

04-940 A

## LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

## BASIS FOR DECISION

WATER QUALITY CERTIFICATION (WQC 010816-02/AI 92969/CER20010001)

TIMBER BRANCH II SUBDIVISION  
BRICKER ROAD  
NEAR COVINGTON, ST. TAMMANY PARISH, LAFILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA  
2004 AUG -3 AM 10:01LORETTA G. WHITE  
CLERK

The Louisiana Department of Environmental Quality (DEQ), Office of Environmental Services, Permits Division, through this decision issues a Water Quality Certification (WQC 010816-02) to August J. Hand for the proposed Timber Branch II Subdivision on Bricker Road, near Covington, Louisiana.

Water Quality Certification (WQC) 010816-02 is a certification needed to obtain a U.S. Army Corps of Engineers (Corps) permit. The WQC certifies that the placement of fill material will not violate water quality standards of Louisiana. The area of wetland impact is approximately 38.9 acres.

For August J. Hand's Water Quality Certification, the DEQ finds that as part of the "IT Requirements,"<sup>1</sup> adverse environmental impacts have been minimized or avoided as much as possible consistent with the public welfare. See Save Ourselves v. La. Envtl. Control Commission, 452 So. 2d 1152, 1157 (La. 1984). To make this determination, the DEQ finds that Timber Branch II Subdivision complied with all applicable regulations and otherwise minimized or avoided environmental impacts. Additionally, the DEQ finds that Timber Branch II Subdivision met the alternative sites, alternative projects, and mitigating measures requirements of Save Ourselves. Id. at 1157.

<sup>1</sup> The "IT Requirements" or "IT Questions" are five requirements that both the permit applicant and the DEQ consider during certain permit application processes. Save Ourselves v. Envtl. Control Comm'n, 452 So. 2d 1152, 1157 (La. 1984); Blackett v. Dept. Envtl. Quality, 506 So. 2d 749, 754 (La. App. 1<sup>st</sup> Cir. 1987). They were first set forth in Save Ourselves and later explicitly designated as five requirements in Blackett. Although the five requirements have recently been expressed as three requirements (In Rubicon, Inc., 670 So. 2d 475, 483, reh'ring denied, 670 So. 2d 488 (La. App. 1<sup>st</sup> Cir. 1996)), the requirements remain basically the same whether stated as five or as three. Compliance with the IT Requirements require satisfying the following issues or questions:

- Have the potential and real adverse environmental effects of the proposed project been avoided to the maximum extent possible?;
- Does a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former?; and
- Are there alternative projects or alternative sites or mitigating measures, which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable?

— Fee  
— Process  
☒ Dktd  
— ClRmDep  
— Doc. No.

After the DEQ determined that adverse environmental impacts had been minimized or avoided to the maximum extent possible, it balanced social and economic factors with environmental impacts. The DEQ finds that the social and economic benefits of the project will outweigh its adverse environmental impacts. Notably, “the [Louisiana] constitution does not establish environmental protection as an exclusive goal, but requires a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors.” *Id.* Accordingly, the DEQ finds that the social and economic benefits of the project will outweigh its adverse environmental impacts.

The details of the DEQ’s reasoning are set forth below.

## **FINDINGS OF FACT**

### **I. BACKGROUND**

#### **A. Description of the Project Site**

The proposed Timber Branch II Subdivision is located just outside the city limits of Covington, Louisiana, and may be annexed into the city limits in the near future. The parent tract of the subject property contains 196.34 acres of woodlands, however, a portion of the tract is not included in this proposal. Phase I of the Timber Branch II development consists of approximately 81.39 acres of which 39.54 acres have been identified as jurisdictional pine flatwood and savannah wetlands. The project implementation would impact approximately 38.9 acres of wetlands located on-site.

The subject site is somewhat irregularly shaped and has access along the north side of LA Hwy 1085 (Bootlegger Road) and frontage along the east and west side of Bricker Road.

The subject property is located in Flood Zones “C”, “B” and “A”. Approximately half of the site is located in Flood Zones “C” and “B”, which are not considered to be flood hazards. Approximately 35 to 40 acres of the subject site is in Flood Zone “A”, a flood hazard area.

#### **B. Description of the Project**

The proposed Phase I of Timber Branch II Subdivision will include the clearing, grading, and deposition and maintenance of earthen fill material to construct 147 residential lots, driveways, access roads, and a recreation area. Approximately 47,074 cubic yards of earthen fill material would be deposited, as necessary.

## **II. PUBLIC NOTICE AND COMMENT PERIOD:**

By application dated August 10, 1999, Timber Branch, LLC, through their authorized agents, Solutions, Inc., applied to the Corps of Engineers for review and issuance of a permit under Section 404 of Public Law 95-217, the Clean Water Act (CWA). The project was Joint Public Noticed between the Corps of Engineers and DEQ on September 3, 1999. However, the applicant withdrew the application.

The applicant, August J. Hand, through his authorized agents, Solutions, Inc., reapplied for certification on or about August 15, 2001. The revised project was again Joint Public Noticed between the Corps of Engineers and DEQ on August 29, 2001. However, the application was deactivated by DEQ due to the amount of time that had passed without receiving the requested information from the applicant.

By application dated November 19, 2002, August J. Hand, through his authorized agents, Solutions, Inc. applied a third time for a Water Quality Certification. On March 27, 2003, the project was placed on notice in *The Advocate* in accordance with LAC 33.IX.1507. The comment period ended on April 6, 2003.

During the first two comment periods, we received requests for a public hearing; however, since the applicant did not pursue the application, no public hearing was held. After the third comment period had ended, DEQ determined that the water quality issues raised by commenters had been addressed; therefore, no public hearing was held.

## **III. PUBLIC COMMENT RESPONSE SUMMARY**

A "Public Comment Response Summary" has been prepared for all significant comments and is attached to and made a part of this Basis for Decision (Attachment 1).

## **IV. ALTERNATIVE SITES: Are there alternative sites, which would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits?**

While the DEQ recognizes that the concepts of alternative sites, alternative projects, and mitigating measures are closely interrelated and overlap, each concept is addressed separately in this document for purposes of emphasis and clarity. However, the DEQ stresses the interrelationship of the three. For example, the choice of a particular site could involve mitigation factors and possibly project considerations. Likewise, selection of alternative projects could involve mitigating factors and often site selection. The First Circuit Court of Appeals has also recognized this interrelationship and is now

considering the three requirements as one. Matter of Rubicon, Inc., 95-0108 (La. Appl. 1 Cir. 2/14/96); 670 So. 2d 475, 483.

Because of this relationship, the DEQ adopts any and all of its findings on all of the three factors under each of the specific designated sections: alternative sites (Section IV), alternative projects (Section V), and mitigating measures (Section VI). Additionally, the assessment and findings set forth below in Section VII (Avoidance of Adverse Environmental Effects) also interrelate and have been considered relative to those three factors.

In the selection, the applicant considered the following six parcels:

- 1) The 248.83-acre Kolby family tract is located on the east side of LA Hwy 21, south of I-12 and north of Christwood Boulevard in rural Covington. Approximately 50% of the site consists of wetlands. The portion of the site included in the analysis is under option, and would not immediately be available for development.
- 2) The 670.5-acre Planche family tract is located on both sides of LA Hwy 1085, the north side of Bricker Road, and both sides of Rousseau Road in rural Covington. This acreage is being cut into smaller parcels and sold for development. The choice portions have been sold, with only marginal portions remaining.
- 3) The 162.36-acre Planche family tract is located in the city limits of Covington, south of West 15<sup>th</sup> Avenue and west of Menetre Drive. The southern portion of the property is located in Flood Zone "A" (flood hazard), which is the floodplain of the Tchefuncte River. A large portion of the site is assumed to be wetlands, based on topography and mapped soil types.
- 4) The Shelby LaSalle tract is approximately 100 acres in size and is located on the north side of LA Hwy 22 and the east side of Perriloux Road in rural Madisonville. The majority of the site is located in Flood Zone "C" with only 12 acres of the site in Flood Zone "A". The topography suggests that the site may be 40% to 50% wetlands. The property is similar to the applicant's proposed site regarding wetlands, however, having been timbered over the past several years, is unattractive. In addition, this property, which is west of the subject property, is not as convenient a location.
- 5) An additional site, approximately 82 acres in size is located in a rural area along the south side of LA Hwy 1085 (Bootlegger Road), approximately 0.7 miles south of I-12. This parcel is located on the west side of Perriloux Road, is incorporated in the town limits of Madisonville, and includes the area known as rural Madisonville. This site is not convenient



because of the distance from shopping, the Lake Pontchartrain Causeway, and other amenities. Additionally, approximately 1/3 of the site is wet. A predicated offer has been accepted for this site.

- 6) The David M. Moore tract is 32.6 acres in size and is located on the north side of Viola Street, approximately 320 feet east of LA Hwy 59 in rural Mandeville. Mayhaw Branch crosses through this site in an east to west direction from the highway, and according to the owner, this area, as well as the rear, stay wet most of the year. Based on elevation and vegetation, the site is believed to be predominately wet. Configuration and location make this site less desirable.

These parcels were selected based on discussions with agents who typically specialize in developable parcels, land developers, planners for the city of Mandeville, St. Tammany Parish, and the Multiple Listing Services (MLS) for sale availability in the western portion of the St. Tammany Parish area.

Most of the sites include at least as much wetland impact as the subject property, and most include more area in the flood zone.

The proposed site offers an array of lot types, integrating middle and upper middle-income residents in a project, which is proximate to the interstate, schools, shopping and other amenities.

**CONCLUSION:** For the forgoing reasons, the DEQ finds there are no alternative sites, which would offer more protection to the environment than the proposed site without unduly curtailing non-environmental benefits.

**V. ALTERNATIVE PROJECTS: Are there alternative projects, which would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits?**

The DEQ finds that the project as proposed, offers more protection to the environment than other possible alternatives without unduly curtailing non-environmental benefits. Additionally, the DEQ recognizes that selection of the most environmentally sound projects usually also serves as a mitigating measure, because the two considerations often overlap.

Originally, the designers considered installing detention ponds, however, this design was rejected because of their disturbance of the conservancy area along Timber Branch Creek. The project was then revised to include a storm water detention settling area for temporary storage. This area is sloped and bounded on the low side by a berm with a 30-inch culvert. This design will slow down the runoff with the berm. The runoff will be metered through a 30-inch culvert flowing into a 100-foot vegetated buffer, which will act as a filter to the runoff.

Another alternative would be to eliminate development in wetlands. However, a large portion of the wetlands is located on the property that is higher and flatter and, therefore, more favorable for development. It is not feasible to entirely eliminate wetlands from the development.

Still, another design alternative would be to leave the site in its current state, which is a pine flatwood and hardwood flat forest. However, Section VIII of this document shows a need for development in this area.

The initial project noticed on September 3, 1999, referenced a 196.34-acre development. The current project has been reduced to 81.39 acres in size and the original 25-foot vegetated buffer was increased to a 100-foot buffer. Also, the project utilizes a storm water detention settling area, thus offering greater protection to the environment.

**CONCLUSION:** For the forgoing reasons, the DEQ finds there are no alternative projects, which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits.

**VI. MITIGATING MEASURES: Are there mitigating measures, which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits?**

Mitigating measures include: storm water control measures, construction measures, and a centralized sewerage treatment system with a minimum of tertiary filtration.

The roadside drainage swales are to be vegetated to limit turbidity from storm water runoff. The project design includes a storm water detention settling area, which consists of a berm to slow down flow, temporarily holding the storm water, and a 30-inch culvert to meter storm water into a 100-foot buffer. The buffer will act to filter outfall sediments before the water is discharged into Timber Branch.

In addition, the applicant will utilize "Best Management Practices" through their Storm Water Pollution Prevention Plan, which will be prepared in accordance with DEQ's Louisiana Pollutant Discharge Elimination System (LPDES).

The applicant will also be required by the Corps to mitigate for wetland impacts. According to correspondence from the agent dated December 12,

2002, the applicant proposes to purchase the required mitigation credits from The Nature Conservancy.

**CONCLUSION:** For the foregoing reasons, the DEQ finds there are no mitigating measures, which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits.

**VII. AVOIDANCE OF ADVERSE ENVIRONMENTAL EFFECTS: Have the potential and real adverse environmental effects of the proposed facility been avoided to the maximum extent possible?**

The main issues raised related to the issuance of a Water Quality Certification included impacts on water bodies (such as Timber Branch) from storm water runoff and sewage treatment.

Other concerns raised are addressed in the "Public Comment Response Summary".

**STORM WATER RUNOFF**

The applicant proposes to install a low level berm along Timber Branch to detain storm water runoff and attempt to create wetlands in non-wet terrace floodplain. The berm will be constructed with material excavated in roadway construction and will detain storm water prior to metering to Timber Branch. The runoff will then enter the 100-foot buffer area, which will filter outfall sediments. In addition, greenspace area will be left through the project site, which will also act to slow down and filter storm water runoff.

In addition, the initial drainage will be conveyed in vegetative swales, which will reduce the velocity of the flow and filter runoff.

The applicant will utilize "Best Management Practices" through their Storm Water Pollution Prevention Plan, which will be prepared in accordance with DEQ's Louisiana Pollutant Discharge Elimination System (LPDES). Measures included in the applicant's proposed plan are retaining natural vegetation, placing temporary silt fences around construction limits, and placing check dams at a minimum of every 300 feet along swales and ditches.

Further, this project will comply with St. Tammany Parish Ordinance No. 3308 that sets forth measures to reduce the amount of sediment-laden runoff.

## **SEWAGE TREATMENT**

The sewage treatment for the subdivision will be a centralized treatment system including an extended aeration treatment plant with a design capacity of 350,000 gallons per day and a minimum of tertiary filtration. In addition, the sewerage treatment facility would extend central sewerage to areas where individual treatment is currently in use.

The proposed development has been reduced in scope to include Phase I of Timber Branch II development and portions of Phase II and Phase III. Originally, the development consisted of 147.13 acres of which 91.94 acres consisted of wetlands. The revised project consists of a total of 81.39 acres with 38.9 acres being identified as wetlands.

**CONCLUSION:** Considering the aforementioned protective measures, the Department determines that the adverse environmental impacts have been avoided to the maximum extent possible.

## **VIII. COST/BENEFIT ANALYSIS (BALANCING): Does a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits for the proposed facility demonstrate that the latter outweighs the former?**

The social and economic benefits of the proposed subdivision outweigh adverse environmental impacts. The Louisiana constitution requires balancing, not protection of the environment as an exclusive goal. Save Ourselves, 452 So. 2d at 1157.

In December 2002, the applicant compared the absorption of homes in the same price range with the available inventory of homes. There was about a 6 months to one-year supply of homes and lots available to satisfy the demand. In addition, there are few A-3 lots (12-100' x 200') proposed in the Covington market. There are some A-3 lots available in the Mandeville market, however, these lots are priced in the + \$60,000 range. The proposed A-3 lots will be priced in the \$43,000 + range. Also, there are no known lots that offer garden homes such as the proposed A-5 (29 lots or 58 units), except for the Savannah Subdivision. None of the garden lots were available at the time and none of the other sized lots were available within the \$43,000 price range.

The proposed project offers an array of lot types integrating middle and upper middle-income residents, which is proximate to the interstate, schools, shopping, and other amenities.

The proposed subdivision will provide the public with the necessary single-family home sites, which will enable homeowners to save money through home ownership and income tax incentives. The proposal will generate



revenue through taxes, acquisition of construction materials, employment of work crews, and equipment purchase and rental. The local and regional economy will benefit from the money borrowed from financial institutions for the purchase of the property and construction materials.

In addition, the project will offer centralized sewerage treatment with a minimum of tertiary filtration to surrounding residents, where individual treatment is currently in use.


The proposed site for this subdivision is located in an area in which development has already occurred and is similar in density to this project. Because development has already occurred in this area, the proposed area would not be as adversely impacted by the destruction of wetlands, as would an area where less proximate development has occurred.

**CONCLUSION:** Based on the information contained in Alternative Sites Analysis/Needs Demand Analysis, submitted by the applicant, and on a review of the social and economic benefits balanced against environmental impacts, the Department finds that the benefits provided by the project are significant and tangible and outweigh the minimal environmental impacts posed by the project.

### CONCLUSION

Based on a careful review and evaluation of the entire administrative record, the Louisiana Department of Environmental Quality, Office of Environmental Services, finds that August J. Hand's Timber Branch II Subdivision will not violate the State water quality standards and comply with the requirements of Save Ourselves v. La. Env'tl. Control Commission, 452 So. 2d 1152, 1157 (La. 1984). Accordingly, the Department hereby issues the Water Quality Certification for August J. Hand's Timber Branch II Subdivision.

Baton Rouge, Louisiana, this 28<sup>th</sup> day of July.

  
Karen Gautreaux  
Deputy Secretary