of 360 feet plant datum (PD). The normal high-water level of the lake is 358 feet PD, which is usually reached in May. When rainfall decreases during the summer months and the demand for power increases, the surface elevation of the lake begins to drop, with a normal low-water level of 350 feet PD coming in the fall of the year.

In addition to power production, Lake Murray is used for aesthetic enjoyment and recreational activities such as fishing, boating, water-skiing, jet-skiing, picnicking, and camping. The reservoir also is used for drinking water and agricultural irrigation and

serves as the receiving body for cooling water effluent from the adjacent McMeekin Station, a coal-fired power plant also operated by the licensee.

The project contains about 17,152 acres of land surrounding 650 miles of shoreline. Approximately 60 percent of the surrounding shoreline is privately owned. Lake Murray and the location of Pintail Point are displayed in figures 4, 5, and 6.

The northern half of the lake has been developed commercially while the southern portion, which is where the proposed facility would be located, is more residential according to comments on the proposed development. As shown in Figure 6, in the area just to the north of where Pintail Point would be located, there is a group of approximately 11 private docks/marinas to accommodate local residents. There is a private dock just south of Pintail Point near four residences, and there are two docks across the cove.

Environmental Components:

Aquatic Resources – Lake Murray varies substantially in habitat from shallow coves and wetlands to vast open water with an abundance of diverse structure. This varied habitat within the project boundary supports a diverse fish population and a valuable sport fishery. The lake has a maximum depth of approximately 200 feet, but also has extensive shallow waters associated with the 650 miles of shoreline.

Figure 4: Lake Murray, Lexington County, South Carolina

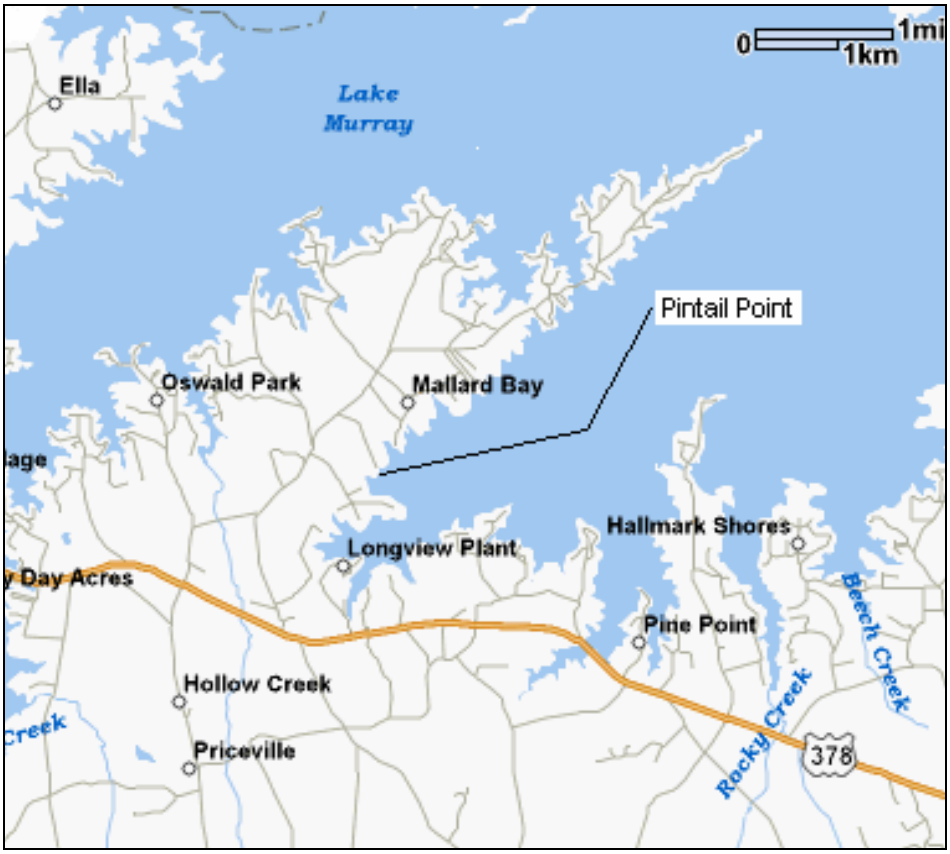

Figure 5: Map of the general project area and location of the proposed development

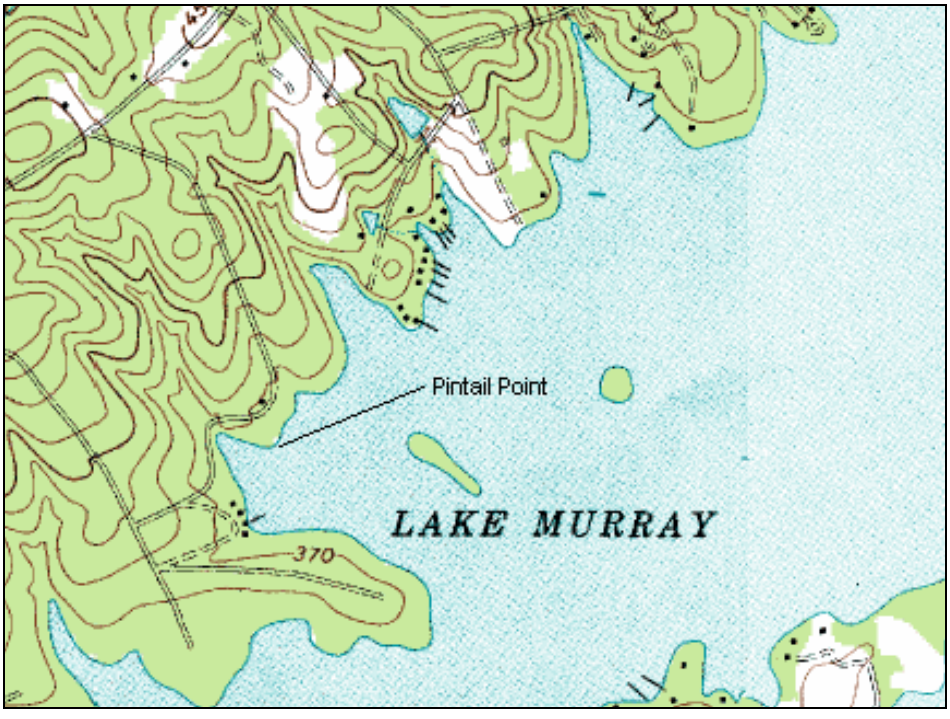

Figure 6: Detailed view of proposed development showing other docks in vicinity (Source: USGS quad map)

Water Quality: The DHEC classifies all waters within the project boundary upstream of the dam as "fresh waters"[1] (Class FW). Waters within this classification are defined as fresh waters suitable for primary and secondary contact recreation and as a source of drinking water supply after conventional treatment in accordance with DHEC requirements, suitable for fishing and survival and propagation of a balanced indigenous aquatic community of fauna and flora, and suitable also for industrial and agricultural use. Additionally, the Saluda River from the dam downstream to the confluence with the Broad River is classified as trout put, grow, and take (FERC, 2004).

Fisheries: More than 40 species of fish occur within Lake Murray. Many of these species provide important recreational benefits, including largemouth bass (*Micropterus salmoides*), bluegill (*Lepomis macrochirus*), redear sunfish (L. *microlophus*), and striped bass (*Morone saxatilis*). Predator fish populations are supported by high numbers of prey species including bluegill, threadfin shad (*Dorosoma petenense*), gizzard shad (D. *cepedianum*), and blueback herring (*Alosa aestivalis*). Fish growth in Lake Murray is generally considered excellent, and the fishery has produced several current state record fish.

Striped bass were initially stocked in Lake Murray in 1960, and the current stocking program has been in place since the early 1970s. At present, the stocking goal is 1,000,000 fingerlings per year, although the goal is not always met and occasionally is surpassed. Since the early 1970s, striped bass have become the dominant pelagic predator fish species benefiting from the lake's diverse forage species. In addition to striped bass, Lake Murray has an exceptional population of other gamefish and panfish, including largemouth bass, black crappie (*Pomoxis nigromaculatus*) and white crappie (*P. annularis*). These species typically spawn in shallow, nearshore areas over sand or other fine-grained substrate.

[1] The minimum and daily average dissolved oxygen (DO) standards for Class FW waters are 4.0 milligrams per liter (mg/l) and 5.0 mg/l, respectively. *E. coli* measurements shall not exceed a geometric mean of 200/100 ml, based on five consecutive samples during any 30-day period; nor shall more than 10 percent of the total samples during any 30-day period exceed 400/100 ml. The water temperature of all FW waters, which are free flowing, shall not be increased more than 2.8 degrees Celsius (°C) above natural temperature conditions.

Submerged Aquatic Vegetation: Rooted submerged aquatic vegetation (SAV) is found along the shoreline of Lake Murray. The SAV beds are used by many species of forage and game fish as nursery habitat for fry and juveniles because of the protection they provide from predators. The predominant species, hydrilla (*Hydrilla verticillata*), covers about 2,800 acres of lake bottom and is concentrated between the 335- and the 355-foot elevation. Hydrilla is a non-native species introduced from Southeast Asia and is considered a nuisance species, because of its prolific growth creating dense mats that impede boat traffic and out-competing native aquatic plant species. Illinois pondweed (*Potamogeton illinoensis*), a native aquatic plant species, covers approximately 500 acres of the lake, mostly between the 352- and 360-foot elevations. Dense colonies of Illinois pondweed may also impede boat traffic.

Management efforts to control hydrilla and Illinois pondweed in Lake Murray currently depend on extended drawdown periods, stocking of sterile grass carp (*Ctenopharyngodon idella*), and mechanical harvesting (SCDNR, 2004). Reservoir drawdowns to elevation 345 feet NGVD occurred in 1990 and 1996 and have been effective for hydrilla; however, Illinois pondweed cannot be controlled by drawdowns. Other species of SAV known to occur in Lake Murray include slender pondweed (*P. pusillus*), spotted pondweed (*P. pulcher*), slender naiad (*Najas minor*), southern naiad (*N. quadalupensis*), and Brazilian elodea (*Egeria densa*). Brazilian elodea and slender naiad are also non-native aquatic plant species.

Terrestrial Resources – Lake Murray lies within the Lower Piedmont physiographic province of South Carolina. Elevations in the Piedmont generally range from 300 to 1,000 feet above mean sea level (msl). The area is characterized by irregular plains and open hills with occasional tablelands. The upland vegetation on Lake Murray shoreline and fringe property consists of mixed hardwoods and pines.

Soils within the Lake Murray area belong to the Georgeville-Herndon-Almance association, are derived from argillite, and are characterized as clayey. These reddish or yellowish soils are gently sloping, deep, well to moderately drained, and have silt-loam topsoils over silty clay subsoils. The soils in the region are generally low in fertility and are best suited for forest or pasture use. While the soils are generally not susceptible to creep or slumping, soil limitations for development tend to occur along drainage ways or other areas where bedrock is very close to the surface. Soil erosion is a problem in some lakeshore areas, particularly along exposed shorelines; Pintail Point is in a slight inlet, protected from wind and wave-driven erosion.

Wildlife within the Lake Murray project area includes white-tailed deer *(Odocoileus virginianus)*, eastern cottontail (*Sylvilagus floridanus*), gray squirrel *(Sciurus carolinensis)*, red fox *(Vulpes vulpes)*, raccoon *(Procyon lotor)*, beaver *(Castor*

canadensis), red-tailed hawk *(Buteo jamaicensis),* osprey *(Pandion haliaetus),* and other birds such as wading birds, gulls, terns, ducks, and Canada geese *(Branta canadensis).* Migratory birds such as waterfowl, geese, and some passerines (warblers, sparrows) are present in the appropriate seasons (Birds of Dreher Island State Park, 2004). Reptiles and amphibians are also found in the available habitats at Lake Murray.

Threatened and Endangered Species – According to the South Carolina Department of Natural Resources (SCDNR), there are several federal- and state-listed species that occur in Lexington County, SC. Table 3 presents a list of threatened or endangered species in Lexington County. Habitat information provided for these species indicates that none of the listed species are likely to occur in the area of the proposed development:

Table 3. Threatened or endangered species that occur in Lexington County, SC

Common Name	Scientific Name	Federal Status	State Status
Rafinesque's big-eared bat	Corynorhinus rafinesquii	None	Endangered
Smooth coneflower	Echinacea laevigata	Endangered	Endangered
Southern coal skink	Eumeces antracinus pluvialis	None	Threatened
American peregrine falcon	Falco peregrinus anatum	None	Endangered
Bog turtle	Glyptemys muhlenbergii	Threatened	Threatened
Black-spored quillwort	Isoetes melanospora	Endangered	Endangered
Eastern small-footed myotis	Myotis leibii	None	Threatened
Mountain sweet pitcher plant	Sarracenia rubra ssp. jonesii	Endangered	Endangered
Bewick's wren	Thryomanes bewickii	None	Endangered

Bald eagle *(Haliaeetus leucocephalus)* and wood stork *(Mycteria americana)* have been observed on Lake Murray. Wood storks were found using an area of the western portion of the lake approximately 15 miles from the Saluda dam. It is believed that area is used for roosting and foraging and as a possible stopover site in migration. The site is not in the vicinity of the proposed marina facilities, and it is probable that wood storks would not use that area of the project. Bald eagles are known to have five active nests at Lake Murray and may spend the winter at the lake. Bald eagles may range widely in their opportunistic feeding and cannot be discounted from using the area in the vicinity of the marina site for feeding or roosting. The lack of water in the inlet reduces the opportunity for bald eagle feeding in the area until after the water level has risen; however, they could roost or nest in any available tall pine trees.

Currently, no bald eagles, wood stork, or other threatened or endangered species are known to utilize the habitats in the area, including the shoreline area where the proposed marina facilities would be located.

Recreation and Other Land and Water Uses – Lake Murray is a popular tourist destination offering boating, fishing, swimming, and a variety of other day-use activities. SCE&G presently maintains 12 parks on Lake Murray. Each park provides a variety of recreational opportunities available to the public. Recreational activities include boat launching, fishing, and picnicking. In addition to the existing 12 developed public parks, there are 65 islands in Lake Murray consisting of 220 acres that are available for public recreation. Public boat ramps are provided on the north and south sides of the Saluda River approximately one mile below the dam. A canoe portage facility is located approximately seven miles below the Lake Murray Dam on the north side of the Saluda River. Public access to the lake is also provided at privately-owned facilities. Boat launching and other recreation activities are available. Dreher Island State Park provides boat ramps, camping, swimming, nature trails, sailing, and overlook areas. This 348 acre island is leased to the S.C. Department of Parks, Recreation, and Tourism by SCE&G. Based on the project's 2003 Hydropower Development Recreation Report (Form 80 Report), public and private recreation areas include, among other facilities, approximately 51 boat ramps (with a total of 82 boat launching lanes), 38 picnic areas, 2 swimming areas, 16 campground areas, and 6 fishing piers. Public access also is provided at shoreline facilities where boat launching, rentals, and other recreational activities and supplies are available, including 32 public marinas and landings and 57 private marinas, landings, clubs, and common access areas. SCE&G reports that there are approximately 2,133 rental slips at local marinas (FERC, 2002).

Cultural Resources – Commission staff identified the area of potential effect (APE) as the area within the project boundary where the proposed marina facilities would be located. According to the National Register of Historic Places (NRHP), no significant historic or archaeological resources are known to exist within the APE (National Register Information System). Given that no known historic properties are located within the APE, we conclude that no historic properties would be affected by this undertaking.

5.2 Environmental Effects

5.2.1 Proposed Action

Since the licensee’s SMP does not allow for excavation in areas like that proposed by LAB Investors, and the licensee’s May 30, 2006 letter indicates that the proposal can go forward without excavation, we will analyze the proposal excluding the excavation.

Table 4 summarizes the probable environmental impacts of the proposed action. Brief descriptions of these impacts are provided in the remarks section following the table.

Table 4. Environmental Effects of Proposed Action

IMPACT ISSUE	IMPACT RATING		
	1 - Minor 2 - Moderate 3 - Major	**A - Adverse B - Beneficial NI - No Impact**	**S – Short Term L – Long Term I – Intermittent**
A. Aquatic Resources			
Water Quality	**1**	**A**	**S**
Fisheries	**1**	**A**	**S**
Submerged Aquatic Vegetation	**1**	**A**	**S**
B. Terrestrial Resources			
Upland Vegetation	**1**	**A**	**S**
Shoreline Stability and Soil Erosion	**1**	**A**	**S**
Wildlife and Riparian Habitat	**1**	**A**	**S**
C. Wetlands		**NI**	
D. Threatened and Endangered Species		**NI**	
E. Recreation, Land Use, and Aesthetics			
Boating and Navigational Safety	**1**	**A**	**L**
Available Docks	**2**	**B**	**L**
F. Cultural Resources		**NI**	

Remarks:

A. Aquatic Resources

Water Quality: The construction of the docking facility and launching lane, would have localized short-term impacts on water quality due to increased turbidity and sedimentation. If the docks are constructed on shore and floated into place, construction-related impacts on water quality would be further minimized. Implementing the terms and conditions of USACE and DHEC permits, as described in Section 4.0 would reduce the negative effects of the proposal on water quality.

In accordance with the Shoreline Management Plan (SMP) for Lake Murray, SCE&G would require LAB Investors to collect baseline water-quality and aquatic-

biology data in the vicinity of the proposed dock and launching lane before construction of these marina facilities begins (SCE&G, 1989). As specified in the SMP, baseline sampling of DO, water temperature, conductivity, fecal coliform, pH, and benthic macro-invertebrates must be conducted on a weekly basis during the month of August prior to any construction. The number of sampling locations is site specific and would be determined by the appropriate agencies in consultation with the licensee. Annual monitoring of water quality and benthic macro-invertebrates would continue annually for a minimum of 5 years after construction is completed and 100 percent of the slip occupancy has occurred. Continuation of monitoring after the 5-year time period would be determined by SCE&G and appropriate agencies. In addition to the above-described monitoring, which is a requirement for all newly permitted marinas on Lake Murray, SCE&G collects water-quality data at numerous sampling stations around the lake (SCE&G, 1989). The data obtained from these two sources, which supplement the water quality data obtained through DHEC's watershed management strategy, is used to support the assessment of cumulative impacts of human activities on and around the lake.

Fisheries: The USACE and DHEC permits issued for LAB Investors proposal require: (1) all excavation must be done in the dry when the lake is drawn down; (2) placement of appropriate erosion control measures prior to beginning excavation and/or construction activities; (3) ensuring that all efforts to protect existing native riparian vegetation adjacent to the project area are made; and (4) not conducting excavation activities during the months of March, April, May, and June because of the potential impacts to spawning fish. Provided LAB Investors properly complies with the above conditions, the proposed construction activities would have only minimal impacts on existing fish populations. Following the completion of these activities, the temporarily disturbed and displaced fishery would re-inhabit the affected area. The new dock structure would provide limited protective cover for fish.

Submerged Aquatic Vegetation: A small amount of SAV habitat would be permanently displaced by the proposed boat-dock facilities. SAV habitat would return along the shoreline after the completion of construction, except where the dock and courtesy-slip structures are placed. The loss of a small area of SAV in the vicinity of the proposed marina facilities would not constitute a substantial impact to aquatic resources.

B. Terrestrial Resources

Upland Vegetation: The proposed docking facility and launching lane would occupy a relatively small portion of shoreline in Pintail Point subdivision, and no major impact on upland vegetation would occur. Minor short-term disturbance impacts on existing vegetation would occur during placement of the piers and launching lane. The terms and conditions contained in the USACE and DHEC permits require the

stabilization of all disturbed land areas with a permanent vegetative cover. LAB Investors compliance with this condition would minimize any construction-related impacts on upland vegetation.

Shoreline Stability and Soil Erosion: Construction of the boat docks and launching lane would likely cause some on-site ground disturbance, which could potentially result in soil erosion. The USACE and DHEC permits include requirements to: (1) minimize erosion and sedimentation; (2) grade all disturbed land surfaces to a minimum 3-to-1 slope; and (3) stabilize all disturbed land areas. With the proper implementation of these measures, the proposed facilities would have only minimal, short-term impacts on soils.

Wildlife and Riparian Habitat: Due to the existing condition of the marina site, no appreciable impacts on riparian habitat would occur from construction of the proposed facilities. However, the construction activities would disturb any wildlife using this area of the cove. These adverse effects would be minor and short term. The USACE and DHEC permits require that: (1) all efforts to protect existing native riparian vegetation be taken; (2) every reasonable effort to perform the authorized work in a manner that minimizes adverse impacts on wildlife be taken; and (3) the permitted development activities be completed in an expeditious manner in order to minimize the period of environmental disturbance. Also, for the same reason discussed in the above fisheries section, the shoreline-planting measure recommended to compensate for lost shallow-water habitat should be implemented to offset any riparian-habitat loss as well. Under these conditions, the proposed marina facilities would have minimal adverse effects on migratory birds, game and non-game mammals, reptiles, and amphibians that use the lake's shoreline.

Nevertheless, the increases in boat traffic and human disturbance resulting from these facilities would further discourage wildlife use of the area. The cove contains many existing docks and is seasonally active with boaters. Current human activity in the cove, including seasonal increases in water-based recreation, does not provide conditions beneficial to wildlife and waterfowl use. The additional recreational disturbance to the cove area resulting from boat traffic originating from the proposed boat dock and courtesy slips would not significantly increase existing disturbance levels. Waterfowl would likely continue using the cove and shoreline after these marina facilities are in operation. Wintering and migrating waterfowl would use the cove as resting and feeding habitat in the fall, winter, and spring months when boat traffic and activity levels are less.

C. Wetlands

No comments specific to wetlands were received from agencies or individuals. Based on available documentation and aerial photography, no wetlands occur in the vicinity of the proposed marina facilities. Because there are no wetlands in the area, we conclude that the proposed action would have no impact on wetland functions and values.

D. Threatened and Endangered Species

Currently, no bald eagles, wood stork, or other threatened and endangered species are known to utilize the habitats in the cove, including the shoreline area where the proposed marina facilities would be located. Therefore, we expect no impacts on these species.

E. Recreation, Land Use, and Aesthetics

Boating and Navigational Safety: Several comments express concern that an increase in boat traffic and congestion in the cove where Pintail Point is located would create public safety issues. The approved shoreline management plan for Lake Murray limits the distance a dock may extend across any cove or waterway; under the plan, a dock may not extend more than one-third the distance across any cove or waterway. According to the information provided by Beam, Shannon & Associates on April 10, 2006, the proposed dock would extend 383 feet into Lake Murray, and would have a width of 238 feet. An island is located 1149 feet from the shoreline at location of the proposed marina, and a peninsula is 856 feet from the shoreline at location of the proposed marina, as shown in figure 6. The marina, as proposed, would extend exactly one-third the distance between the shoreline and the island, and the shoreline and an adjacent peninsula.

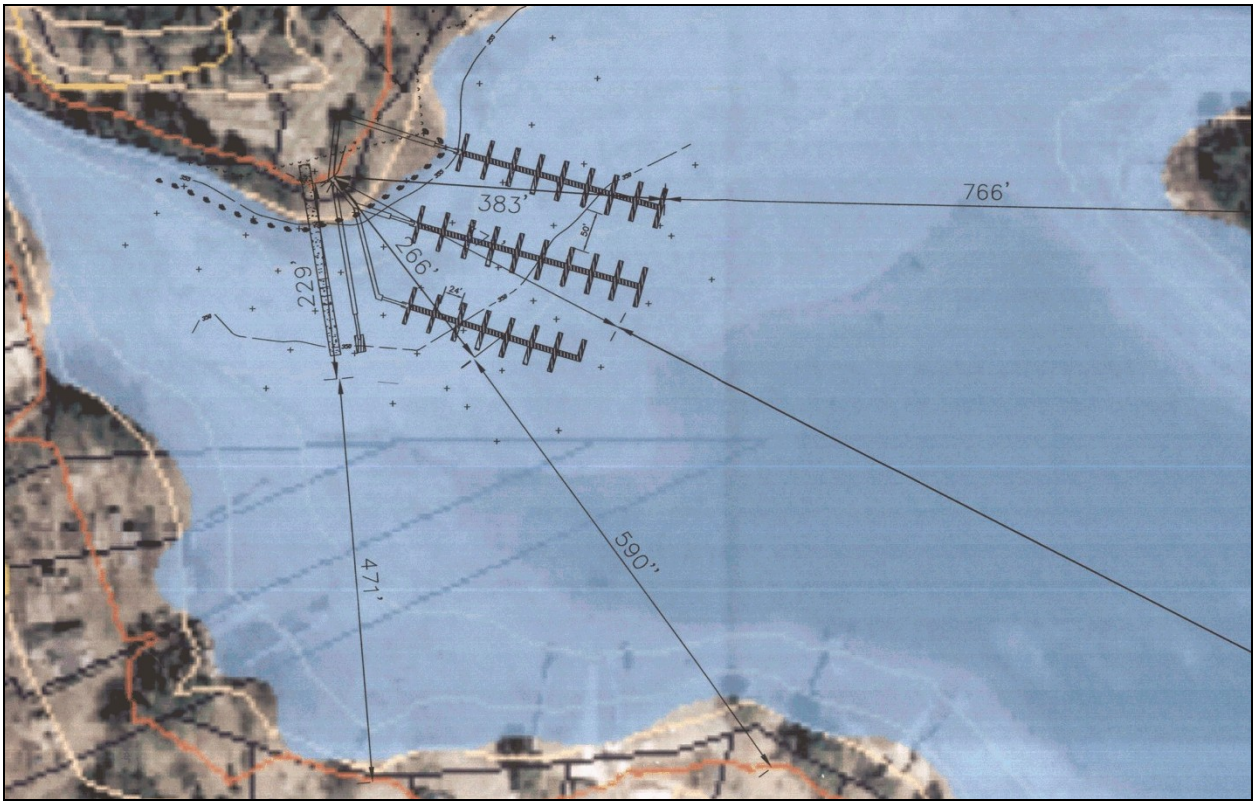

Figure 6: Location of the proposed development with distances to island and adjacent peninsula

The addition of a 100-slip boat dock and launching lane would result in a moderate increase in the number of boats using this portion of Lake Murray. The boat traffic generated by the proposed marina facilities would be dispersed geographically throughout Lake Murray and temporally throughout the day. Boats would return to the cove in an equally diffuse manner. The proposed boating facilities would have a minor adverse impact on boat congestion and public safety in the immediate area of the marina site, but would not create adverse impacts on navigational safety and boating use overall on the Lake Murray reservoir. The proposed boating facilities may have a minor impact on the visual character and scenic quality of the cove. Given the on-land development that will occur with the new subdivision, the scenic quality and visual character of that area will be changed. The visual impact of the marina compared to the visual impact of the subdivision on the aesthetics of the surrounding area will be minor.

Available Docks: One hundred docks would be available for the 100 lots proposed in the subdivision.

F. Cultural Resources

Given that no known historic properties are located within the APE, we conclude that no historic properties would be affected by this undertaking. However, there is the possibility that archaeological or historic resources could be discovered during construction of the proposed marina facilities. The USACE permit includes a condition requiring appropriate agencies to be contacted if any historic or archaeological materials are discovered during the authorized activities in order to determine if the remains warrant a recovery effort or if the site is eligible for listing in the NRHP. As a condition for approval of the application, any permit granted to LAB Investors should require that SCE&G be notified if any archaeological or historic artifacts are discovered during the permitted work. In such event, all work in the vicinity of the discovered materials should stop. The licensee would consult with the South Carolina State Historic Preservation Officer (SHPO) and any Native American tribes that may attach traditional religious or cultural values to the discovery in order to determine the steps that should be taken to evaluate the materials and to protect any resources found to be significant. The licensee would notify LAB Investors as to when, and under what conditions, the permitted work could resume.

5.2.2 No action alternative

Under the no-action alternative, the Commission would deny the licensee's application, and LAB Investors would be precluded from constructing and maintaining the proposed marina facilities.

6.0 CONCLUSION AND RECOMMENDATIONS

Commission staff has evaluated the environmental effects of the proposed action, without excavation, and no-action alternative. The information provided by Beam, Shannon & Associates on April 10, 2006, establishes that the proposed facilities are consistent with the project's approved shoreline management plan which limits the distance a dock may extend across any cove or waterway.

By letter sent May 18, 2006, Commission staff requested rationale and documentation of how the proposal meets the shoreline management plan stipulation that multi-use docks be located in areas where water depths are adequate for the proposed development without requiring excavation. The response from SCE&G, filed May 30, 2006, states that the restriction was designed to prevent construction in the back end of shallow coves. As such, the licensee says the restriction has been successful in carrying out its intended purpose, but was never intended to apply to the type of construction contemplated in the current proceeding. Further, SCE&G did not object. The May 30,

2006 letter from SCE&G states that the proposed dock would be adequate for development without requiring any excavation; the excavation would optimize the development to allow year round use.

Following review of SCE&G's application and the information that was provided in supplemental correspondence and given the fact that the proposed excavation is not consistent with the project's SMP, Commission staff recommends that SCE&G's request for authorization to issue a permit to LAB Investors for construction of a docking facility be approved. Based on the information contained in the application and supplemental correspondence, we conclude that approving the proposal to construct a docking facility, without excavation, would not constitute a major federal action significantly affecting the quality of the human environment.

We recommend that SCE&G take all reasonable precautions so that the operation and maintenance of the facilities would occur in a manner that protects the scenic, recreational, and other environmental values of the project, including provisions that LAB Investors implement all the federal, state, and local agency recommendations to the extent that they apply to the proposed facilities. Construction of the proposed facilities is not likely to affect cultural resources, however, we recommend that SCE&G include a provision that if any archeological or historic remains are discovered during construction, LAB Investors should: (1) cease all work at the site immediately; and (2) consult with the SHPO and any Tribes that might attach religious or cultural significance to the discovered materials to determine if the remains warrant a recovery effort or if the site is eligible for listing on the NRHP.

7.0 LITERATURE CITED

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