LAKE ALMA 404(c)
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RECOMMENDED 404(C) DETERMINATION TO WITHDRAW AND RESTRICT THE SPECIFICATION OR USE OF PORTIONS OF HURRICANE CREEK FLOODPLAIN AND PORTIONS OF UNNAMED TRIBUTARIES OF HURRICANE CREEK

I. SUMMARY

On July 16, 1988, EPA Region IV gave notice in the Federal Register (53 Fed. Reg. 26859) of its "Proposed 404(c) Determination to Withdraw, Deny or Restrict the Specification or Use of Portions of Hurricane Creek Floodplain and Portions of Unnamed Tributaries of Hurricane Creek." The waters of the United States subject to the proposed 404(c) action include a segment of Hurricane Creek extending 7.2 miles upstream of a point approximately 4000 feet south of Georgia Highway 32 (the planned location of the main Lake Alma dam), certain unnamed tributaries flowing into Hurricane Creek, and the wetlands lying adjacent to both the creek segment and these tributaries. The announcement also provided notice of a public hearing on the Proposed Determination which was held in Alma, Georgia on August 30, 1988. As EPA Region IV Administrator, I designated Mr. Al Smith as the hearing officer for the public hearing.

I have considered the administrative record in this case, including comments received at the public hearing and during the public comment period, from federal, state, and local agencies, the public, and affected property owners. Following my review I have determined that the filling and inundating the above-described waters including wetlands in connection with the construction of Lake Alma in Bacon County would have unacceptable adverse effects on wildlife habitat, as more fully set forth below.

Under 40 CFR Part 231.5, I, therefore, recommend that EPA withdraw specification for the Corps of Engineers issued Section 404 Permit No. 074 OYN 003752 for discharges required for construction of Lake Alma. I further recommend that EPA restrict specification or use of the above described waters of the United States, including wetlands, as a disposal site for dredged or fill material in connection with the construction of any lake and greentree reservoirs in mitigation thereof pursuant to Section 404(c) of the Clean Water Act, (CWA).

II. LEGAL AUTHORITY

Under Section 404 of the CWA (33 U.S.C. 1251 et seq), any person who proposes to discharge dredged or fill material into the waters of the United States, including wetlands, must first obtain a permit from the Secretary of the Army, acting through the Chief of Engineers. However, CWA Section 404(c) authorizes the EPA Administrator to withdraw, prohibit and/or restrict any area defined by him if he determines after notice and opportunity for public hearing that discharges of dredged or fill material there would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. EPA's procedures for implementing Section 404(c) are set forth in 40 CFR, Part 231.

Under §231.3 of the regulations, Section 404(c) proceedings begin when the Regional Administrator issues a proposed determination that a site should be prohibited, withdrawn, or restricted for use as a disposal site because of unacceptable adverse environmental effects. This proposed determination does not represent a judgment that discharge of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that the issue should be explored. The Regional Administrator then consults with the Corps, if no corrective actions are agreed upon, he issues a public notice, inviting public comments on the proposed determination. The Corps has agreed that if there is a permit application pending, such notice will serve to stay its issuance of the permit.

If there is enough interest, the Regional Administrator or his designee holds a public hearing under §231.4 to supplement the public comments. After the comment period and the hearing, if one is held, the Regional Administrator or his designee reviews the information available to him and decides whether to withdraw his proposed determination to prohibit, restrict, or withdraw a site. If he withdraws the proposed determination, he gives public notice of that step, and the matter drops (unless the Administrator decides to review). Otherwise the Regional Administrator or his designee sends a "recommended determination," and the record on which it was based, to the Administrator for a "final determination." The Administrator or his designee then reviews that material, and makes a final determination whether a discharge of dredged or fill material will result in unacceptable adverse effects warranting the prohibition or restriction of the disposal site. This determination and reasons therefore are then made public.

These regulations define "unacceptable adverse effect" in Section 231.2(e) as:

> Impact on aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the Section 404(b)(1) Guidelines (40 CFR Part 230).

The preamble to 40 CFR Part 231 explains that one of the basic functions of Section 404(c) is to police the application of the Section 404(b)(1) Guidelines. Those portions of the Guidelines relating to significant degradation of waters of the United States (40 CFR 230.10(c)), as well as consideration of cumulative impacts (40 CFR 230.11(g)), are of particular importance in the evaluation of the unacceptability of environmental impacts in this case. Section 230.10(c) of the Guidelines requires that

no discharge of dredged or filled material shall be permitted that contributes to significant degradation of waters of the United States. Section 230.10(d) requires that no discharge of dredged or fill material shall be permitted unless appropriate steps have been taken which will minimize potential adverse impacts. Within the decision-making process, Section 230.11(g) requires that the permitting authority collect, analyze, consider, and document information relevant to cumulative impacts resulting from the subject action. Thus, it is appropriate under Section 404(c) to take into account whether significant degradation of waters of the United States will occur as a result of individual and/or cumulative fill activities and whether appropriate steps have been taken to minimize adverse impacts.

The Administrator's Section 404(c) authority may be used either to veto a permit which the Corps has determined it would issue (as in the case of the mitigation application described below) or to withdraw an issued permit (as in the case of the 1981 permit for the reservoir construction noted below). Under his Section 404(c) authority, the Administrator may totally prohibit all discharges of dredged or fill material in a defined area or he may impose some partial prohibition, such as a restriction on discharges from a particular type of activity. This proposed Section 404(c) determination is limited to a prohibition on discharges resulting from lake and reservoir construction for the above mentioned sites, including withdrawal of the 1981 permit.

III. NATURE OF PROPOSED DISCHARGE (PROJECT DESCRIPTION)

As indicated above, the discharges being proposed are intended to create a recreational lake covering some 1400 acres by means of damming Hurricane Creek and thereby causing the flooding of adjacent tributary and wetland areas. In November 1981, the Corps of Engineers issued Section 404 Permit No. 074 OYN 003752 to the applicant, City of Alma/Bacon County, for discharges required for construction of an earthen dam and spillway. This permit authorized the discharge of 412,000 cubic yards of fill material into Hurricane Creek and its adjacent wetlands to create Lake Alma. The placement of fill and the resultant impoundment would have destroyed, stressed, or inundated approximately 1200 acres of floodplain wetlands and other waters.

Construction of the proposed lake was delayed, however, by a 1983 decision of the Eleventh Circuit Court of Appeals. This decision held that a Supplemental Environmental Impact Statement (SEIS) was required to evaluate the impacts of the proposed "greentree reservoirs" plan which had been developed to mitigate some of the adverse effects of lake construction (see "Project History" section below). After completion of this SEIS, the Corps of Engineers indicated its intent in May of this year to issue a second Section 404 permit to the City of Alma/Bacon County (Application No. 074 OYN 006129) authorizing

additional discharges needed to implement this mitigation plan.

This second permit would allow discharge of an additional 99,030 cubic yards of fill material for the purposes of constructing 14 earthen dams and an emergency access road. The proposed dams would create 14 greentree reservoirs (forested impoundments) with an aggregate surface area of approximately 194 acres in tributaries to Hurricane Creek. The purpose of the impoundments would be to provide partial mitigation for habitat losses that would result from impounding Hurricane Creek. The construction of these 14 greentree reservoirs would enhance approximately 137 acres of existing wetlands and create 23 acres of new wetlands, primarily to attract waterfowl. Additional habitat improvement is planned for the upland portions (714 acres) of the project site. However, 35 acres of existing wetlands would be filled or flooded by the greentree reservoirs and an additional .5 acre would be filled during construction of the emergency access road. Implementation of the mitigation plan would entail the net loss or degradation of 12.5 acres of existing wetlands.

IV. CHARACTERISTICS AND FUNCTIONS OF THE PROJECT SITE

Hurricane Creek, located in the Georgia coastal plain, is part of the Satilla River drainage system. The Creek drains a 228 square mile watershed which has been developed primarily for farming and forestry. The 1000- to 2000- foot wide floodplain is well defined but not deeply incised into the constituent sands and abundant organic matter. The main channel is often braided with three or four separate channels. Where the channel is defined it has an average width of 40 to 60 feet and a depth of 2 to 3 feet. Deeper pools retain water even during no-flow conditions. Mean daily flow in Hurricane Creek is estimated at 112 cubic feet per second (cfs); however, flows range from 0 cfs during extended droughts to peak flows of 4450 cfs (1953) or greater during storm events. The creek contains a diverse fish community (25 species) and a supporting snag and drift macroinvertebrate community.

The proposed Lake Alma site encompasses approximately 1350 acres of bottomland hardwoods, e.g., forested floodplain areas including the bay swamp community in the Hurricane Creek floodplain and branch swamp communities in the drainageways to Hurricane Creek (see Map 2). The wetlands along this 7.2 mile reach of the Creek are relatively undisturbed. As such, they provide high quality, diverse habitat for fish and wildlife, a travel corridor for upland and wetland animals, food web production for on-site and downstream biological communities, nutrient and pollutant uptake and assimilation, floodwater storage, and flow moderation. Additionally, they serve as an environment for outdoor activities including fishing, hunting, and bird watching as well as other nature-oriented activities.

The major floodplain plant communities include nearly mature bay swamp and branch swamp associations. The bay swamp community is located in the main floodplain of Hurricane Creek where soils consist primarily of alluvial deposits. The community is characterized by broadleaf evergreen and deciduous hardwood species that are adapted to periodic inundation. Overstory trees include sweetbay, loblolly bay, redbay, red maple, swamp blackgum, sweetgum, water oak, cypress, ogeechee plum, and black willow (see Attachment A).

The branch swamp communities are located in the drainageways leading to the main floodplain. They are similar in composition to the bay swamps but have a greater number of deciduous trees and shrubs and more abundant understory vegetation. Understory vegetation includes sweetpepper bush, greenbriar, honey suckle, privet, saw palmetto, and wildgrape. Pitcher plant bogs are located at the edge of the floodplain at sites where seepage from adjacent uplands occurs. The bogs contain trumpet pitcher plant and hooded pitcher plant which are classified as threatened within the State of Georgia. Adjacent to the floodplain are less diverse plant associations including sandhill, upland pine, pine plantation, and cleared or abandoned fields.

The forested wetlands which would be lost to project construction are part of an intact, functioning system that has specifically adapted to the pulsed hydrologic regime of Hurricane Creek and its tributaries. A variety of contiguous habitats are created within the floodplain by natural fluctuations in water levels including forested wetlands, braided stream channel, remnant pools, hummocks, and floodplain-upland interface. This segmentation of the environment allows the bottomland hardwoods to support aquatic, semiaquatic, and terrestrial animal communities. Vertical stratification of the forest canopy, subcanopy, and ground cover also contributes to habitat diversity. Hence, the floodplain is used by fish and wildlife as a resting, breeding, rearing, and feeding area as well as a travel corridor in an area surrounded by low quality wildlife habitat such as urban, agricultural, and pine plantation areas (see Attachments B and C).

In fact, the bulk of primary (plant) and secondary (animal) production is accomplished during the seasonal inundation of the creek swamp floodplain. Further, leaf biomass produced by the trees and shrubs provides the trophic basis for the diverse fish and wildlife communities both on the project site and downstream. The mixed hardwood tree community within the proposed project site is conducive to a diversity of wildlife because the tree species have various periods of fruition resulting in staggered mast (acorns and seeds) and fruit production. This makes food available for a variety of wildlife throughout the year. As these trees mature, their habitat value and food production will increase.

Wetlands in Hurricane Creek play a role in maintaining and/or improving water quality, as well as regulating water quantity. Pollutants from agricultural, silvicultural, and urban activities in the watershed are trapped, assimilated, or transformed within the diverse substrates and microclimates provided by the wetlands. Water temperatures in the creek and remnant pools are modulated by the shading effects of the forest canopy. Wetland trees and shrubs retard floodwaters, which are temporarily stored in the floodplain. This situation tends to decrease downstream flood stages. During drier times of the year, water stored in the spongy organic substrate of the wetlands is released, contributing to stream base flows.

As noted, creek swamps such as this gum-bay-maple assemblage are among the most productive wildlife habitats in the coastal plain. Moreover, they are becoming increasingly valuable due to the rate at which these freshwater forest communities are being lost in the Southeast through agricultural/silvicultural development, drainage projects, and impoundments. By recent estimates, over 7,300 acres of wetlands, mostly freshwater types, are being destroyed each year in the State of Georgia. Hence, the impacts of the Lake Alma Project cannot be viewed in isolation.

V. ADVERSE IMPACTS OF PERMIT ISSUANCE

Constructing the main dam, clearing the floodplain, and impounding Hurricane Creek to create an artificial lake will destroy or inundate a 1350-acre section of a productive floodplain forest and blackwater creek system. This loss represents approximately 35 percent of the total wetlands in the Bacon County portion of the Hurricane Creek watershed. Virtually all of the diverse forested habitat that now exists in the 7.2 mile reach of the floodplain will be destroyed. The proposed lake will physically eliminate all of the forest stream-pool habitat and the floodplain community which has adapted to periodic flooding. Wetlands immediately downstream from the dam would be partially dewatered by the proposed structure. Succession to more upland plant communities may eventually occur. Depending on the lake discharge regime, floodplain wetlands further downstream may be similarily affected. Reduction of detrital export will reduce overall productivity and/or alter species composition of downstream animal communities.

The dam and lake will permanently block the Hurricane Creek floodplain. Since the floodplain functions as a travel corridor for wildlife, this would disrupt animal and fish movement patterns. Animals currently living on the lake site or migrating through it will either be killed or forced into adjacent lower quality, upland habitat. There they will have to compete for available food and habitat with the present upland animal communities. This competition may result in temporary disruptions of animal communities and lowered overall population levels, thereby adversely affecting indigenous wildlife.

Although 230 acres of forested wetlands in the upstream end of the proposed reservoir and in several embayments will remain after being selectively timbered (a 75% reduction in tree stems) much of the present wetland value of this area will be destroyed or degraded especially after the remaining trees die from the effects of continuous flooding (3 to 6 foot depth). These areas then will function primarily as scrub-shrub backwater areas of the lake, subject to irregular drawdowns.

The existing forested wetlands will be replaced by a shallow recreational lake with a depth ranging from 3 to 19 feet that contains standing water habitat primarily for fish and bottom dwelling organisms. During the initial few years, the lake should be relatively productive, but thereafter lower productivity may limit its value as a sports fishery, unless the lake is intensively managed which includes significant drawdowns every seven years. These intensive management requirements may be inconsistent with other proposed uses of the lake. Moreover, it is anticipated that fish species diversity would decline and species composition change since the project would transform a stream fishery into a still water lake fishery. Approximately 180 acres at the periphery of the proposed lake may develop aquatic weed growth that should provide some habitat for aquatic and semiaquatic animals, but may limit the recreational value of the lake. However, anticipated weed control programs - - rimming, chemical applications and periodic drawdowns - - will reduce the value of this shallow water habitat.

EPA Region IV believes that the destruction of 1350 acres of relatively undisturbed bottomland hardwoods will constitute significant degradation of the waters of the United States. Forested wetlands and the valuable fish and wildlife habitat they provide have been rapidly declining in the Southeast during the last four decades. On the other hand, flatwater habitat, such as lakes, reservoirs, ponds, and mining pits, has increased. The anticipated wetlands loss represents a substantial portion of the wetlands in the Hurricane Creek watershed and is regionally significant.

While the unacceptable wildlife habitat losses serves as the primary basis of this recommended 404(c) determination, EPA Region IV has other concerns about the proposed project. These include the effects of nutrient loadings from the Hurricane Creek watershed on water quality in the proposed lake, especially during warm season, low flow periods; the effects of aquatic weed growth/die-out cycles on the water quality and the recreational value of the lake; and the effects over the long-term on downstream wetlands and stream communities from changes in flood regime and detrital export.

A mitigation plan has been developed which includes: 1) the construction of 14 small greentree reservoirs (194 acres of forested impoundments) in

drainageways adjacent to and upstream from the lake site, 2) tree plantings, and 3) a water management scheme to periodically flood and drain the reservoirs. These forested impoundments are designed primarily to enhance or create waterfowl habitat, although other wildlife will also benefit.

Construction of the greentree reservoirs and an access road would destroy or permanently flood 35 acres of existing forested wetlands in the drainage ways. Only 23 acres of new wetlands would be created. The greentree reservoirs would have to be managed regularly and, almost certainly, would require a rigorous beaver control program to keep them functioning. Mast producing trees will be planted in the greentree reservoirs to improve food supplies for wildlife. However, these benefits will not be realized fully until the trees reach maturity many years after planting.

The 194 acres of habitat which the greentree reservoirs would either create or enhance represent only a very small portion of the wildlife habitat which the project would destroy. According to a 1978 Habitat Evaluation Procedure (HEP) conducted by the U.S. Fish and Wildlife Service, only 13 percent of the wetland habitat units lost by lake construction would be replaced by the mitigation plan. Most of the other functions and values of the forested floodplain wetlands, e.g., leaf litter export and travel corridor, etc., would not be replaced and would be irreparably lost. Although 714 acres of upland habitat surrounding the reservoir would be enhanced as part of the mitigation proposal, the enhancement of uplands will not replace any wetland habitat or other wetland functional losses associated with lake construction. Based on current information/data, EPA believes that it is not possible to mitigate for the loss of a 7.2 mile long floodplain corridor and its attendant functions and values.

VI. PROJECT HISTORY AND PROCEDURAL BACKGROUND

On December 15, 1976, the Final EIS on Lake Alma construction was published. EPA rated the project unsatisfactory based on its significant environmental impacts on wetlands and water quality, and referred the project to the Council on Environmental Quality (CEQ). On June 10, 1977, the Chairman of CEQ in letters to the applicant, City of Alma/Bacon County, and to the Department of Housing and Urban Development (HUD) concurred with EPA's position that the project would result in serious environmental degradation. CEQ recommended to HUD that project funds should be reprogrammed to more environmentally acceptable projects.

On January 16, 1978, EPA Regional Administrator John White recommended that the Corps of Engineers deny a Section 404 permit for the lake project

based on its nonconformance with 404(b)(1) guidelines, EPA's wetland policy, Executive Order 11990, and the expected adverse water quality impacts. U.S. Fish and Wildlife Service (FWS) and Bureau of Outdoor Recreation also recommended denial of this permit.

In 1978, FWS initiated studies to determine the mitigation necessary to offset the habitat losses resulting from the project. The report concluded that 7426 acres of wooded swamp would have to be managed intensively to compensate for these losses. Since this was considered impractical, FWS prepared a mitigation plan to mitigate some of the habitat losses. Based on the applicant's acceptance of this proposed plan, the FWS withdrew its objections to permit issuance in November, 1978. On November 15, 1979, CEQ reviewed the proposed mitigation plan and found it provided inadequate compensation. It then reaffirmed its earlier determination regarding the environmental unacceptability of the Lake Alma Project.

On August 8, 1980, EPA Assistant Administator E.C. Beck requested review of the Savannah District Engineer's favorable permit decision by the Assistant Secretary of the Army under the MOA per Section 404(q). However, on October 9, 1981, EPA Administrator Ann Gorsuch in a response to a letter from Assistant Secretary of the Army William Gianelli withdrew EPA's objections to permit issuance. Accordingly, on November 10, 1981, the Corps issued Army Permit No. 074 OYN 003752 for the construction of the dam for Lake Alma. The permit stipulated the development of mitigation based on the FWS Plan.

On December 19, 1983, the Eleventh Circuit Court of Appeals determined that a Supplemental EIS would be required to evaluate the impacts of the mitigation plan prior to the Corps 404 permit action required for construction of the greentree reservoirs. The court also enjoined lake construction pending completion of the Supplemental EIS.

In January and April 1986, EPA Region IV recommended that the Corps evaluate the impacts of the entire (lake/mitigation plan) project in the Supplemental EIS. Region IV also stated its intent to consider the total project in the reviewing process. On April 4, 1986, Regional Administrator Jack E. Ravan recommended denial of the Section 404 permit for the mitigation project as part of the unacceptability of the overall project. In January and November 1987, Region IV's comment letters on the Supplemental EIS reaffirmed a position opposing the project, and stated that if the Corps decided to issue the Section 404 permit then EPA would seriously consider 404(c) action.

On March 25, 1988, Regional Administrator Greer C. Tidwell met with representatives from the State of Georgia Department of Natural Resources, the Corps, and FWS to discuss EPA's objections to the project. Regional

Administrator Tidwell also met with representatives from the City of Alma and Bacon County on May 9, 1988, to tour the project site.

After receiving the Corps May 27, 1988, letter stating the Savannah District Engineer's intent to issue a Section 404 permit for the Lake Alma mitigation, Regional Administrator Tidwell notified the Savannah District Engineer, the City of Alma, and Bacon County, on June 8 that he would initiate Sections 404(c) proceedings covering the entire project site unless it was demonstrated to him within 15 days that no unacceptable adverse effects would be caused by the project. After considering a June 15, 1988 letter from the Savannah District Engineer, Colonel Ralph V. Locurcio, restating the Corps' position that construction of Lake Alma would serve the public interest, the Regional Administrator initiated the proposed Section 404(c) action.

On June 28, 1988, Regional Administrator Greer C. Tidwell, in his response to Savannah District Engineer Colonel Ralph V. Locurcio, restated the Region IV position that such extensive loss of bottomland hardwood wetlands and their associated functions constitutes significant degradation of the waters of the United States under 40 CFR 230.10(c). Consequently, the Region had decided to proceed with the Section 404(c) action as outlined in the June 8, 1988 letter.

On July 15, 1988, EPA Region IV published in the Federal Register (53 Fed. Reg. 26859) a Proposed 404(c) Determination to Withdraw, Deny, or Restrict the Specification or Use of Portions of Hurricane Creek Floodplain and Portions of Unnamed Tributaries of Hurricane Creek and Announcement of a Public Hearing to be held in Alma, Bacon County, Georgia on August 30, 1988.

On July 15, 1988, Region IV sent by certified mail copies of the proposed 404(c) determination and public hearing announcement to the Savannah Corps District, the City of Alma, and the Bacon County Board of Commissioners. Copies were also sent to Georgia Department of Natural Resources and other affected agencies and parties. The applicant and affected property owners acknowledged receipt of the proposed 404(c) determination/public hearing announcement. As required in 40 CFR Part 231.3(d)(1) and (2), a copy of the notice of the proposed 404(c) determination/public hearing announcement was published in the Alma Times on July 21, 1988 and in the Savannah News on July 21, 1988 newspapers. In addition, copies of notice of the proposed determination/public hearing announcement were mailed to involved federal, state and local agencies, to interested local and state-wide conservation groups, and to other interested parties.

On August 30, 1988 Region IV held a public hearing in Alma, Georgia to solicit information and viewpoints on the proposed 404(c) action. Numerous speakers, including Alma-Bacon County public officials, GA DNR, USFWS, affected property owners, environmental groups, and other interested parties, were provided a forum in which to express their views.

A complete transcript of the public hearing proceedings is contained in Attachment E. However, a short summary of the concerns voiced by the 46 speakers is provided here. Of the 46 speakers, 22 opposed the 404(c) action and favored the construction of Lake Alma. Comments from these speakers included: the overwhelming need for the lake for recreation because of the lack of a large lake in the area and the need for the lake to further economic development; the lake would be a preferrable habitat and fishery than the existing wetlands; lack of understanding why EPA could oppose something supported by Corps and GDNR; and the inconsistency of EPA actions on other projects. Speakers against the lake raised concerns which included: the importance of the existing wetlands for hunting and fishing; the significance and cumulative impacts of such large bottomland hardwood losses; the value of a shallow lake for recreation and economic development; industry was being lost or not attracted for a multitude of other reasons; the area had numerous lakes and rivers nearby with a 1000 + acre lake within the SE quadrant and coastal areas a short drive away; and that the cost of construction and on-going maintenance would actually be a financial drain on the community, as was the case at several other lakes in the region, with a resultant tax burden.

EPA Region IV received a large number of written comments in response to the Region's proposed 404(c) determination during the public comment period both before and after the public hearing. Region IV received a total of 2242 letters and 3438 signatures in petitions in support of the proposed Regional action while 155 letters and 3583 petition forms were received opposing the proposed Regional action. Because of the large number of responses received, the concerns expressed and the Region's responses have been grouped. See Attachments D2-D5 for a response to the substantive comments. (The letters and petitions have been enclosed as part of the administrative record.)

The following briefly summarizes some of the concerns expressed in the letters. Concerns of those favoring the lake included: the need for the lake for recreation and fishing; the importance of the lake for attracting industry; the difficulty in accessing the existing wetlands and their lack of use; the ample wetlands in the region; why is EPA opposing something that the majority want; and the lake will be a better habitat than the creek. Those in opposition to the construction of the lake expressed concerns which included: the importance of these wetlands and thus the significance of their loss; the significant cumulative losses being experienced and the support for strong EPA action to protect wetlands; first-hand fishing and hunting experiences

in the wetlands; questioned the anticipated economic benefits of the lake, and it may become a local burden; questioned flat water recreational needs since opportunities were plentiful and many nearby lakes get sparse usage; loss of industries may be due to other reasons; and that the community has been divided by this issue too long and there is the need to pursue more positive objectives.

At the request of the attorneys representing the applicant, Alma-Bacon County, Region IV granted a six day extension of the public comment period until the close of business on September 19, 1988 (53 Fed. Reg. 36636). The extension was granted to afford every opportunity for adequate comment on a project with a voluminous record.

On September 16, 1988, Georgia DNR submitted a lengthy comment letter with technical enclosures which supplemented its statement made at the public hearing. The letter restates DNR's strong support for the lake and documents their rationale for preferring this lake over the existing wetlands. Many of its arguments revolve around the greater fishery potential of the lake and the consistency of this project with other DNR programs. Attachment D2 contains the DNR letter and Region IV's responses to its comments.

On September 19, 1988, the applicant through its Attorney submitted comments regarding the proposed 404(c) action on Lake Alma. Attachment D1 contains the letter and Region IV's response. The applicant contends that EPA cannot address the original permit decision because of the Circuit Court ruling in National Wildlife Federation v. Marsh and because of EPA policy and precedent. The applicant further claims that EPA's administrative record lacks sufficient information to meet the legal standard to use 404(c) to withdraw specification for the 1981 permit and to restrict specification for construction of the lake and GTRS. The Region, however, disagrees with these contentions. EPA believes that its authority to review the permit issuance is not limited by the Circuit Court decision, that it has acted in a manner consistent with its policy in reviewing the permit and that the record provides ample evidence of unacceptable adverse impacts on wildlife habitat to warrant use of Section 404(c) in this case.

VII. RECOMMENDED DETERMINATION

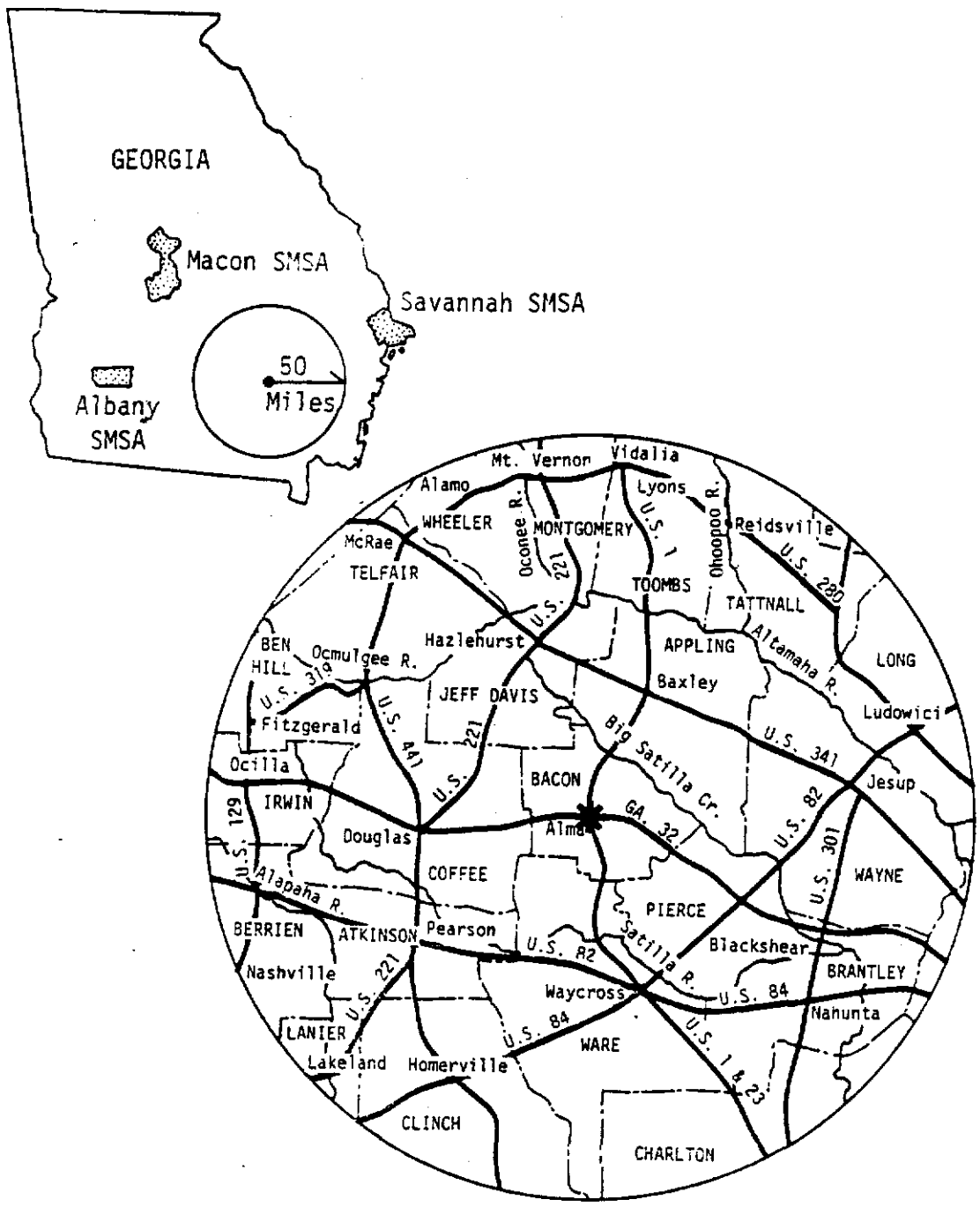
Section 404(c) authorizes different limitations on discharges which EPA may reflect through its actions on disposal site specifications. Where the facts warrant it, I may recommend that any defined area be withdrawn from specifications as a disposal site pursuant to Sections 404(a) and (b). If I should determine that the discharge of certain materials will have significantly less damaging effects than others, or that limiting discharges by amount, method and/or location will reduce the likelihood of unacceptable adverse effects, I may recommend that the use of specified site merely be restricted in some manner and/or that only a portion of the area under consideration be made the "defined area" subject to prohibition on specification.

After consideration of the entire record in this case I have determined that filling and inundating the subject waters, including wetlands, will have an unacceptable adverse effect on wildlife habitat.

Therefore, I am recommending that action be taken by EPA under Section 404(c) of the Clean Water Act (CWA) to withdraw specification for the Corps of Engineers issued Section 404 Permit No. 074 OYN 003752 for discharges required for construction of Lake Alma. I am further recommending that EPA restrict specification or use of these above described waters of the United States, including wetlands, as a disposal site for dredged or fill material in connection with the construction of any lake and greentree reservoirs in mitigation thereof.

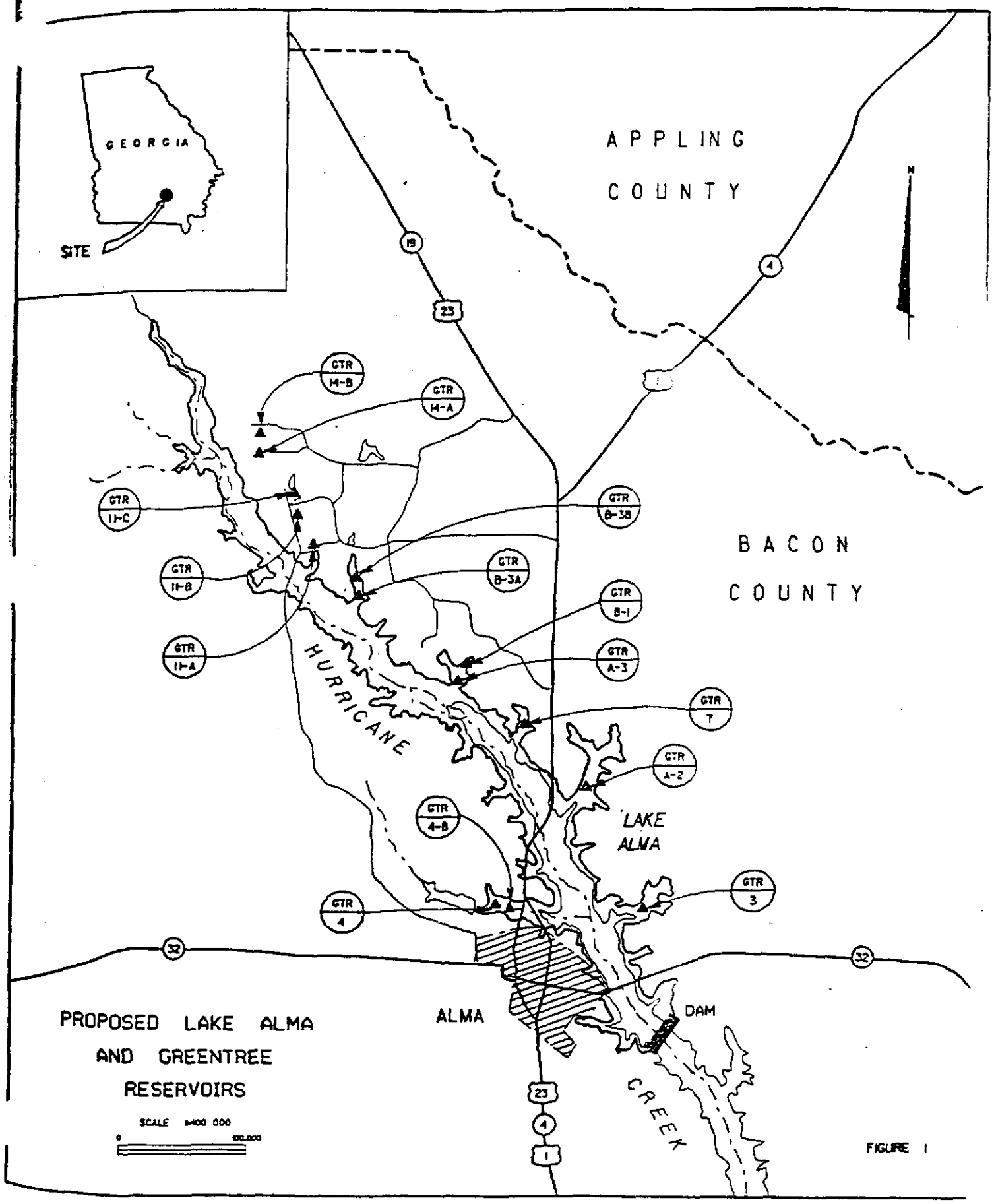
Greer C. Tidwell
Regional Administrator

10/5/88
DATE



Source: Gulf South Research Institute.

Figure I-I PROJECT LOCATION, PROPOSED LAKE ALMA


GEORGIA
SITE
APPLING
COUNTY
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19
23
4
1
GTR 14-B
GTR 14-A
GTR 11-C
GTR 11-B
GTR 11-A
GTR 8-3B
GTR 8-3A
GTR 8-1
GTR A-3
GTR 7
GTR A-2
GTR 4-B
GTR 4
GTR 3
HURRICANE
LAKE
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BACON
COUNTY
32
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CREEK
PROPOSED LAKE ALMA
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SCALE 1:400 000
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100,000

FIGURE 1