



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

JAN 03 2001

REPLY TO
ATTENTION OF

Mr. Kenneth L. Smith
Acting Assistant Secretary for Fish
and Wildlife and Parks
MS 3156 - MIB
Department of the Interior
Washington, D. C. 20240-0002

Dear Mr. Smith:

This is in further response to your letter dated December 8, 1999, which requested review of the proposed decision by the Army Corps of Engineers Mobile District (District) to issue a Department of the Army permit to the Baldwin County Electric Membership Cooperative. The permit would authorize the installation of four 5-inch utility conduits beneath Terry Cove between Walker Avenue in Orange Beach and Robinson Island, in Baldwin County, Alabama.

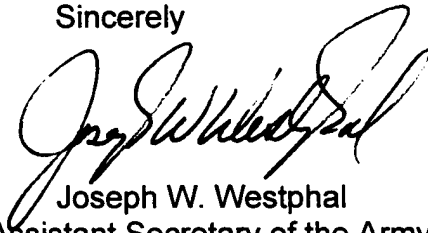
On January 7, 2000, I concurred with your request, made pursuant to Part IV of the Memorandum of Agreement (MOA) between the Army and the Department of the Interior (DOI). In my response, I concurred that aquatic resources in and surrounding Robinson Island are aquatic resources of national importance. I also agreed that the proposed permit, as well as a recently issued permit to Mr. Frank A. Hughes authorizing, piers, dredging, and rip rap, in support of a proposed residential development, raised important national issues regarding the scope of analysis, as well as the consideration of secondary and cumulative impacts. Further, I agreed that additional information was required concerning the determination of the least environmentally damaging, practicable alternative. For these reasons both the proposed permit, as well as the previously issued permit to Mr. Hughes, were forwarded to Corps Headquarters (HQUSACE) for additional review of the policy and environmental impact implications of the entire project.

Pursuant to our Section 404(q) MOA, the Corps has completed its review of the administrative records for the aforementioned permit applications and discussed its review and findings with my staff. First, we agree that the NEPA scope of analysis should be expanded and that the secondary and cumulative impacts of the entire island development to the bird rookery in the center of the island and the adjoining marine waters should be evaluated. We believe that these impacts, resulting from the construction of the residential subdivision, would not occur but for the installation of utilities and dredging and docking facilities which induce home construction. Therefore,

we believe it is appropriate in this case for the Corps to consider reorienting and/or reducing the number of homes in the proposed residential subdivision, to address those impacts. Second, while we do not agree that the District necessarily piecemealed (from a NEPA perspective) its decisions regarding the Baldwin County EMC and Hughes permits, we do agree that the permit applications should be processed/evaluated on the same timetable, rendering the permit decisions concurrently. Third, while we agree with FWS that Robinson Island provides habitat for migrating Neotropical birds, we do not agree that it is particularly unique or important to these species as the aforementioned breeding habitat is to waterbirds. We note that reorientation and/or reduction of the residential subdivision would benefit Neotropical birds as well as the waterbirds. We believe the District did a good job addressing the direct effects of the project concerning long term degradation of aquatic habitats on and adjacent to the island.

Again, we believe that this elevation request reflects the complexity and considerable effort required for the evaluation of permit applications, especially with regard to the proper establishment of the scope of analysis. We appreciate the opportunity to provide additional guidance for the field on this difficult issue. Attached, please find a copy of the Corps analysis and findings document, as well as the memorandum to the District. If you have additional questions or comments concerning this case, please contact me or Mr. Chip Smith, Assistant for Environment and Regulatory Affairs, at (703) 693-3655.

Sincerely

A handwritten signature in black ink, appearing to read "Joseph W. Westphal". The signature is fluid and cursive, with a large initial "J" and "W".

Joseph W. Westphal
Assistant Secretary of the Army
(Civil Works)