

136 FERC 162, 115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Georgia Power Company

Project No. 2413-115

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

(Issued August 5, 2011)

1. On March 2, 2011, Georgia Power Company (licensee) filed an application to permit Linger Longer Development Company (permittee) to occupy 2.25 acres of project lands for the construction and operation of a portion of the Dye Golf Course at the Wallace Pumped Storage Project (FERC No. 2413). The proposed golf course would be located on the Richland Creek portion of Lake Oconee in Greene County, Georgia.

DESCRIPTION OF PROPOSAL

2. The proposed Dye Golf Course would be an 18-hole, private golf course available to residents of Reynolds Plantation, a gated community located adjacent to the project. Most of the golf course would be located outside the project boundary, but select features for four golf holes would be located inside the project boundary and would occupy 2.25 acres of project lands and 3,890 linear feet of shoreline. Specifically, the proposal would permit the following activities inside the project boundary: (1) 6,907 square feet of boardwalk (measuring approximately 224 linear feet) and bridges (two separate bridges; one measuring 302 linear feet and the other measuring 338 linear feet); (2) 664 square feet of rough (sod grass); (3) clearing of 1 acre of shoreline trees and vegetation for golf play over; (4) selective thinning of shoreline vegetation of 1.08 acres for enhanced views; and (5) selective placement of riprap where additional shoreline stabilization is needed, to be determined in the field. The latitude and longitude coordinates for the proposed golf course are provided in the application.

3. In order to reduce the potential environmental and recreational impacts of the proposed golf course construction, the proposal includes: (1) locating the golf course play over and bridges where shallow waters occur to minimize effects on boating traffic; (2) allowing shoreline areas with gentle slopes or minimal wave action to remain undisturbed; (3) building boardwalks and bridges in-place on hand-driven piles and using pressure-treated lumber for decking; (4) removing vegetation within 25 feet of the shoreline by hand removal or pruning only; (5) stabilizing disturbed shoreline areas using best management practices (i.e., mulching or sodding) within 90 days of construction; (6)



following strict erosion control practices during and after construction; and (7) installing 47 fish attractors at locations to be coordinated with the licensee and the Georgia Department of Natural Resources, Wildlife Resources Division (WRD) within 60 days of construction completion. No wetlands exist in the proposed work area.

AGENCY CONSULTATION AND PUBLIC NOTICE

4. The permittee consulted the U.S. Fish and Wildlife Service (FWS), Georgia Historic Preservation Division (SHPO), U.S. Army Corps of Engineers (Corps), Greene County Board of Commissioners (County), and WRD. By letter dated July 23, 2009, the FWS concurred with the permittee's determination that federally-listed species are not likely to occur on the project site. By letter dated August 5, 2009, the SHPO determined that no archaeological resources or historic structures listed or eligible for listing in the National Register of Historic Places (National Register) will be affected by the proposed golf course. By letter dated October 26, 2009, the County states it supports the proposed golf course and that it is correctly zoned; and by letter dated February 15, 2010, the County states that it considers the proposed golf course to be a minor land-disturbing activity and that it is exempt from the state's buffer requirements. By letter dated May 28, 2010, the Corps determined that no Corps permit is required for the portions of the proposed golf course located inside the project boundary.

5. By letter dated October 14, 2009, the WRD states that the permittee's proposed measures to minimize environmental impacts should be sufficient to protect freshwater fisheries habitat in Lake Oconee, but notes that the Altamaha shiner, a state-threatened fish species, occurs in sections of Richland Creek and recommends that efforts be taken to establish wide riparian buffers and reduce sediment and nutrient runoff. In response to the WRD's concerns, the licensee responded by letter dated November 17, 2010, that it is not certain whether the proposed golf course is located near the sections of Richland Creek in which the Altamaha shiner can be found; the aquatic habitat adjacent to the proposed golf course is less than suitable for the Altamaha shiner, based on its review of the literature; and the permittee's proposed impact minimization measures would adequately protect the Altamaha shiner should it occur near the proposed golf course.

6. On May 10, 2011, the Commission issued a public notice of the licensee's application that set a deadline of June 9, 2011, for filing comments, protests, or motions to intervene. By letter dated June 8, 2011, the U.S. Department of the Interior, Office of Environmental Policy and Compliance (Interior) states that it has no comments on the application. No other comments on the application were received.

DISCUSSION

7. Approval of the licensee's proposal would authorize the construction and operation of a portion of a private golf course located adjacent to Lake Oconee. Because the golf course would not be open to the public, the proposed 3,890 linear feet of



shoreline would be effectively converted from public use to private, exclusive use by the members and residents of Reynolds Plantation. However, based on our review of the site's aerial photography, the proposed golf course site does not appear to be valuable for public recreation or other public uses, as the lake is very shallow in the upper reaches of Richland Creek and far from any public boat ramps or access areas. The permittee has proposed several measures to minimize the environmental effects of the proposal, and we find that those measures would help to minimize any environmental disturbance to lands within the project boundary.

8. In order to protect the Altamaha shiner, the WRD states that efforts should be taken to establish wide riparian buffers and reduce nutrient and sediment runoff into project waters, although no specific measures were recommended. In response, the licensee states that, although the locations are unknown where the Altamaha shiner has been detected, it believes that the aquatic habitat surrounding the proposed golf course is not suitable for the Altamaha shiner. The permittee's proposed measures to minimize environmental impacts include mulching graded areas, and strictly adhering to erosion and sedimentation control practices during and after construction. Such proposed measures would help address the WRD's concern for nutrient and sediment runoff. Neither the permittee nor licensee has proposed any measures to address the WRD's concern over the presence of shoreline buffers, which is a general concern shared by Commission staff as well.

9. In general, shoreline buffers provide beneficial ecological functions (i.e., filtering and sequestering nutrient and sediment runoff, providing riparian habitat and shade for fish and wildlife, etc.) around the lakeshore. As such, licensees are encouraged to preserve and protect shoreline buffers. In the case of the proposed golf course, the permittee proposes to clear 30% and selectively thin 55% of the linear shoreline frontage, and leave 15% undisturbed shoreline. The project boundary in the area generally provides for a 25-foot-wide buffer upland of the reservoir, although this buffer ranges from just a few feet to over 100 feet wide in certain areas. In most cases, the shoreline that the permittee proposes to clear consists of small areas of shoreline that are needed for golf play over. Based on our review of the submitted golf course plan, one 250-foot-long section of shoreline proposed to be cleared for golf play over does not appear to be needed for golf play over (Figure 1), and the purpose for clearing is not apparent. This area should be selectively thinned, rather than cleared, which would allow the existing trees to remain while still accommodating a reasonable view of the water from the #15 tee. This modification would provide additional shoreline protection and is in line with the WRD's recommendation to maintain wide riparian buffers and reduce sediment and nutrient runoff in order to protect the state-threatened Altamaha shiner.

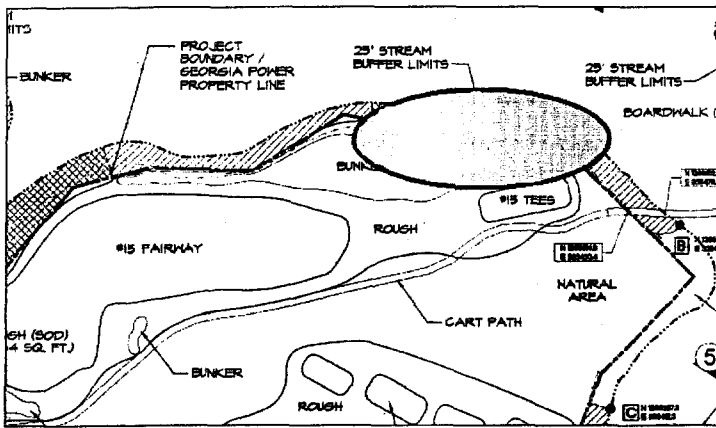


Figure 1. The shoreline that should be selectively thinned rather than cleared is marked with a dark oval shaded in light gray (Source: licensee's application, modified by staff).

10. Although construction of the proposed golf course is unlikely to affect cultural resources, the licensee should include conditions in the permit issued for the proposal to protect previously unidentified historic properties. The conditions should require that, if a previously undiscovered cultural resource site is discovered during construction, operation, and/or maintenance of the facilities, the permittee should immediately cease all work at the site and immediately contact the licensee. In turn, the licensee should consult with the SHPO and any tribes that might attach religious or cultural significance to the discovered cultural resources to determine what steps need to be taken to evaluate the discovery and, if the cultural resource is identified as an historic property eligible for the National Register, to mitigate or avoid any adverse effects. The licensee should file with the Commission for approval, a report on any historic property determined to be eligible and adversely affected, along with the proposed mitigation. The filing should also include comments received from the SHPO and tribes on the report and proposed mitigation.

11. The licensee has an overall obligation to ensure that any non-project uses and occupancies of project lands and waters that it permits are not inconsistent with the purposes of the project, including public recreation and resource protection. In this regard, the licensee should include in any permit(s) issued for the proposed golf course the following standard conditions: (1) the permittee's use of the project lands and waters covered by the permit shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the permittee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of the

authorized facilities and improvements will occur in a manner that protects the scenic, recreational, and other environmental values of the project; and (3) the permittee shall not unduly restrict public access to project waters. Additionally, the licensee is reminded that it is responsible for ensuring that all necessary local, state, and federal permits have been obtained for the improvements before construction begins.

12. Given the above information, the proposed golf course is expected to have minimal environmental impacts to the project area. The application should be approved with the above modifications.

13. The proposed golf course should be constructed as approved in this order in a timely manner to ensure that it does not result in new or different impacts than anticipated, due to unauthorized changes to the facilities or changes in the surrounding environment over time. In order to keep the Commission apprised of the progress towards completing the proposed facilities and to ensure the facilities are built as approved, the licensee should file within two years of the date of this order, documentation, including photographs, showing the location of the proposed facilities. The filing should also include verification that the licensee inspected the proposed facilities to ensure they have been constructed as approved in this order, including the installation of fish attractors and required limits on vegetation clearing. If the facilities are partially completed or construction has not begun, the licensee should include in its filing, for Commission approval, a schedule for completing construction of the proposed facilities and a description of the key factors considered in the development of the schedule.

The Director orders:

(A) Georgia Power Company's application, filed on March 2, 2011, requesting Commission authorization to permit Linger Longer Development Company (permittee) to occupy project lands for the construction and operation of the Dye Golf Course at the Wallace Pumped Storage Project (FERC No. 2413), as modified by ordering paragraphs (B), (C), and (D) is approved.

(B) The licensee may authorize the permittee's proposal, with the following modification: the approximately 250-foot-long section of shoreline north of the tee box for golf hole #15, as indicated in Figure 1 of this order, shall be maintained as selective thinning rather than cleared for golf play over.

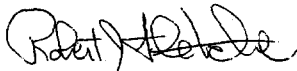
(C) The licensee shall include in the permit issued for the approved facility the following conditions: (1) the permittee's use of the lands covered by the permit shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) the permittee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of the structures and facilities covered by the

permit will occur in a manner that protects the scenic, recreational, and other environmental values of the project; and (3) the permittee shall not unduly restrict public access to project waters.

(D) The licensee shall include as a condition of any permit it issues under this approval, a provision that, if any cultural resources are discovered during construction, operation, and/or maintenance of the facilities, the permittee shall immediately cease all work at the site and immediately contact the licensee. The licensee shall then consult with the Georgia State Historic Preservation Officer (SHPO) and any tribes that might attach religious or cultural significance to the cultural resources to determine what steps need to be taken to evaluate the discovered cultural resources and, if found to be an historic property eligible for the National Register of Historic Places listing, to mitigate or to avoid any adverse effects. The licensee shall file with the Commission, for approval, a report on any discovered historic property determined to be eligible and adversely affected, along with the proposed mitigation. The filing shall also include comments received by the SHPO and tribes on the report and the proposed mitigation.

(E) Within two years from the date of this order, the licensee shall file with the Commission documentation, including photographs, showing the completed facilities as approved in ordering paragraph (A). The licensee shall include notification that it has inspected the facilities to ensure that they have been constructed as approved in this order. If the facilities are partially completed or construction has not begun, the licensee shall file, for Commission approval, a schedule when construction will be completed and a description of the key factors that were considered in the development of the schedule.

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.



Robert J. Fletcher
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Division of Hydropower
Administration and Compliance