

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Duke Power

Project No. 2232-475

ORDER APPROVING NON-PROJECT USE
OF PROJECT LANDS AND WATERS

(Issued February 21, 2006)

1. On September 14, 2004, Duke Power, licensee for the Catawba-Wateree Hydroelectric Project No. 2232, filed an application requesting Commission authorization to lease 0.491 acres of project lands to Black Forest on Lake James, LLC (Black Forest) for the construction of a private residential/commercial marina on Lake James, in McDowell County, North Carolina. The proposed marina, which consists of a cluster dock with 14 boat slips and a canoe launch, would be used by non-waterfront owners in the Black Forest subdivision, a residential development along the shoreline of Lake James. Black Forest also would place riprap along approximately 515 feet of shoreline in the area of the marina to control erosion and sediment.

2. On October 25, 2004, the Lake James Environmental Association (Association) filed a timely motion to intervene, opposing Black Forest's proposal. On October 28, 2004, the U.S. Department of the Interior (Interior) filed a late motion to intervene, which has been granted.¹ Interior raises general concerns, as discussed below, but does not oppose the proposed marina. This order addresses the intervenors' concerns and approves Duke Power's request with certain conditions.

Background

3. Lake James, one of eleven reservoirs of the 294.72-megawatt Catawba-Wateree Project, has a surface area of about 6,577 acres and 151.5 miles of shoreline. The reservoir's full pond elevation is 1,200 feet mean sea level, which is also the established

¹ See unpublished notice of September 16, 2005.

project boundary.² The Black Forest development, a single-family residential subdivision, consists of 56 lots on approximately 600 acres and includes approximately 7 miles of shoreline.

4. Article 39 of the license for the Catawba-Wateree Project authorizes the licensee to grant permission for certain types of non-project use and occupancy of project lands and waters without prior Commission approval.³ Because the marina facilities proposed by Black Forest are not within the scope of uses set forth in Article 39, they can only be permitted if the Commission approves an application to allow the facilities and uses in question.

5. Duke Power's consideration of requests for permission to use its project shoreline and waters is guided by its shoreline management plan (SMP), which was first approved in 1996,⁴ revised in 1998 to include shoreline management classification maps,⁵ and updated in 2001.⁶ The SMP is intended to assist Duke Power in managing the use and development of the project's shoreline.⁷

6. Under the SMP, the entire shoreline is classified according to various existing and future use categories, which are indicated on the SMP classification maps. The maps classify the shoreline where the proposed marina is to be located as future

² The project boundary for the Catawba-Wateree Project is generally located at the normal high water elevation contour at each of the eleven project reservoirs. 20 FPC 360, 365-67 (1958). For this reason, project lands consist of those lands that lie under the project waters at all times and those lands that lie between the reservoirs' high water marks and minimum pool levels. 67 FERC ¶ 61,061 at 61,170 (1994).

³ See 24 FERC ¶ 61,346 (1983) (order adding the Commission's standard land use article and approving the licensee's requests to lease project lands and waters for private marinas and other shoreline development).

⁴ 74 FERC ¶ 62,047.

⁵ The Commission approved the classification maps in 2000. 93 FERC ¶ 62,159.

⁶ The Commission approved the updated (and current) SMP in 2003. 105 FERC ¶ 62,027. The updated SMP supercedes the earlier SMP. *Id.* at P 2.

⁷ 105 FERC ¶ 62,027.

commercial/non-residential. Under this classification, commercial marina facilities such as the one proposed here are permitted.⁸

Description Of The Proposal

7. Black Forest proposes to stabilize approximately 515 feet of project shoreline using riprap⁹ and to construct a dock and canoe launch within a 280-foot-wide cove on Lake James. The riprap would be placed from one foot above to four feet below full pond level in the vicinity of the marina to control erosion and sediment along the shoreline.

8. The proposed docking facilities would extend approximately 63 feet out from the shoreline and consist of a cluster dock with 14 boat slips, each measuring 20 feet long and 10 feet wide. These facilities would occupy 0.435 acres of submerged project lands. The proposed canoe launch would consist of a stationary dock that is 12 feet square, with a 4-foot-wide ramp leading to a floating dock that is 6 feet wide by 30 feet long. The canoe launch is expected to occupy 0.056 acres of submerged project lands.

9. The proposal will require no dredging. Once constructed, the marina would provide the non-waterfront residents of the Black Forest development with access to Lake James.

10. The Commission issued public notice of Duke Power's application on September 23, 2004. In response, Interior and the Association filed motions to intervene.¹⁰

11. Interior expresses general concerns regarding the potential impacts of the proposed facilities on endangered species and on aquatic communities, especially the lake's recreational fishery resources. It is also concerned that the marina may have potential cumulative impacts on water quality and fish and wildlife habitats.

⁸ See Duke Power's SMP, Volume I at 23 (classification matrix chart of suitable future shoreline uses), filed July 30, 2001.

⁹ Riprap is a permanent, erosion-resistant gravel cover of large, loose, angular stone with filter fabric or granular underlining.

¹⁰ Interior and the Association also filed motions to intervene in Project No. 2232-476, another proceeding regarding marina facilities on Lake James. The pleadings are identical to those filed in this proceeding.

12. The Association opposes the marina, arguing that we should prohibit this non-project use of project lands because it does not benefit the general public and could damage threatened or endangered species. In addition, the Association raises concerns regarding boating safety and asks that we consider approval of any marinas at Lake James in the context of the upcoming relicensing proceeding for the project.

13. The Commission's staff prepared an environmental assessment (EA) analyzing the potential impacts of placing the riprap and constructing and using the proposed marina. The EA, which is attached to this order, addresses the intervenors' comments and recommends approval of Black Forest's proposal.

Discussion

A. Commission Authorization of Non-Project Uses

14. The Association contends that "non-project use of project lands should be allowed only under extreme circumstances," and moreover that this proposal is not in the public interest because the marina would not be public and thus would solely benefit private interests.¹¹

15. We review proposals for authorization of non-project uses of project lands and waters pursuant to the Federal Power Act's comprehensive development standard, as

¹¹ The Association also argues that non-waterfront residents should not be allowed to have boat docks on the lake. The Association points out that waterfront residences must have 75 feet of water frontage in order to have a dock, and that an exception to this requirement should not be made for non-waterfront residences. However, the SMP guidelines, which were developed with extensive public input and approved by the Commission after public notice and comment, allow for both kinds of non-project uses. *See Duke Power*, 105 FERC ¶ 62,027 (2003) (order modifying and approving revised shoreline management plan).

In a related argument, the Association objects to residential developments around the lake providing access to the waterfront (and related marinas), contending that the sole purpose is to raise the value of the non-waterfront lots. However, residential developments like Black Forest are not within our jurisdiction. They occur outside the project boundary on non-project lands and are thus subject to local zoning requirements.

informed by the SMP,¹² relevant license terms, public and agency comments, and the EA.¹³ While public access to project lands and waters for recreation is an important project purpose, it is appropriate for us to authorize licensees to permit private recreation facilities where, as here, there is no dispute that the public has sufficient access to recreation at a project¹⁴ and where the private facilities do not unduly interfere with any other project purposes.¹⁵

B. Threatened and Endangered Species and Fishery Resources

16. Interior expresses general concerns regarding the potential impacts of the proposed facilities on endangered species and on aquatic communities, especially the lake's recreational fishery resources. The Association argues that the marina could damage threatened or endangered species. Neither intervenor specifies any species of concern.

17. As explained in the EA, the federally listed threatened American bald eagle and two terrestrial plant species, the endangered Schweinitz's sunflower and the threatened dwarf-flowered heartleaf, occur in the Catawba-Wateree Project area. However, neither the bald eagle nor the two plants are found in the area of the proposed marina.¹⁶ Moreover, the proposal would result in very little damage to or clearing of vegetation, and the areas that would be disturbed are located below or slightly above the high water mark, which is not typical habitat for these terrestrial plant species.¹⁷ Therefore, the

¹² The primary goals of the SMP are to: (1) provide for public and private access without destruction of the project's natural resources or without compromising the project's primary function, which is the production of electricity; and (2) ensure that the existing and future public recreational needs of the project are addressed.

¹³ See *Duke Energy Corporation*, 109 FERC ¶ 61,016 at P 8 (2004).

¹⁴ See EA Section 6.5 for a description of public recreation access at Lake James.

¹⁵ See *Duke Energy Corporation*, 111 FERC ¶ 61,197 at P 13 (2005).

¹⁶ EA Section 6.4.

¹⁷ *Id.*.

proposed facilities are not expected to have an impact on federally listed threatened or endangered species.¹⁸

18. With respect to fishery resources, construction of the proposed dock and boat launch will temporarily affect some shallow fish habitat, but overall, the proposed marina would have only minor adverse impacts on fish and wildlife and their habitat.¹⁹ Under the proposal, any large woody debris, which is critical to aquatic habitats, would not be disturbed; the facilities would be constructed off-site and floated into place; and no dredging would occur. In addition, while construction of the proposed facilities would cause a temporary disturbance in some shallow water fish habitat, the applicant would plant vegetation under the dock that would provide complex aquatic life habitat.²⁰

C. Cumulative Impacts

19. Interior states, without elaboration, that the marina may have potential cumulative impacts on water quality and fish and wildlife habitats.

20. The EA evaluates the potential cumulative impacts associated with the proposal and concludes that the minor effects of the proposed marina on water quality and fish and wildlife habitats would incrementally add to the cumulative environmental impacts of other shoreline development activities at the project.²¹ Over time, continued shoreline development will result in cumulative fish habitat loss and degradation.²²

¹⁸ *See id.*. We reject the Association's request that we have the U.S. Environmental Protection Agency (EPA) conduct an environmental impact study of, among other things, the potential impacts that the proposed marina may have on threatened and endangered species in the Lake James area. Requiring the EPA to take an action is beyond the Commission's authority. In any event, staff's EA adequately considers these issues, and there is no need for further analysis.

¹⁹ EA Sections 6.2-6.3.

²⁰ *See* EA Section 6.2.

²¹ EA Section 7.0.

²² The increasing alteration of the shoreline and vegetation cover (including trees, shrubs, and herbaceous plants) is associated with increases in sedimentation and turbidity. In addition, loss of vegetation along the water's edge will reduce the habitat of wildlife species that depend on it.

21. However, the licensee's SMP is designed to take cumulative development factors into account and to consider the project's environmental resources and the developmental demands at the project reservoirs in a comprehensive manner.²³ The mitigation measures included in the SMP, combined with other local, state, and federal regulations and permitting requirements that Black Forest must meet, will help to minimize any cumulative effects resulting from the construction of the proposed marina.

D. Boating Density and Public Safety

22. The Association contends that with the increased shoreline development on Lake James in the past few years, significant increases in boat traffic density are imminent and that the related risks of public safety and public health are not being adequately considered.²⁴

23. While these facilities will contribute to an increase in water-related recreation activities on the lake and create additional boating traffic, Lake James is significantly less developed than some of the other larger project reservoirs, such as Lake Norman and

²³ For example, the SMP assigns shoreline segments to various use classifications in order to restrict development in certain areas with environmentally important or sensitive resources and to permit development in other areas that are more appropriate for intensive use.

²⁴ The Association also contends that a new boat traffic density study is needed to properly consider the application in the context of present and future shoreline development, and asks that we consider the proposal in the context of the relicensing proceeding for the project, which is due to commence this year. We deny the requests. There is no evidence to suggest that the information in Duke Power's SMP (last submitted in 2001) is out of date or inaccurate. Furthermore, Duke Power states that it uses the most recent data available, including digital aerial photography, to guide decisions regarding all types of access within the project boundary and to ensure that the SMP is a factually-based document that can be used by the licensee and the Commission for reviewing requests for use of the project and its resources. *See* Duke Power's 2001 revised SMP (filed July 30, 2001), Volume I at 3.

Wylie and Wateree Lakes.²⁵ Given the size and capacity of the proposed dock and canoe launch, these facilities should have an insignificant effect on boating traffic and safety.²⁶

E. Other Matters

24. The Commission's staff has not identified within the area of the proposed facilities any known cultural or archaeological sites that are listed or eligible for listing on the National Register of Historic Places. The Commission's staff sent letters initiating consultation with the SHPO and Indian Tribes regarding properties that may be affected by the proposed activities, but neither provided a response. To ensure protection of unknown cultural and archaeological resources that may be discovered during construction of the marina, we are requiring Duke Power to include in the lease a condition that, if such materials are discovered during construction, the lessee must halt construction and Duke Power must immediately consult with the SHPO and the appropriate Tribes.

Conclusion

25. We conclude that construction and operation of the proposed docks, as conditioned below, will not constitute a major federal action significantly affecting the quality of the human environment, will not interfere with licensed project purposes and the statutory standards by which we regulate hydroelectric projects, and will be consistent with the public interest. Accordingly, we approve Duke Power's application to permit the proposed use of project lands and waters.

The Commission orders:

(A) Duke Power's application for authorization to permit non-project use of project lands and waters, filed on September 14, 2004, is approved, as modified below.

(B) The licensee shall include the following condition in its lease issued to the Black Forest on Lake James, LLC., as approved in Ordering Paragraph (A) above:

²⁵ EA Section 5.7.

²⁶ As previously noted, the cove is 280 feet wide and the proposed dock would extend only 64 feet out from the shore. In addition, the boat slips are sized to accommodate relatively small boats that can be easily maneuvered in and out of the dock, and the developer will install reflective devices on the dock to ensure visibility and user safety. EA Section 6.5.

Upon discovery of any previously unidentified archaeological or historic properties during construction of the marina facilities covered by the lease, the lessee shall immediately stop all land-disturbing and land-clearing activities and contact Duke Power, the North Carolina State Historic Preservation Officer (SHPO), and any Native American tribes/groups that may have an interest in the discovery.

(C) 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 (2005).

By the Commission.

(S E A L)

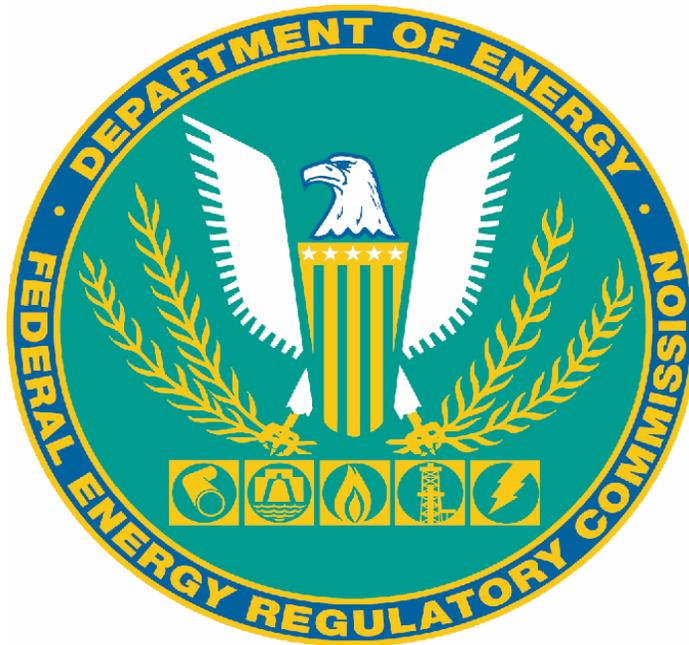
Magalie R. Salas,
Secretary.

Environmental Assessment

Application for Non-Project Use of Project Lands and Waters

Duke Power, Division of Duke Energy Corporation
McDowell County, North Carolina

Catawba-Wateree Hydroelectric Project
FERC No. 2232-475



Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Administration and Compliance
888 First Street, N.E.
Washington, D.C. 20426

February 2006

Environmental Assessment
Federal Energy Regulatory Commission
Office Of Energy Projects
Division Of Hydropower Administration And Compliance

Project Name: Catawba-Wateree Project

FERC No.: 2232-475

1.0 Application

Application type: Non-Project Use of Project Lands and Waters
Date Filed: September 14, 2004
Licensee: Duke Power
Water body: Lake James
County and State: McDowell County, North Carolina

Purpose and Need for Action

Duke Power (licensee), a division of Duke Energy Corporation and licensee for the Catawba-Wateree Hydroelectric Project, filed an application to grant a lease to Black Forest on Lake James Properties, LLC (applicant), of 0.491 acres of project lands for the purpose of constructing a commercial/residential marina and a canoe launch on Lake James. The docking facility would consist of one cluster dock with 14 boat slips, and would occupy 0.435 acres of project lands. The canoe launch would consist of a stationary dock with a wide ramp leading to a floating dock, and would occupy 0.056 acres of project lands. Additionally, the applicant proposes to install 515 feet of riprap. No requests for dredging or vegetation clearing were included in the application. The proposed facilities would provide access to Lake James for the residents of Black Forest development, located in McDowell County, North Carolina. No changes in project operations are expected to result from the proposed construction.

This EA considers the environmental effects of the proposal.

2.0 Proposed Action And Alternatives

2.1 Description of the Proposed Action

The licensee proposes to allow the applicant to construct one cluster dock with 14 boat slips and a canoe launch for use by non-waterfront property owners in the Black Forest development. These facilities would occupy a total of 0.491 acres of project lands.

The proposed cluster dock would have 14 slips, each measuring 20 feet long by 10 feet wide. The dock fingers would be 20 feet long by 3 feet wide, and consist of a steel frame and treated wood deck. The main walk would be 4 feet wide. The dock would be constructed off-site and floated into place during periods of low recreation usage. The floats used would consist of plastic cells properly sized to support dead and live loads.²⁷ The total length of the docks, fingers, and floats would not exceed 64 feet. After the facility is constructed, reflective devices would be installed on the dock. Approximately 0.435 acres is expected to be required for the cluster dock.

The proposed canoe launch consists of a stationary dock with a wide ramp leading to a floating dock. The stationary dock would measure 12 feet by 12 feet, the ramp would be 4 feet wide, and the floating dock would measure 6 feet by 30 feet. Additionally, 515 linear feet of riprap would be installed in the area of the canoe launch and boat dock. The riprap would be placed from one foot above to four feet below full pond level. Approximately 0.056 acres is expected to be required for the canoe launch.

The Black Forest development is a restricted, single-family residential subdivision with 56 lots located on Lake James. Individual lots range in size from 3 acres to over 21 acres. This development is situated on approximately 600 acres and includes approximately 37,202 linear feet of shoreline. Residents living in this development are prohibited from removing plants larger than 2 inches in an established 75-foot buffer/setback. No mechanical clearing is permitted.

2.2 Action Alternatives

No alternative actions have been identified.

2.3 No-Action Alternative

Under the no-action alternative the Commission would deny the licensee's application. The applicant would be precluded from constructing the proposed docking and canoe launch facilities.

²⁷ As specified in the North Carolina Building Code. The floats would be anchored with self-driving steel piles.

3.0 Catawba-Wateree Project Description And Operation

3.1 Catawba-Wateree Project

The Federal Energy Regulatory Commission (Commission) issued a license for the Catawba-Wateree Hydroelectric Project, FERC No. 2232, to Duke Power on September 17, 1958.²⁸ The project includes a series of 13 hydroelectric developments and 11 reservoirs on the Catawba River in North Carolina and the Catawba and Wateree rivers in South Carolina. (See Figure 1) The developments and reservoirs occupy lands in 14 counties in two states, spreading over approximately a 200-mile reach of river.

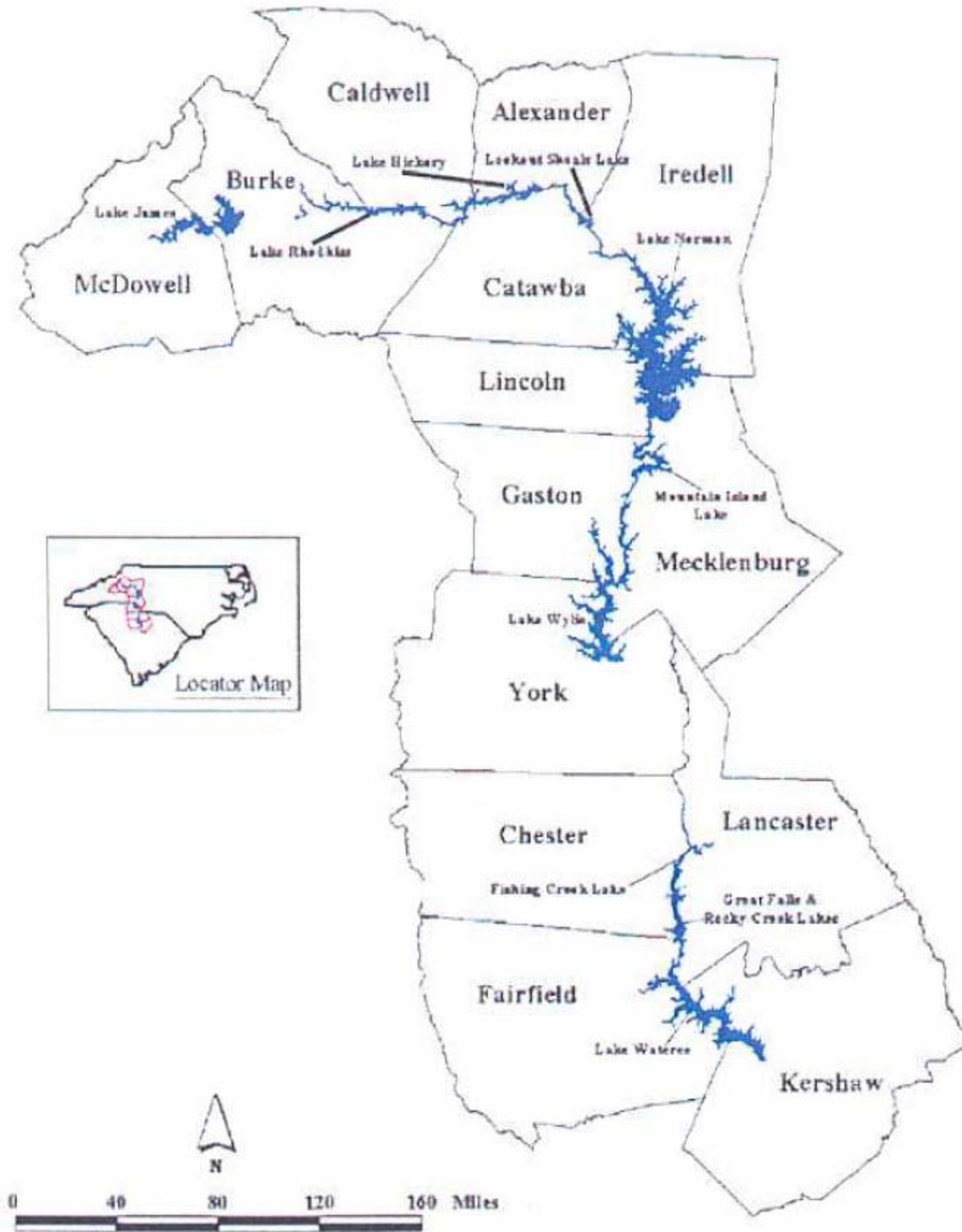
The hydropower developments were constructed between 1905 and 1925, except for the Lake Norman Development which was completed in 1963. Several of the reservoirs are near the metropolitan areas of Charlotte, North Carolina and Columbia, South Carolina. The project boundary established in the license is generally the normal high water elevation contour at each of the 11 reservoirs.

3.2 Development and Reservoir

The Lake James Reservoir (also referred to as the Bridgewater Development) is the northernmost reservoir in the Catawba-Wateree system. Lake James has a surface area of about 6,577 acres and 151.5 shoreline miles at a full pond elevation of 1,200 feet mean sea level (MSL), which is also the established project boundary.

²⁸ 20 FPC 360-373 (1958).

Figure 1: Catawba-Wateree Project Reservoirs



Source: Volume 1 of Duke Power's Final Shoreline Management Plan Update Filed July 30, 2001.

4.0 Consultation And Comments

4.1 Comments Received by the Applicant

On February 25, 2004, the licensee contacted the following federal, state, and county agencies to request consultation, comments, and recommendations on the proposed plan: 1) McDowell County Building Inspectors (MCBI); 2) McDowell County Health Department (MCHD); 3) North Carolina Department of Cultural Resources, Division of Archives and History (State Historic Preservation Officer, SHPO); 4) North Carolina Department of Environment and Natural Resources (NCDENR), Division of Parks and Recreation (DPR); 5) NCDENR, Public Water Supply Section (PWSS); 6) North Carolina Wildlife Resources Commission (NCWRC); 7) U.S. Army Corps of Engineers (ACE); and 8) U.S. Fish and Wildlife Services (FWS). The licensee also sent a letter requesting consultation to the NCDENR, Department of Water Quality (DWQ), on March 9, 2004. The following agencies responded with comments:

Table 1: Agency Comments Received by the Applicant

<u>Agency</u>	<u>Date Filed</u>	<u>Response Type</u>
NCDENR—DPR	March 9, 2004	No objections
NCDENR—DWQ	March 15, 2004	Conditional approval
NCWRC	March 25, 2004	Conditional approval
NCDENR—PWSS	April 1, 2004	No objections
SHPO	April 2, 2004	No comment
MCBI	April 21, 2004	Comments
ACE	June 23, 2004	General Permit Verification

The NCDENR—DPR and NCDENR—PWSS both stated that they had no objections to the project as proposed. The SHPO replied that it had no comment concerning the project. The licensee sent two letters requesting consultation to both the MCHD and to the FWS. Neither agency replied.

The MCBI informed the licensee that county building permits are only required for stationary structures located on the ground, and therefore, all floating docks, boats, and bridges from the shoreline bank to a floating apparatus are exempt from this permit requirement. The MCBI did state that any and all electrical installations are required to have permits and inspections. The licensee responded to the MCBI in a letter dated July 12, 2004, in which it asserted that should it chose to provide electricity to the proposed docks, it will comply with any county electrical permitting requirements.

On March 15, 2004, the NCDENR—DWQ responded to the licensee's letter by approving a 401 Water Quality Certification and Authorization Certificate with Additional Conditions. In its letter the NCDERN—DWQ stated that the licensee had its

approval, in accordance with those conditions added by the NCDERN—DWQ. The required conditions are as follows:

- *Diffuse Flow*—An additional condition is that all storm water shall be directed as diffuse flow at non-erosive velocities through the protected stream buffers and will not re-concentrate before discharging into the stream as identified within 15A NCAAC 2B .0234(5); and
- *Certificate of Completion*—Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant is required to return the attached certificate of completion to the 401/Wetlands Unit, North Carolina Division of Water Quality, 1650 Mail Services Center, Raleigh, NC, 27699-1650.

The licensee issued a letter to the NCDERN—DWQ, dated August 3, 2004, stating it would comply with the aforementioned conditions.

The NCWRC provided the licensee with comments and recommendations concerning the proposed boat slips, canoe launch, and shoreline stabilization. After receiving the licensee's request for consultation, the NCWRC visited the project site on March 19, 2004. During the visit, the NCWRC noticed that some of the boat slips had already been constructed.²⁹ In order to preserve large woody debris in the water as an important fishery resource, the NCWRC recommends that the riprap be restricted to the immediate vicinity of the boat slip and canoe launch areas. The NCWRC stated that they approved of the cove location, and would concur with the issuance of a 401 Water Quality Certification if the following conditions are met by the licensee:

1. If practicable, the work should be completed from the water to avoid buffer disturbance and in the dry while the lake is drawn down.
2. Only areas that are actively eroding should be stabilized.
3. Adequate sedimentation and erosion control measures must be implemented as needed prior to any ground-disturbing activities to minimize impacts to aquatic resources. Temporary or permanent herbaceous vegetation should be planted on all bare soil within 15 days of ground disturbing activities to provide long-term erosion control measures.

²⁹ This facility is a common use facility, as permitted under the project's Shoreline Management Plan. (E-mail from Mr. Joe Hall to Commission staff dated June 6, 2005).

4. Excavation of soils from the lakebed is not authorized under this permit. Excavation should be limited to the area in proximity of the actively eroding shoreline for the explicit purpose of placement and anchoring of the rock into the substrate. This permit does not authorize disturbance of the shoreline or the lakebed outside of the stabilization limits for access or staging of materials.
5. Any large woody debris should remain or be replaced and secured to the shoreline at the completion of the project. Stumps, rocks or woody debris within the lakebed should not be disturbed or removed.
6. Filter fabric should be installed behind and under the rock to minimize sedimentation of the soils into the lake.
7. The rock should be clean and free of sediment and other contaminants.
8. The spaces between the rocks should not be filled with concrete or other types of grout, but should be left open to allow colonization with native plants and to provide habitat for fish and wildlife. Uncured concrete is toxic to fish and other aquatic life and is not authorized by this permit.
9. If temporary access across the riparian buffer is granted, the vegetation should be cut off at the ground and the roots left intact to sprout or the area should be replanted with appropriate native vegetation to provide long-term shoreline stability and riparian habitat.
10. The rock stabilization or wall should extend only as high as necessary to stabilize the bank but no higher than a few inches above the high water mark. If a stacked wall is used, the rock should be set slightly lake-ward to minimize disturbance of vegetation on the bank. Voids around trees with exposed roots should be backfilled with soil prior to installing filter cloth and rock. Areas along the shoreline without woody vegetation should be planted with native trees (e.g., hemlock, tulip poplar, and sycamore) and shrubs (e.g., silky dogwood, rhododendron, mountain laurel, or dog hobble) to provide shoreline cover.
11. The applicant should install suitable trees and brush under the fixed portion of the piers to provide complex aquatic life habitat. These should be constructed and perpetually maintained (for the life of the pier) in a manner as to be "Fish-Friendly."

Pursuant to the NCDENR—DWQ's, approval of a 401 Water Quality Certification, the ACE issued a General Permit Authorization to the licensee on June 23, 2004. This permit allows for 515 linear feet of impacts on Lake James associated with the installation of riprap for bank stabilization and the construction of the marina and

canoe launch. Work in the lake within the 25-foot “trout buffer” is prohibited from October 15 through April 16. The permit contains general terms and conditions, as well as other restrictions specific to bank stabilization:

1. No material is placed in excess of the minimum needed for erosion protection.
2. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plan of the ordinary high water mark or the high tide line.
3. No material is placed in any special aquatic site, including wetlands.
4. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area.
5. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas).
6. The activity is part of a single and complete project.

The applicant included a memo in the application stating that it would comply with all recommendations, requirements, and conditions from federal, state, and local agencies pertaining to the proposed construction.

4.2 Comments Received by the Commission

On September 23, 2004, the Commission issued a Public Notice for the proposed activities. The Commission requested all comments, motions to intervene, and protests be filed within 21 days of the issuance of the notice. In addition, on September 22, 2004, the Commission issued a letter requesting consultation to the Eastern Band of Cherokee Indians, Catawba Indian Tribe, Catawba Indian Nation, and the North Carolina State Historic Preservation Officer (SHPO).

Pursuant to the Public Notice and the letter requesting consultation, the Commission received responses from the Board of Directors of the Lake James Environmental Association (Association), and the Department of the Interior (DOI).

Table 2: Comments Received by the Commission

<u>Agency</u>	<u>Date Filed</u>	<u>Response Type</u>
Association	October 25, 2004	Motion to Intervene
DOI	October 28, 2004	Motion to Intervene

In its motion to intervene, the Association stated that the project licensee is “practicing ‘key-holing’ for boat slips in the sole interest of increasing off-water land/lot values,” and argued that non-project use of project lands should only be permitted under extreme circumstances. The Association asserted that the narrow character of Lake James and its associated coves “restricts and concentrates elevated marina activities to unsafe levels.” The Association stated that an imminent increase in boating traffic due to increased shoreline development along the lake would directly impact public safety and health. In the filing, the Association recommended that a new boat traffic density study be performed by an objective third party, and that an environmental impact study assessing the risk of increased development to endangered and threatened species³⁰ be conducted by the Environmental Protection Agency. The filing concludes by stating that any further cluster dock applications requiring FERC approval should be directly tied to the project relicensing process.

In the DOI’s motion to intervene, the DOI stated that it was concerned about the potential impacts of the proposed expanded commercial activities on Lake James. The DOI asserted that the potential adverse affects on the project area’s diverse aquatic communities, endangered species,³¹ and warm-water fisheries resources needed to be evaluated. In addition, the DOI noted the potential impact of cumulative effects associated with water quality and fish and wildlife habitat may incrementally add to the cumulative environmental impacts of other shoreline development activities.

5.0 Affected Environment

5.1 General Area Description

The Catawba-Wateree Project spans over 200 river miles and transects 9 counties in North Carolina and 5 counties in South Carolina. The Catawba River Basin and the Catawba-Wateree Project area are dominated by forested land and agricultural areas. Remaining terrestrial areas are a mixture of rural transportation corridors and minor development. The area is moderately developed and recreationally attractive.

The Catawba River Basin has a total drainage area of approximately 4,749 square miles. The river arises from the eastern slope of the Blue Ridge Mountains in the Pisgah National Forest, and flows east and south to Lake Wylie, which straddles the North

³⁰ No specific threatened or endangered species were identified in the Association’s motion to intervene.

³¹ No specific threatened or endangered species were identified in the DOI’s motion to intervene.

Carolina-South Carolina state line. Below Lake Wylie, the Catawba River flows through Lake Wateree and becomes the Wateree River. The Wateree River joins the Congaree River in central South Carolina, and the Congaree eventually flows to the Santee River and into the Atlantic Ocean.

The Lake James Reservoir is the northernmost reservoir in the Catawba-Wateree system. Lake James has a surface area of about 6,577 acres and 151.5 shoreline miles, at full pond elevation of 1,200 feet MSL.³² The project's approved Shoreline Management Plan³³ (SMP) addresses the allowable uses of Lake James' 151.5 shoreline miles. Table 3 summarizes the shoreline classification for Lake James (Duke Power 2001).

Table 3: Shoreline Classification for Lake James

Shoreline Classification	Shoreline Miles	Percent of Total
Commercial/Non-Residential	1.6	1.1
Commercial/Residential	4.4	2.9
Residential	12.5	8.3
Business Industrial	0.0	0.0
Public Recreational	0.7	0.0
Public Infrastructure	0.7	0.0
Project Operations	2.3	1.5
Future Commercial/Non-Residential	60.8	40.1
Future Commercial/Residential	4.0	2.6
Future Residential	15.8	10.4
Future Public Recreational	10.0	6.6
Impact Minimization Zones	9.5	6.3
Impact Minimization Zone (Dev)	0.2	0.0
Environmental Area	20.8	13.7
Natural Area	8.1	5.3
Total	151.5 miles	100.0%

5.2 Geology and Soils

The headwaters of the Catawba-Wateree River basin originate in the Blue Ridge Physiographic Province, which quickly transitions toward the southeast into the Piedmont Plateau Physiographic Province. The rocks are generally granites and gneisses which

³² The established project boundary.

³³ As revised on October 15, 2003.

once formed the basement of the Appalachian highlands. This area has the highest peaks of the Appalachian highlands. Other rock types found in the southern portion of the Blue Ridge Province include thick sedimentary rocks, including siltstones, sandstones, and conglomerates. Many of these sedimentary rocks have been metamorphosed, but to a lesser degree than is found in the Piedmont Plateau.

Shorelines of the reservoirs within the Catawba-Wateree system are seasonally exposed as water levels are lowered to accommodate anticipated seasonal runoff or to provide additional power generation. During certain periods shorelines may be experiencing erosion because of wave action on exposed sediments or soils.

5.3 Water Quality

Water quality in the Catawba River Basin, especially in its forested upper reaches above the Catawba-Wateree Project, is generally good. Water quality within the project varies from reservoir to reservoir, depending upon factors such as reservoir configuration, water retention time, and nutrient input (FERC 1996). The average stream flow in Lake James is 499 cubic feet per second (cfs) and the tributary area encompasses 380 square miles (FERC 1996). The Catawba-Wateree Project reservoirs are managed for hydropower generation and minimum flow release requirements. Water levels typically fluctuate 2 to 3 feet daily, but may be as high as 10 feet throughout the year. Water levels are lowered in the fall and winter to accommodate runoff. During the summer, these water levels are relatively high and stable for recreation (FERC 2003).

5.4 Aquatic Resources and Fisheries

Approximately 13% of Lake James' 151.5 miles³⁴ of shoreline is classified as "environmental." This designation includes vegetated areas or cove heads with stream confluences protected from development. In addition, 5% is classified as "natural area," indicating areas containing shallow waters, significant cultural resources, or significant terrestrial habitat. Development is not allowed in such areas within the project boundary (Duke Power 2001; FERC 2003).

The principal sport fishes in most of the project reservoirs are warmwater species, including largemouth bass, crappie, bluegill, other sunfishes, and catfishes. These species frequent shoreline areas with standing timber, submerged woody debris, aquatic vegetation, or other cover. Spawning occurs in spring and early summer over nests constructed in shallow-water habitats, often in areas sheltered by undercut banks, fallen timber, and other overhead cover (Duke Power 2001; FERC 2003).

³⁴ 6,577 surface acres.

Lake James, by virtue of the Linville River and other high quality cool water tributaries, also supports introduced populations of smallmouth bass (*Micropterus dolomieu*) and walleye (*Stizostedion vitreum*) (Goodreau 1995). Lake James is the deepest project reservoir with a mean depth of 46 feet and a maximum depth of 118 feet (NCDEM 1995). Smallmouth bass spawn in late spring over nests constructed in or near shore habitats. Walleye spawn in early spring by releasing eggs in riffles of tributary streams or over rocky shorelines.

5.5 Terrestrial and Wildlife Resources

Forest vegetation at the project ranges from broadleaf deciduous-dominated systems of the Blue Ridge Mountains in the upper reaches of the watershed, to a wide mixture of pine or oak dominated forests in the Piedmont province in the lower portions of the Catawba-Wateree basin. Much of the forest land in the Piedmont province is managed for pines and has been developed into monocultures. The sites proposed for construction are described as rural, residential, wooded areas with hilly topographies.³⁵

The principal terrestrial wildlife species in the project area include white-tailed deer, Eastern cottontail, and Eastern gray squirrel. Upland game birds that may be present may include bobwhite, American woodcock, and mourning dove. Great blue heron and other birds associated with aquatic habitats are also found in the project area. A diversity of non-game terrestrial species, including songbirds and many species of amphibians and reptiles occur in the area. Areas where tributaries meet the project reservoirs may have wetland characteristics and serve as feeding areas for waterfowl and shorebirds, and as habitat for other species. Project reservoir shorelines provide foraging, nesting, and habitat sites for terrestrial wildlife and migratory birds.

5.6 Threatened and Endangered Species

The federally-listed endangered Schweinitz's sunflower and the federally-listed threatened dwarf-flowered heartleaf and American bald eagle, occur within the Catawba-Wateree Project area.

The Schweinitz's sunflower's habitat is in clearings and edges of upland oak-pine-hickory woods, in moist to dry sandy loams. It requires the full to partial sunlight of an open habitat.³⁶ The dwarf-flowered heartleaf is found in the upper piedmont regions of

³⁵ U.S. Army Corps of Engineers permit application, enclosed in a letter, dated July 12, 2004, from the applicant to the USACE.

³⁶ NatureServe 2003.

the Carolinas. This plant grows in acidic, sandy loam soils along bluffs and nearby slopes, in boggy areas adjacent to creekheads and streams, and along the slopes of hillsides and ravines.³⁷ The bald eagle prefers to breed in areas close to bodies of water, such as lakes and reservoirs, and typically roosts in larger conifers and perches in deciduous and conifer trees.³⁸ Bald eagles tend to avoid areas with nearby human activity (such as boat traffic and pedestrians) and development.

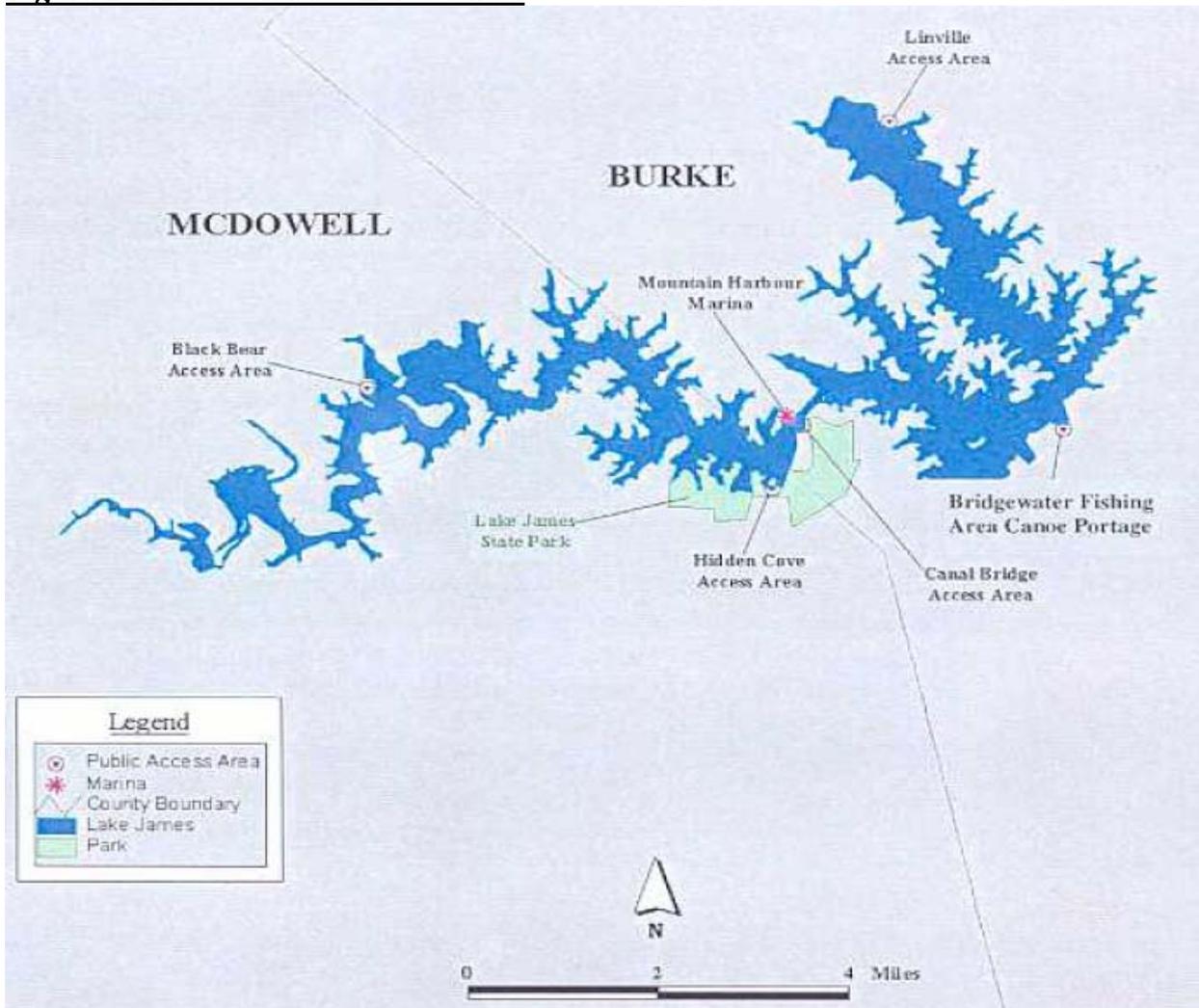
5.7 Recreation, Public Access, and Aesthetic Resources

There are 5 developed licensee-owned public recreation access locations (2 leased to the North Carolina Department of Parks and Recreation) on Lake James and 1 state park, as seen in Figure 2. In addition, there are 4 commercial non-residential marinas that provide additional public access to the lake. According to the Form 80 Licensed Hydropower Development Recreation Report (FERC Form 80) filed with the Commission on March 28, 2003, the boat ramps, launching lanes, and marinas are used at a 70-75% capacity. The licensee provides the general public with 403.6 acres of access areas, which include 32,139 feet of project shoreline. Facilities include 13 public boat ramps, 6 loading piers, 1 fishing pier, and parking for 23 cars and 345 vehicles/trailers. In addition, there are 4 commercial marinas and approximately 285 private piers on the lake. The lake is significantly less developed than some of the other, larger reservoirs within the project, such as Lake Norman upstream and the Wylie and Wateree lakes downstream (Duke Power 2001; FERC 2003).

Boating activities on the lake are generally heavier on the weekends and holidays between May and August. Boating traffic at Lake James consists of powerboats, jet skis, pontoons, fishing boats, limited sailing boats, and water skis. Boating traffic lightens between September and April, during which time more fishing boats appear than general cruising boats. The closest public access site for Black Forest residents is the Black Bear Access Area, which is adjacent to the development.

³⁷ U.S. Fish and Wildlife Service. Division of Endangered Species: Species Accounts. <http://endangered.fws.gov/i/q/saq5g.htm>. Accessed on May 23, 2005.

³⁸ NatureServe. InfoNutro: Birds, Mammals, and Amphibians. <http://www.nutraserve.org/infonutra/>. Accessed on May 23, 2005.

Figure 2: Access Sites at Lake James

Source: Final Shoreline Management Plan Update; filed July 30, 2001.

5.8 Cultural Resources

The Commission, the Advisory Council on Historic Preservation, and the North and South Carolina Historic Preservation officers (SHPOs) developed a Programmatic Agreement (PA) outlining the operating procedures for cultural resource management and protection under the SMP. Under this PA, and in an effort to identify and evaluate historic properties within the Catawba-Wataree Project, the licensee developed a database of all known historic properties previously identified in South and North Carolina survey files located in the immediate vicinity of the project boundary. The licensee also developed a schedule and implementation plan to conduct archaeological surveys of areas within the project boundary determined to have a probability for the presence of archaeological resources (Duke Power, 1997).

The Catawba-Wateree Project area has not been systematically surveyed for historical or archeological resources yet. Although no known structures or prehistoric resources listed or potentially eligible for inclusion in the National Register of Historic Places (NRHP)³⁹ occur at the location of the proposed cluster dock and canoe launch, the potential exists for unknown historical and archaeological resources to occur in the project area.

6.0 Environmental Impacts

6.1 Water Quantity

Undisturbed stretches of shoreline are important in filtering non-point source runoff, minimizing shoreline erosion, and providing shoreline cover.⁵ The proposed construction would affect the ability of the shoreline to perform these functions on 0.491 acres of project shoreline.

The NCDENR—DWQ permit includes a condition that all stormwater shall be directed as diffuse flow at non-erosive velocities through protected stream buffers and will not re-concentrate before discharging into the stream. Only a minimal area will be cleared for the cluster dock.

Riprap will only be installed in the immediate vicinity of the boat slip, canoe launch site, and in areas that are actively eroding. The riprap will consist of clean, sediment-free rocks and will help control any erosion caused by the proposed activities. A filter fabric will be installed behind and under the rocks to minimize sedimentation of the soils into the lake.

The proposed construction would have a short term impact on the water quality of Lake James. The licensee does not propose any dredging activities, and stated that the cluster dock and canoe launch facilities will be constructed off-site and floated into place. Only minor increases in turbidity and total suspended solids will result from the proposed activities. Water quality conditions in the area of the proposed cluster dock and canoe launch will return to normal levels after construction has been completed. The installed riprap will provide protection against long-term erosion at these sites.

³⁹ National Park Service. National Register of Historic Places: National Register Information System. <http://www.cr.nps.gov/nr/research/nris.htm>.

6.2 Fish Resources

Shorelines are important in filtering non-point source runoff, minimizing shoreline erosion, providing shoreline cover, and contributing woody debris to aquatic habitats.⁴⁰ Undisturbed stretches of shoreline contribute to woody debris, which are important for aquatic habitat. The application states that no large woody debris should be disturbed. In addition, the amount of riprap installed shall be minimized in order to reduce any disturbance to the project shoreline.

The licensee's Water Quality Certificate includes a requirement for the licensee to install suitable trees and brush under the fixed portion of the piers to provide complex aquatic life habitat. The proposed cluster docks should be constructed and perpetually maintained (for the life of the pier) in a manner as to be "fish friendly." Under this certificate the licensee is also required to implement adequate sedimentation and erosion control measures prior to any ground-disturbing activities, in order to minimize impacts to aquatic resources.

Construction of the proposed dock and canoe launch would cause a temporary disturbance in some shallow water fish habitat. Fish spawning, rearing, and nursery habitats will be impacted. In areas where riprap is installed, disturbance to shoreline cover, rooted plants, and overhanging vegetation may reduce the availability of shade and cover and increase the potential for shoreline erosion and sedimentation. The applicant states that no large woody debris would be disturbed. If there is any disturbance to shoreline habitat and other woody debris along the 515 foot of shoreline that would be rip-rapped, the required 75-foot shoreline buffer should retain much of the area's habitat value. No work in the water that is within the 25-foot "trout buffer" will be permitted between October 15 and April 16. Also, in an effort to resolve all matters regarding woody debris and shallow water fish, and as part of the SMP for the Catawba-Wateree Project, the state agencies and licensee have entered into a Memorandum of Agreement Concerning Habitat Enhancement and Woody Debris Management. As part of this agreement, a Habitat Enhancement Program will be established to enhance fish and wildlife habitat at the project reservoirs.

The licensee has agreed to comply with all proposed conditions, recommendations, and requirements pertaining to the proposed construction.

⁴⁰ U.S. Department of the Interior, U.S. Fish and Wildlife Service. Letter dated February 8, 2005, from USFWS to the Commission concerning Order Modifying and Approving Non-Project Use of Project Lands and Waters and Notice of Environmental Assessment, P-2232-455.

6.3 Terrestrial and Wildlife Resources

The proposed construction will result in a loss of shoreline habitat. Wildlife species that utilize edge habitat, such as raccoons, muskrats, salamanders, and beavers will be directly impacted. Black Forest has a 75-foot buffer/set-back covenant in place, to which all residents are subject. Only plants under 2 inches may be removed from this zone. Mechanical clearing is not permitted.

No vegetative clearing is proposed to construct the dock and canoe launch. However, some vegetation may be removed or otherwise damaged as a result of the proposed construction activities. The licensee's 401 Water Quality Certificate requires the licensee to plant native trees and shrubs in areas along the shoreline without woody vegetation to provide shoreline cover, and contribute to woody debris accumulation.

According to a permit application submitted by the applicant to the ACE, no wetlands or riparian buffer zones are expected to be impacted.⁴¹

6.4 Threatened and Endangered Species

The following federally-listed threatened and endangered species are known or are likely to occur within the project vicinity: 1) American bald eagle (*Haliaeetus leucocephalus*); 2) Schweinitz's sunflower (*Helianthus schweinitzii*); and 3) dwarf-flowered heartleaf (*Hexastylis naniflora*). The Schweinitz's sunflower occurs within the project area in a rocky area of a bypass channel below one of the project's spillways. The licensee sent the FWS two letters requesting consultation via certified mail. No responses were received.

There would only be minimal vegetation clearing during the construction of the facilities. The areas proposed to be disturbed are located below or slightly above the high water mark and are not considered appropriate habitat areas for the dwarf-flowered heartleaf and Schweinitz's sunflower. No bald eagles were identified in the proposed construction areas. Therefore, no federally-listed threatened or endangered species are expected to be impacted.

6.5 Land Use, Recreation, Public Access, and Aesthetic Resources

The construction of the proposed cluster dock and canoe launch will increase water-related recreational opportunities for residents of the Black Forest community by

⁴¹ U.S. Army Corps of Engineers permit application, enclosed in a letter, dated July 12, 2004, from the applicant to the USACE.

improving their access to Lake James. These facilities will contribute to an increase in water-related recreation activities on the lake, and create additional boating traffic. However, given the size and capacity of the proposed dock and canoe launch, it is not likely that these facilities will cause a material increase in boating traffic or significantly impact boating safety.

The total width of the cove is 280 feet, and the application shows the dock extending 64 feet into the cove.⁴² The slips are sized to accommodate relatively small boats that are easily maneuvered approaching and leaving the dock. Therefore, the proposed facility is not expected to impede boating traffic. Additionally, reflective devices will be installed on docks after construction is complete to increase the safety of project patrons. The licensee does not propose to install any lighting on the docks.

The dock and canoe launch will not produce additional access for the general public. Lake James currently provides recreationalists with 403.6 acres of public access facilities, which includes 32,139 feet of shoreline. There are a total of 6 developed public access areas at the lake, 5 of which are licensee-owned. In addition, the licensee has developed an Access Area Improvement Initiative (AAII), one of the programs included in the SMP. The AAII gives local counties the opportunity to purchase low-cost project land for the purpose of creating public access areas, before the land is available to the general public for sale. The SMP has set aside 10.0 shoreline miles at Lake James (6.0% of the lake's total shoreline miles) for future public recreation. The proposed construction is consistent with the project's SMP.

Although the cluster dock and canoe launch will change the rural character of the project, these types of recreation and access facilities are typical of other developments on Lake James. The Black Forest community is a low-density development consisting of 610 acres divided into 56 lots, and a total of 37,202 feet of shoreline. Only 42 of the development's lots are located on the water-front. Therefore, the addition of the cluster dock facility will satisfy the docking needs of the community, while leaving the shoreline relatively natural.

6.6 Soils

Temporary, minor, short-term impacts on soil resources are likely to occur during the installation of the cluster dock and the canoe launch. The dock will be constructed off-site and floated into place in order to minimize potential increases in sedimentation and erosion. The licensee's Water Quality Certificate requires filter fabric to be installed

⁴² See Application for Non-Project Use of Project Lands, Drawing entitled, "Typical Dock Dimensions."

under the riprap to minimize the sedimentation of soils into the lake. In addition, all rocks used to construct the riprap will be clean and free of sediment. By adhering to the licensee's SMP, those permitting requirements, suggestions, and conditions submitted by state and federal agencies, potential impacts from sedimentation and erosion will be minimal.

6.7 Cultural Resources

Unearthing archaeological artifacts or disturbing historically significant areas during any construction is a possibility and is considered a potential adverse impact. However, the Commission has determined that no acreage containing identified cultural properties listed on the NRHP, or eligible for listing, is included in the proposed construction area. Therefore, no adverse effects to any known historic properties within the proposed area are expected.⁴³ The licensee sent a letter to the SHPO requesting consultation on this matter, and the SHPO responded that it had no comment. An additional request for comments was sent to the SHPO by the Commission, but no response was received.

The Commission issued a letter requesting consultation to the appropriate members of the Eastern Band of Cherokee Indians, the Catawba Indian Nation, Catawba Indian Tribe, and the North Carolina SHPO on September 22, 2004. No responses were received.

The licensee should state in the applicant's lease that if any historic or archeological remains are discovered during construction, all further construction activities will be halted, and the SHPO and those Indian Tribes that may attach a religious or cultural significance to the area in which the discovery was made, and/or to the discovered materials, will be contacted. The materials should then be assessed to determine if a recovery effort is warranted, and/or if they may be eligible for listing on the NRHP.

6.8 Socioeconomic

The construction of the proposed facilities will have a beneficial effect on the socioeconomic conditions within the project region. The presence of boat docks and a canoe launch may increase the real estate value of the houses within the Black Forest development. Residents of Black Forest will contribute to the expansion of the local

⁴³ National Register of Historic Places: National Register Information System. National Park Service. <http://www.cr.nps.gov/nr/research/nris.htm>.

economy and taxbase. Additional revenues may also be generated for businesses and associated services that cater to these homeowners.

6.9 No-Action Alternative

Under the no-action alternative, the licensee would be denied Commission authority to lease the project lands to the applicant. This alternative would prevent the environmental impacts stated above in this section of the EA.

If the no-action alternative is selected, some residents of the Black Forest community would be denied convenient lake access afforded by the proposed cluster dock and canoe launch, and would likely utilize other public access sites at the lake. The real estate value of the homes in the Black Forest residential community may decrease or may not increase at the rate of other residential communities on the lake, due to the lack of lake access.

7.0 Cumulative Impacts

According to the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act, an action may cause cumulative impacts on the environment if its impacts overlap in space and/or time with the impacts of other past, present, or reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions.

In the DOI's motion to intervene, the DOI cited concerns with potential cumulative effects associated with water quality, and fish and wildlife habitats. These effects could incrementally add to the cumulative environmental impacts of other shoreline development activities. The licensee's SMP was designed to take such cumulative development factors into account. The SMP is a working document that assumed future construction would follow current development trends when it was submitted in 2001. The document comprehensively addresses the issue of cumulative shoreline development impacts. Specifically, it assigns shoreline segments to various use classifications in order to restrict development in certain areas with environmentally important or sensitive resources, and to permit development in other areas that are more appropriate for intensive use (FERC 2004).

Unavoidable impacts resulting from continued shoreline development include incremental, cumulative fish habitat loss and degradation. The increasing alteration of the shoreline and vegetation cover (including trees, shrubs, and herbaceous plants) is associated with increases in sedimentation and turbidity. In addition, the loss of perimeter vegetation reduces habitat of wildlife species that depend on edge habitat.

Local shoreline development trends indicate that residential and commercial developments within the project boundary will continue to increase. In light of the growing number of non-project use developments, state and local buffers identified in the project's SMP are implemented to help maintain the scenic quality of the area, among other things. These buffers restrict shoreline development and required natural or vegetated areas. The project's SMP identifies valuable habitats and has placed restrictions on development.⁴⁴

The licensee's application did not include any requests for dredging or vegetation clearing. The proposed dock will be constructed in a manner at to be "fish friendly" and floated into place to reduce potential sedimentation and turbidity. Riprap and filter fabric will be installed to curb shoreline erosion.

Although the proposed facilities are relatively small in size and capacity, they are still a contributing factor to the growing number of non-project use of project lands and waters at the Catawba-Wateree Project. This shift towards development continues to transform the lake's primarily rural nature into a more residential landscape. The relatively minor adverse impacts to project resources stated above in this EA will compound as increasing numbers of developments are constructed at the lake. However, the Black Forest community is considered a low density development. With a total of 610 acres, 56 lots, and 37,202 acres of shoreline, the addition of the 14-slip cluster dock and canoe launch will leave the project shoreline relatively natural.

The project's SMP aims to accommodate the various and sometimes conflicting expectations of people, businesses, natural resource agencies, and environmental groups by allowing controlled and measured development along the shoreline. The SMP also comprehensively addresses the issue of cumulative shoreline development impacts. Specifically, the SMP assigns shoreline segments to various use classifications in order to restrict development in certain areas with environmentally important and sensitive resources, and to permit development in other areas that are more appropriate to intensive use. Therefore, the proposed construction is not outside of the scope of the SMP.

Mitigation measures included in the SMP, combined with other local, state, and federal regulations and permit conditions, will help to minimize the adverse effects resulting from the construction of the proposed docks. These measures include: 1) maintaining a vegetative buffer along the shoreline; 2) complying with the resource-protection conditions of all the required permits; 3) constructing a clustered, multi-slip

⁴⁴ FERC. Final Environmental Assessment: Amendment to License—Revised Shoreline Management Plan (P-2232-428).

facility instead of individual docks; 4) not disturbing woody debris;⁴⁵ and 5) installing fish-friendly docks.

The revised SMP has been developed for over 10 years with the input of local, state, and federal agencies, private and non-governmental entities, and the general public. The Commission has issued 3 EAs during various stages of the SMP, and numerous EAs for site-specific development proposals. Each revision of the SMP continues to refine and balance the needs of competing interest parties. The project license is due to expire in 2008. During the upcoming relicensing process, project shoreline resources, among other issues, will again require reconsideration.⁴⁶

8.0 Recommendations

If any historic or archeological remains are discovered during construction it is recommended that: 1) all work at the site cease immediately; and 2) the SHPO and any Indian tribes that might attach religious or cultural significance to the discovered materials be consulted to determine if the remains warrant a recovery effort or if the site is eligible for listing on the NRHP.

9.0 Conclusion And Finding Of No Significant Impact

This Environmental Assessment, for the Catawba-Wateree Hydroelectric Project, was prepared pursuant to the National Environmental Policy Act of 1969. Based on the above assessment, we conclude that approval of the proposed action would not constitute a major Federal action significantly affecting the quality of the human environment.

⁴⁵ This measure is consistent with the Memorandum of Agreement (MOA) Concerning Habitat Enhancement and Woody Debris Management for the Catawba-Wateree Hydro Project, between the licensee, South Carolina Department of Natural Resources, and NCWRC.

⁴⁶ FERC. 2003. Final Environmental Assessment: Amendment to License-Revised Shoreline Management Plan (P-2232-428).

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11.0 Preparer(S)

Federal Energy Regulatory Commission:
Kate DeBragga; Environmental Biologist

OEP/DHAC DeBRAGGA, K: kad 9/7/2005 K-05
bcc: ARO DHAC D2SI DOCKETS DeBRAGGA