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ENVIRONMENTAL ASSESSMENT

PROPOSED WATER-ACCESS RIGHTS EXCHANGE AND WATER USE FACILITIES FOR THE COVE AT BLACKBERRY RIDGE

Watts Bar Reservoir, Rhea and Roane Counties, Tennessee

TENNESSEE VALLEY AUTHORITY

APRIL 2008

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The Purpose and Need

TVA received a request from a private developer, The Cove at Blackberry Ridge, LLC, to grant an easement for shoreline access and issue a Section 26a permit for construction of community water-use facilities at the Cove at Blackberry Ridge (CBR) on Watts Bar Reservoir (Figure 1, Area A). The 145 feet of shoreline fronting CBR does not currently have water access rights; the easement would provide access rights to this stretch of the shoreline for a community boat dock and launching ramp. Consistent with TVA's "maintain and gain" policy for the shoreline of the Tennessee River and its tributaries, the applicant is proposing, through deed modification, to extinguish 150 feet of water access rights on another section of the Watts Bar Reservoir that is currently under the applicant's ownership (Area B). To provide additional public benefits, the applicant would grant TVA \$15,000 for shoreline stabilization work on Wading Bird Island (Figure 1, Area C). Thus, TVA's proposed action involves the grant of a recreation easement for shoreline access to Area A and the issuance of a Section 26a permit to construct a community boat dock and launching ramp in this easement area.

The proposed community facility would consist of a 154-foot by 56-foot community dock connected to the shoreline by an approximately 46-foot-long walkway. The dock would have 10 boatslips, each 24 feet long by 22 feet wide, to accommodate a total of 20 boats and a 20-foot-long by 28-foot-wide fixed platform at its lakeward end. The total length of the proposed facility would be approximately 200 feet at the normal summer pool elevation of 741 feet at mean sea level (msl). The facility would include a 15-foot-wide concrete boat-launch ramp, minimal parking, and shoreline stabilization fronting Area A (Figure 2).

The applicant proposes to establish a 50-foot conservation buffer zone along the 150 feet of shoreline of the Rhea County property (Area B) that would be affected. This would be accomplished by encumbering the adjoining property with a deed restriction, which would perpetually maintain the 50-foot strip as a buffer in a natural condition. Only the planting of native vegetation would be allowed in the buffer area. Excepting a possible future request for a water intake permit for irrigation purposes, the applicant proposes to relinquish any other rights it may have, either real or perceived, that would allow the applicant to construct other water use facilities.

The applicant also proposes to partner with TVA in funding a shoreline stabilization project on Watts Bar Reservoir as part of TVA's shoreline restoration initiative. The applicant proposes to pay \$15,000 that TVA anticipates would fund shoreline stabilization work at Wading Bird Island, located at TRM 544.0L on Watts Bar Reservoir (Figure 1, Area C),

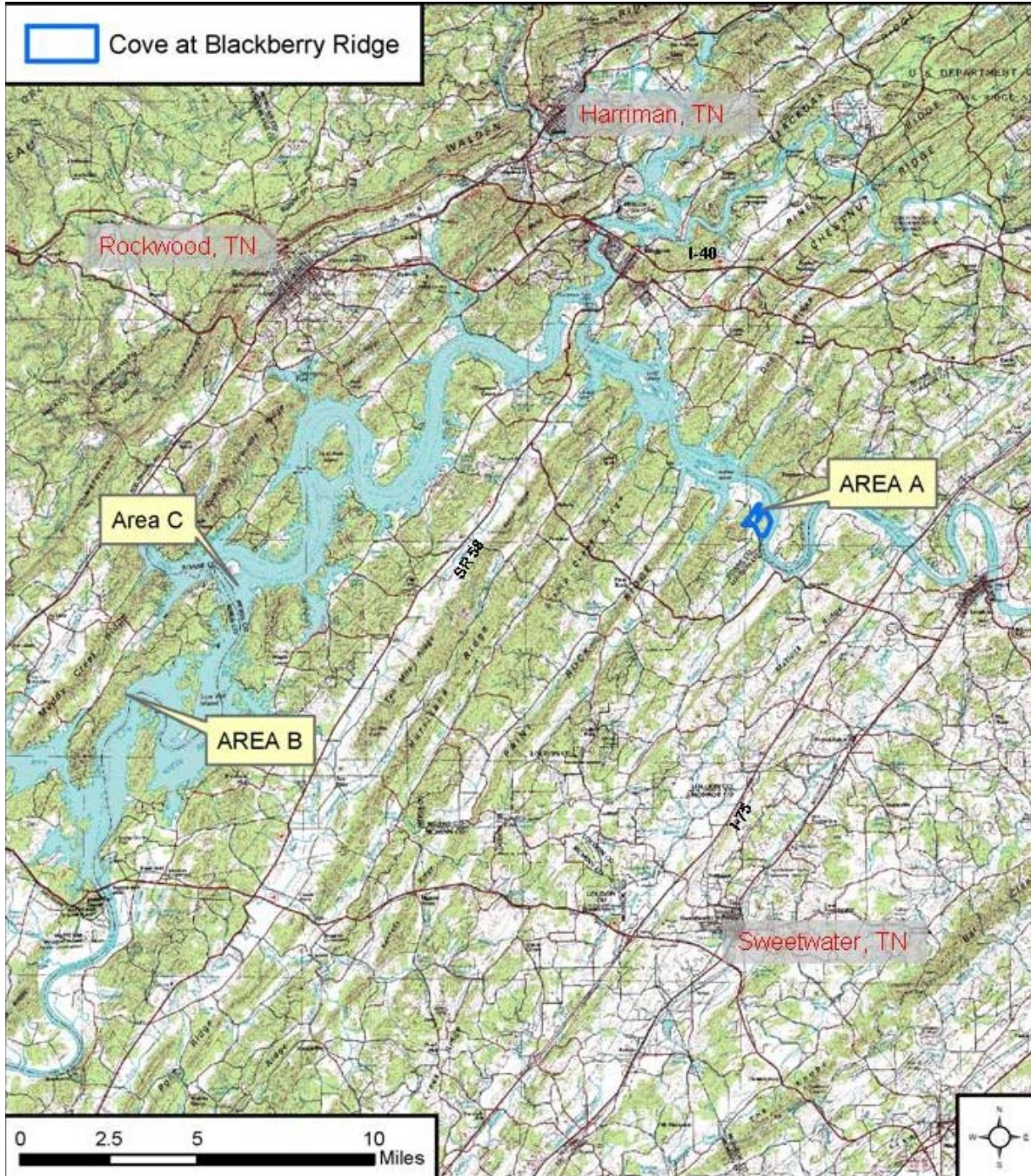


Figure 1. Area Location Map

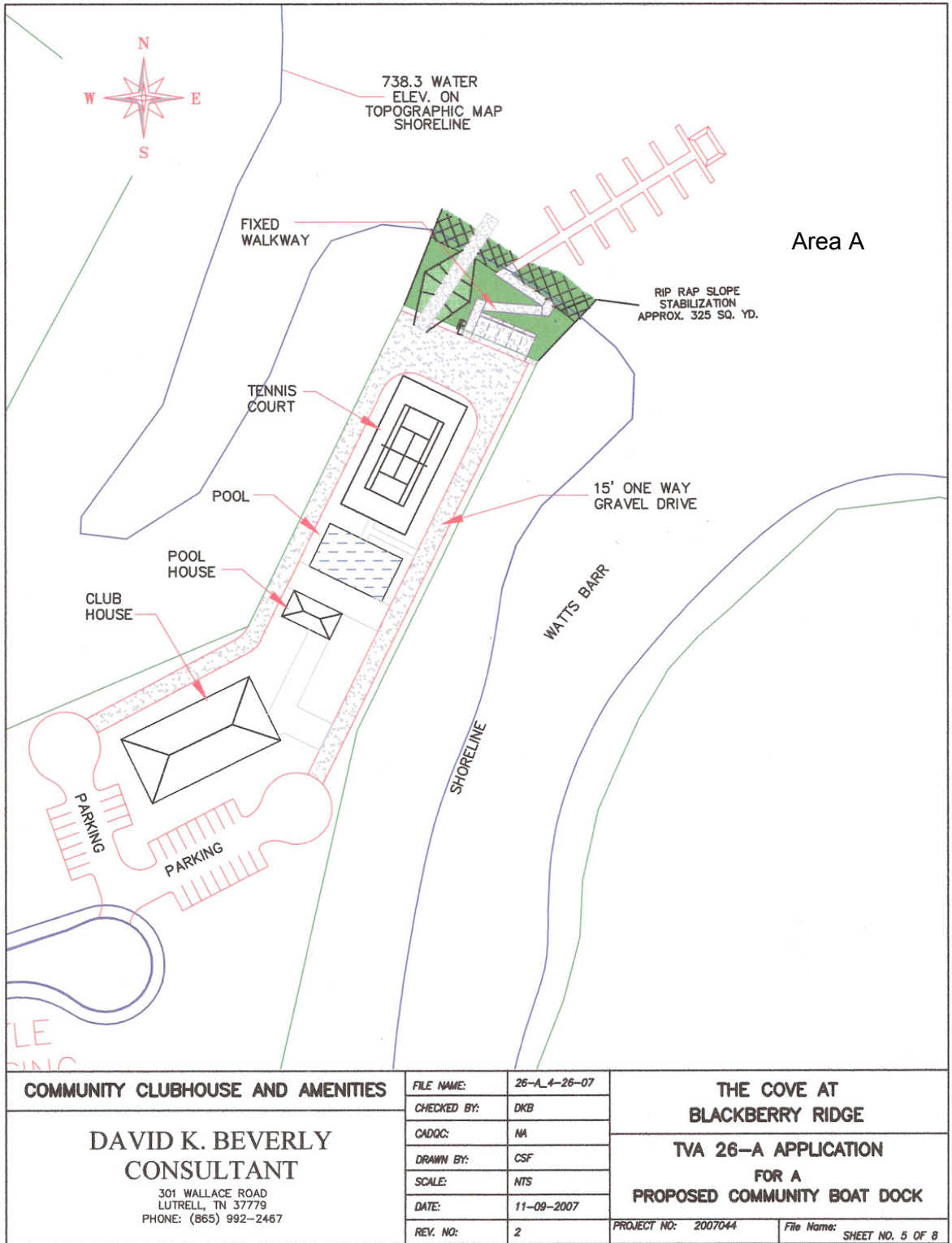


Figure 2. Proposed Community Facility and Boat-Launching Ramp

which has critically eroding shoreline. Restoration of this shoreline would enhance wildlife habitat. Alternatively, TVA may use these funds for shoreline stabilization elsewhere, but this is not likely. This proposal is in accordance with TVA's maintain-and-gain policy under its Shoreline Management Policy, which ensures the maintenance of shorelines and the gain of additional public benefits if access rights are to be exchanged.

The Proposed Decision and Need

The decision before TVA is whether to approve or deny the applicant's request for an exchange of 145 feet of water-access rights in Roane County for 150 feet of water-access rights in Rhea County with a 50-foot conservation buffer and \$15,000 for shoreline stabilization. Provided this exchange is approved, the applicant proposes to construct and operate a community water use facility with an excavation below normal summer pool for a concrete launching ramp with access road, shoreline stabilization, and a 10-slip (accommodating 20 boats) private community boat dock subject to TVA's approval under Section 26a of the TVA Act.

Other Environmental Reviews and Documentation

A series of National Environmental Policy Act (NEPA) documents and other pertinent documents have discussed the same resources considered in this environmental assessment (EA). These documents are listed below.

Shoreline Management Initiative (SMI) Environmental Impact Statement: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley (TVA 1998)

TVA completed an environmental impact statement (EIS) on possible alternatives for managing residential shoreline development throughout the Tennessee River Valley. Under the alternative selected, sensitive natural and cultural resource values of reservoir shorelines would be conserved and retained by preparing a shoreline categorization for individual reservoirs; by voluntary donations of conservation easements over flowage easement or other shore land to protect scenic landscapes; and by adopting a "maintain-and-gain" public shoreline policy when considering requests for additional shoreline access rights. This EA tiers from the SMI EIS.

Watts Bar Reservoir Land Management Plan (TVA 1988)

In August 1988, the TVA Board of Directors approved a land management plan to guide TVA resource management and property administration decisions on 10,405 acres of TVA land on Watts Bar Reservoir. A multidisciplinary TVA team undertook a detailed planning process that resulted in the land use designation in the plan. Both public input and information from TVA specialists were analyzed in making land use decisions. It was determined that Watts Bar Reservoir supported 19 land use allocations (see TVA 1988, Section 2.1). The 207 tracts of land on Watts Bar Reservoir were allocated for one or more of these 19 uses.

Watts Bar Reservoir Land Management Plan Amended Draft Environmental Impact Statement (TVA 2007)

In August 2007, TVA issued an amended draft EIS that examined the potential effects of alternative ways of managing its public lands on Watts Bar Reservoir. The amended draft EIS incorporated modifications to the three alternatives proposed in the TVA 2005 draft EIS and land plan as a result of the implementation of TVA's November 2006 land policy and

public comments received on the 2005 draft EIS. All of the action alternatives included The Cove at Blackberry Ridge maintain-and-gain proposal. Under this proposal, a small portion of Parcel 89 would be allocated to Zone 7 (Residential Access) instead of Zone 4 (Natural Resource Conservation), and a small portion of Parcel 256 would be allocated to Zone 4 instead of Zone 7. The total land area involved is 0.5 acre.

Other Necessary Permits or Licenses

The proposal would also require approval by the U.S. Army Corps of Engineers (USACE) under Section 10 of the River and Harbors Act and Section 404 of the Clean Water Act for both shoreline stabilization areas, the boat-launching ramp, and community facilities. The state of Tennessee, Division of Water Pollution Control, has determined that the proposed shoreline stabilization areas and the boat-launching ramp qualify for the Aquatic Resources Alteration Permit (ARAP) general permit conditions.

Alternatives and Comparison

TVA considered two alternatives:

- No Action Alternative – TVA denial of the applicant's requests for the exchange of water-access rights and approval of the proposed water use facilities.
- Action Alternative – TVA approval of the applicant's request to relinquish 150 feet of water-access rights along shoreline in Rhea County in exchange for opening 145 feet of water-access rights along the shoreline of Watts Bar Reservoir in Roane County for the construction of a 10-slip (accommodating 20 boats) community facility and boat-launching ramp on Lot 124 of The Cove at Blackberry Ridge Subdivision. A 50-foot-wide conservation buffer zone would be established though a deed restriction fronting the shoreline to be relinquished. As part of this alternative, TVA proposes to stabilize up to 200 feet of critically eroding shoreline on Wading Bird Island or similar location on Watts Bar Reservoir in Roane County.

If TVA were to adopt the No Action Alternative, the proposed community facilities and shoreline stabilization along the waterfront at The Cove at Blackberry Ridge could not legally proceed. Although, the current shoreline would likely remain relatively unchanged from its current condition, residential development of back-lying property would nonetheless occur.

Under the Action Alternative, the exchange and establishment of a conservation buffer would occur along with the proposed shoreline stabilization. The community water use facility, concrete launching ramp with access road, and excavation below normal summer pool would occur in the near term. Consequently, there would be some increase in the number of private watercraft in the local area, primarily during the summer months.

Installation of the launching ramp would require grading below the summer pool, resulting in an excess of cut-and-fill material. In addition, installation of the riprap stabilization fronting Area A would require an earthen key to be dug below normal summer pool, again resulting in excess cut-and-fill material. This material would be used for final grading and landscaping around the community facilities and launching ramp above TVA's Flood Risk Profile. The applicant would implement best management practices (BMPs) identified in TVA's General and Standard Conditions to prevent discharges of this material into the reservoir. See Appendix A.

TVA anticipates that the critically eroding shoreline of Wading Bird Island would be stabilized. TVA or a contractor retained by TVA would conduct this work. The planned treatment area involves stabilization of eroded banks around this small island near Half Moon Island. The bank is 3 to 5 feet in height at its highest points, primarily on the southern end of the island. Riprap placement would completely encircle the island for approximately 200 feet to stabilize the shoreline. Site-specific treatment plans would include minimum soil disturbance that includes BMPs. No bank disturbance would occur, as the bank would not be reshaped. Debris, brush, trees, stumps, and other objectionable material may be cut off by hand and removed from the bank in order to provide a uniform surface for installation of filter fabric. Due to the close proximity of wildlife nesting sites, all stabilization activities would be undertaken from a barge. Rock placement would only occur after hatchlings have matured and left the island. Riparian-adapted, native shrubs would also be planted along the upper edge of the rock in certain places pending availability of plant material. Should TVA select a similar location for stabilization, TVA would conduct a site-specific environmental review.

Public Involvement

TVA issued a public notice of its proposed action on July 9, 2007 (Appendix B). TVA accepted public comments through August 18, 2007. In response to the public notice, TVA received five e-mails and one phone call. Three of the e-mails opposed TVA approving the proposal, and two e-mails asked for additional information. Several of the commenters questioned the value of closing access at the location being proposed by the applicant because the topography of the location is steep and is unlikely to be developed anyway. Another commenter expressed concern about activity on Wading Bird Island.

TVA considered these comments in the preparation of this EA. Because of the anticipated cumulative beneficial impacts to water quality and shoreline protection of Wading Bird Island, TVA has determined that this proposal meets TVA's Shoreline Management Policy.

Affected Environment and Evaluation of Impacts

Based on of the nature of the proposal, TVA has determined there would be no waste stream generation or alteration involving air, hazardous materials, solid wastes, or special material. Likewise, TVA has determined there would be no impacts to groundwater or significant managed areas, floodplains, noise, recreation, aesthetics, and environmental justice. These resources are not addressed further in this EA. No impacts other than improving protection of resources on Area B are anticipated.

Cultural Resources

TVA considers the area of potential effects (APE) for the deed modification and construction of community water use facilities regarding archeological resources to be the TVA land on which water-access rights would be granted (including the location of the launching ramp and community dock), the shoreline of Area B where water access rights would be extinguished, and the shoreline of Wading Bird Island. Archival research identified 11 previously recorded archaeological sites within 2 kilometers (1.24 miles) of the APE. However, none lie directly within the APE. Following the archival research, a cultural resources survey was conducted.

In Area A, archaeological testing near the property line above summer pool elevation identified compact and eroded soils, which precluded excavation any deeper than about 10

centimeters (3.9 inches). However, inspection of a hole for a boundary marker demonstrated red clay subsoil just below the surface. An underwater survey was conducted on the remaining portion of the APE. Three holes 20 meters (65.6 feet) apart were excavated, within the first 20 meters (65.6 feet) from the bank. In all three instances, the sediment beneath the lake was dredged up by a hose with a pump attachment and run through a 0.25-inch mesh screen. Due to the power of the pump and the loose nature of the sediment, holes were dredged to a depth of approximately 75 centimeters (29.5 inches). No cultural material was observed in any of the holes that were dredged. The investigation did not identify any archaeological resources, and the terrain was extensively eroded. Since no historic properties were identified within the APE, the proposed deed modification approval and installation of the community boat dock and launching ramp would not affect cultural resources or any historic properties eligible for or listed on the National Register of Historic Places.

TVA Cultural Resources staff visually inspected the shoreline of Area B where water access rights would be extinguished and did not identify any archaeological features or resources. The shoreline is rocky and steep, and there is a low potential for rock shelters or caves. The removal of water-access rights in this area would have no effect on cultural resources or historic properties.

Wading Bird Island had not previously been inspected for archaeological resources. In December 2007, TVA Cultural Resources staff visually inspected the shoreline of Area C (Wading Bird Island) and did not identify any archaeological features or resources. The shoreline is eroded, and there is no potential for intact archaeological resources. The stabilization of the shoreline in Area C would have no effects on cultural resources or historic properties.

On September 21, 2007, and September 25, 2007, TVA requested concurrence on these findings from the Tennessee State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act. Fourteen federally recognized tribes were also included in the Section 106 consultation. The tribes either agreed with TVA findings or did not respond. On October 2, 2007, the SHPO requested that TVA consider the entire back-lying subdivision as the APE for purposes of assessing impacts on cultural resources. TVA reevaluated its delineation of the APE. Development of the back-lying subdivision is not within TVA's control and would proceed without TVA's approval or involvement. Accordingly, TVA determined the APE it identified for this project is correct and sent a letter to the SHPO on October 29, 2007, indicating this determination.

TVA received a letter dated November 7, 2007, detailing the SHPO disagreement, including termination of consultation a request that TVA begin consultation with the Advisory Council on Historic Preservation (ACHP). TVA, per 36 CFR Part 800, began consultation with ACHP (December 4, 2007) in an attempt to resolve the dispute and to fulfill its responsibilities for the project under Section 106 of the National Historic Preservation Act. ACHP responded, in a letter dated January 16, 2008, and requested that TVA further explain its position by demonstrating that the planning, financing, and marketing of the development was not directly linked to TVA's involvement with the deed modification, approval, and permitting. TVA examined documents relating to the planning, financing, and marketing of the development that were filed with Roane County and other governmental agencies, or were otherwise publicly available, and determined that this information supported the agency's earlier delineation of the APE. The supporting documentation was sent to the ACHP on March 3, 2008. The ACHP, in a letter dated April 10, 2008, indicated

it would not challenge TVA's delineation of the APE for this project and suggested TVA consult further with the SHPO, if possible.

On April 18, 2008, TVA followed up with a letter to the SHPO explaining why it determines that the Section 106 process is complete. That letter reminded the SHPO that the original September 21, 2007, correspondence for this project included a survey report for the APE delineated by TVA. In that report, no historic properties were identified. This is the same report submitted to the SHPO by USACE for the same area requiring a USACE permit. The SHPO agreed with the USACE's finding of "no historic properties affected." The APE for USACE's undertaking is the same as the APE delineated by TVA for its proposed undertaking. According, based on the information collected so far and the fact that no cultural resources were found within the identified APE, TVA's Section 106 responsibilities regarding this proposed action have been fulfilled. All correspondence relating to the Section 106 consultation is included in Appendix C.

Terrestrial Ecology and Managed Areas

No uncommon terrestrial plant communities are known from the proposed project area. Marble Bluff and Polecat Creek Slopes, two habitat protection areas (HPAs) designated for protection of spreading false foxglove (*Aureolaria patula*), occur within 2 miles of the Blackberry Cove development. There is no known potential for the proposed action to impact these areas or other uncommon terrestrial habitats. Due to the limited scope of the action and present level of disturbance of the surrounding habitat, there is no potential for this project to contribute to the spread of exotic or invasive terrestrial plant species. No managed areas and/or ecologically significant sites occur at or adjacent to the project site. The nearest managed area is Marble Bluff TVA HPA, which is approximately 0.5 mile southeast of Area A. This HPA is on a narrow 17-acre tract on a high limestone bluff overlooking the river and provides habitat for false foxglove, a species state-listed as threatened. A cave on the tract is gated to protect cultural resources. No impacts to this managed area are anticipated. The project is not expected to significantly affect federal, state, or local parklands, wilderness areas, scenic areas, recreational areas, greenways, or trails.

There are records of two caves within 3 miles of the shoreline proposed to be opened (Area A). These caves are 0.8 and 1.0 mile away and would not be affected by the proposed action. No impacts are expected to these caves or to any other unique or important terrestrial habitats.

Four heron colonies have been recorded within 3 miles of the project sites. Two have been recorded 2.8 and 2.9 miles from the shoreline proposed to be closed. Another two are 0.4 and 1.7 miles from the shoreline proposed to be opened. The latter is on Wilson Island directly across from the proposed community dock. All distances are far enough away that they would not be affected by the proposed action. No other aggregations of migratory birds have been recorded within 3 miles of the proposed actions, and this project would not affect migratory bird populations. The proposed action would not contribute to the spread of exotic or invasive terrestrial animal species.

Wetlands and Streams

Project photographs indicated no wetlands are present in the proposed project area. Because no such designated waters occur at or adjacent to the project site, the proposed action is not anticipated to impact streams listed on the Nationwide Rivers Inventory.

Threatened and Endangered Species

Aquatic Animals - Based on information in the TVA Natural Heritage database and the location of the project site, there is a federally listed mussel, the pink mucket within 3 river miles of Area A. No other listed aquatic species was identified in the vicinity. The pink mucket prefers rock bottoms with swift currents. The habitat at the site is a mudflat with silty soil. The existing pink mucket record occurs in the old river channel upstream of the project site where the bottom is rocky with swift flows. Based on the habitat and location, it is not likely that the pink mucket would be found in the immediate vicinity of the project area because the reservoir is deeper with less flow at that site. Therefore, the proposed action would not affect aquatic threatened and endangered species. There is no unique or important aquatic habitat located near the project area.

Terrestrial Plants - The TVA Natural Heritage database indicated that no federally listed plant species are recorded from within 5 miles of the proposed project area, but there are two state-listed plant species, the spreading false foxglove and slender blazing star (*Liatris cylindracea*), recorded. The statuses and ranks for these plants are threatened-S3 and threatened-S2, respectively. Spreading false foxglove is the only listed species occurring within 5 miles of the exchange lands in Rhea County, Tennessee. Maps, photographs, and the knowledge of rare plant habitats in the vicinity indicate the proposed project area could provide habitat for spreading false foxglove. However, due to the abundance of individuals known from populations in the region and the designation of two HPAs (Marble Bluff and Polecat Creek Slopes) for spreading false foxglove occurring within 2 miles of the proposed project, there would be no significant impact to the viability of the species from project activities. In addition, suitable habitat for the slender blazing star is not present within or adjacent to the project site. The proposed action would not result in impacts to rare plant populations.

Terrestrial Animals - The TVA Natural Heritage database during July 2007 indicated records of one Tennessee state-listed and one federally listed species within 3 miles of the project site. The state-listed Tennessee cave salamander (*Gyrinophilus palleucus*), now called the Berry Cave salamander, has been recorded from a cave 1.0 mile from the shoreline proposed to be opened. The proposed actions would not affect this cave or the species. The federally listed gray bat (*Myotis grisescens*) is known from a cave 0.8 mile upstream from the shoreline proposed to be opened for access. Foraging habitat for this species occurs all along Watts Bar Reservoir. Although the proposed community dock and ramp would likely increase boat traffic in the area by a small amount based on the number of available boatslips, it would not affect the cave (which is gated), or foraging habitat for the gray bat.

Bald eagles (*Haliaeetus leucocephalus*) have recently been removed from the endangered species list, but are still protected by the National Bald Eagle Management Guidelines and the Bald and Golden Eagle Protection Act. A pair of bald eagles has been recorded nesting approximately 1 mile downstream, with three other pairs nesting more than 7 miles away. The proposed community dock and ramp would likely increase boat traffic in the area by a small amount, but the nearby eagles are already tolerant of existing levels of boat traffic; any increase would not affect these eagles. No other federally listed species have been recorded in Roane or Rhea counties.

Two species, incurved cave isopod (*Caecidotrea incurva*) and osprey (*Pandion haliaetus*) are not state-listed but are considered rare by the Tennessee Natural Heritage Program. The incurved cave isopod requires cave habitat, which would not be impacted by the

proposed action. Numerous osprey nests occur on the adjacent sections of Watts Bar Reservoir. The closest recorded nests are 0.3 mile from the project sites. The proposed community dock and ramp would likely increase boat traffic in the area by a small amount, but ospreys in the area are numerous, have abundant habitat, and are already tolerant of existing boat traffic. The proposed action would not affect these or any other state- or federally listed species or their habitats.

Navigation and Recreation

The site proposed for the community facility was field-inspected with USACE on October 4, 2006. At that time, TVA requested that the proposed community facility be restricted to a maximum length of 200 feet from the normal summer pool elevation 741 feet msl and that the facility be oriented toward the upstream point of the island, downstream of the osprey nest. The application has been revised to meet these requirements. The addition of 10 boatslips (accommodating 20 boats) would not significantly detract from the recreation experience provided, based on current knowledge of motorized recreational-carrying capacity. The permit would include the following general conditions:

- The maximum length of the facility should not exceed 200 feet from the normal summer pool elevation 741 feet msl.
- The applicant is advised in writing that the facility would be adjacent to a commercial navigation channel at a location that makes the facility and any moored boats vulnerable to wave wash and possible collision damage from passing vessels.
- The floor elevation of the fixed dock should be a minimum of 2 feet above the normal summer pool elevation 741 feet msl.

Cumulative Impacts

Resources that could cumulatively be affected by the community facility and riprap stabilization on the project sites are water quality and navigation. Water quality would continue to be affected by general population and lakefront development growth in the area. Such cumulative effects are addressed in the SMI EIS.

Area B, over which the applicant proposes to relinquish water-access rights fronts a shallow shoreline and is essentially a mud flat during a large portion of the year. This situation renders the shore inaccessible to the back-lying property except at the summer pool elevation. Area B is steep and inaccessible. Under the proposed maintain and gain, the applicant would establish a 50-foot buffer zone along the 150 feet of shoreline. This would be accomplished by encumbering the adjoining property with a deed restriction, which would perpetually maintain the 50-foot strip as a buffer that is to remain in its natural condition. In this buffer area, only the planting of indigenous vegetation would be allowed.

By contrast, the exchange property does have deep water, even during the winter drawdown months. Furthermore, the installation of riprap stabilization along the shoreline of Wading Bird Island would avoid contributing to water quality degradation. In order to avoid contributing to water quality degradation in the area, TVA would require use of erosion control measures during construction of the community facility, launching ramp, and shoreline stabilization. In order to reduce impacts to navigation, the proposed facility has been limited to 200 feet or less from the normal summer pool elevation 741 feet msl.

Although it would have a somewhat greater impact than the No Action Alternative, implementation of the Action Alternative would result in a minimal impact on the environment and improve critically eroding shoreline on Wading Bird Island if the proposed action is approved. Due to the very small area affected by the proposed boat dock facility and ramp and due to the amount of unencumbered shoreline remaining on the adjacent properties, approval of this proposal would have a minimum impact on the wildlife and other environmental considerations. TVA has determined that cumulative impacts of this action would be insignificant.

Mitigation and Special Permit Conditions

TVA would require adherence to standard and general permit conditions, including the use of construction-related BMPs. The following special permit condition would be established in TVA's approval under Section 26a of the TVA Act in order to reduce the potential for adverse environmental effects:

- The lots served by the community docks would not be eligible for individual water use facilities or private docks.

Preferred Alternative

TVA's preferred alternative is the Action Alternative.

TVA Preparers

Patricia B. Cox, Botanist

Jenny K. Fielder, Zoologist

S. Clay Guerry, Recreation Specialist

Kelie H. Hammond, Navigation Specialist

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Agencies Consulted

Jennifer Barnett, Tennessee Division of Archaeology

Jonathon Burr, Tennessee Department of Environment and Conservation, Division of Water Pollution Control

William James, U.S. Army Corps of Engineers

Don Klima, Director of the Office of Federal Programs, Advisory Council on Historic Preservation

E. Patrick McIntyre Jr., Executive Director and State Historic Preservation Officer,
Tennessee Historical Commission

References

Tennessee Valley Authority. 1988. *Watts Bar Reservoir Land Management Plan*.

———. 1998. *Shoreline Management Initiative: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley*.

———. 2005. *Watts Bar Reservoir Land Management Plan Draft Environmental Impact Statement*.

———. 2007. *Watts Bar Reservoir Land Management Plan Amended Draft Environmental Impact Statement*.

Attachments

Appendix A – Section 26a Permit and TVA General and Standard Conditions for Section 26a and Land Use

Appendix B – TVA Public Notice

Appendix C – Section 106 Correspondence

**Appendix A – Section 26a Permit and TVA General and Standard
Conditions for Section 26a and Land Use** |

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GENERAL AND STANDARD CONDITIONS

Section 26a and Land Use

General Conditions

1. You agree to make every reasonable effort to construct and operate the facility authorized herein in a manner so as to minimize any adverse impact on water quality, aquatic life, wildlife, vegetation, and natural environmental values.
2. This permit may be revoked by TVA by written notice if:
 - a) the structure is not completed in accordance with approved plans;
 - b) if in TVA's judgment the structure is not maintained as provided herein;
 - c) the structure is abandoned;
 - d) the structure or work must be altered to meet the requirements of future reservoir management operations of the United States or TVA, or:
 - e) TVA finds that the structure has an adverse effect upon navigation, flood control, or public lands or reservations.
3. If this permit for this structure is revoked, you agree to remove the structure, at your expense, upon written notice from TVA. In the event you do not remove the structure within 30 days of written notice to do so, TVA shall have the right to remove or cause to have removed, the structure or any part thereof. You agree to reimburse TVA for all costs incurred in connection with removal.
4. In issuing this Approval of Plans, TVA makes no representations that the structures or work authorized or property used temporarily or permanently in connection therewith will not be subject to damage due to future operations undertaken by the United States and/or TVA for the conservation or improvement of navigation, for the control of floods, or for other purposes, or due to fluctuations in elevations of the water surface of the river or reservoir, and no claim or right to compensation shall accrue from any such damage. By the acceptance of this approval, applicant covenants and agrees to make no claim against TVA or the United States by reason of any such damage, and to indemnify and save harmless TVA and the United States from any and all claims by other persons arising out of any such damage.
5. In issuing this Approval of Plans, TVA assumes no liability and undertakes no obligation or duty (in tort, contract, strict liability or otherwise) to the applicant or to any third party for any damages to property (real or personal) or personal injuries (including death) arising out of or in any way connected with applicant's construction, operation, or maintenance of the facility which is the subject of this Approval of Plans.
6. This approval shall not be construed to be a substitute for the requirements of any federal, state, or local statute, regulation, ordinance, or code, including, but not limited to, applicable electrical building codes, now in effect or hereafter enacted.
7. The facility will not be altered, or modified, unless TVA's written approval has been obtained prior to commencing work.
8. You agree to notify TVA of any transfer of ownership of the approved structure to a third party. Third party is required to make application to TVA for permitting of the structure in their name.
9. You agree to stabilize all disturbed areas within 30 days of completion of the work authorized. All land-disturbing activities shall be conducted in accordance with Best Management Practices as defined by Section 208 of the Clean Water Act to control erosion and sedimentation to prevent adverse water quality and related aquatic impacts. Such practices shall be consistent with sound engineering and construction principles; applicable federal, state, and local statutes, regulations, or ordinances; and proven techniques for controlling erosion and sedimentation, including any *required* conditions.
10. You agree not to use or permit the use of the premises, facilities, or structures for any purposes that will result in draining or dumping into the reservoir of any refuse, sewage, or other material in violation of applicable standards or requirements relating to pollution control of any kind now in effect or hereinafter established.
11. The facility will be maintained in a good state of repair and in good, safe, and substantial condition. If the facility is damaged, destroyed, or removed from the reservoir or stream for any reason, or deteriorates beyond safe and serviceable use, it cannot be repaired or replaced without the prior written approval of TVA.
12. You agree that if any historical or prehistoric archaeological material (such as arrowheads, broken pottery, bone or similar items) is encountered during construction of this facility you will immediately contact this office and temporarily suspend work at that location until authorized by this office to proceed.
13. The Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act apply to archaeological resources located on the premises. If LESSEE {or licensee or grantee (for easement) or applicant (for 26a permit on federal land)} discovers human remains, funerary objects, sacred objects, objects of cultural patrimony, or any other archaeological resources on or under the premises, LESSEE {or licensee, grantee, or applicant} shall immediately stop activity in the area of the discovery, make a reasonable effort to protect the items, and notify TVA by telephone (phone _____). Work may not be resumed in the area of the discovery until approved by TVA.

14. On TVA land, unless otherwise stated on this permit, vegetation removal is prohibited.
15. You agree to securely anchor all floating facilities to prevent them from floating free during major floods.
16. You are responsible for accurately locating your facility, and this authorization is valid and effective only if your facility is located as shown on your application or as otherwise approved by TVA in this permit. The facility must be located on land owned or leased by you, or on TVA land at a location approved by TVA.
17. It is understood that you own adequate property rights at this location. If at any time it is determined that you do not own sufficient property rights, or that you have only partial ownership rights in the land at this location, this permit may be revoked if TVA receives an objection to your water use facility from any owner or partial owner of the property rights at this location.

Standard Conditions: (Items that pertain to your request have been checked.)

1. Structures and Facilities

- a) TVA number _____ has been assigned to your facility. When construction is complete, this number shall be placed on a readily visible part of the outside of the facility in the numbers not less than three inches high.
- b) The 100-year flood elevation at this site is estimated to be 748.2-feet mean sea level. As a minimum, your fixed facility should be designed to prevent damage to stored boats by forcing them against roof during a 100-year flood event.
- c) You agree that the float will be temporarily connected (i.e., by slip pin/ropes) and not permanently attached to nonnavigable houseboat.
- d) You agree that this _____ shall have no side enclosures except wire mesh or similar screening.
- e) Buildings or other enclosed structures containing sleeping or living accommodations, including toilets and related facilities, or that have enclosed floor area in excess of 32 square feet, are prohibited.
- f) Ski jumps will not be left unattended for extended periods of time. All facilities will be tied to the shoreline or to a boathouse or pier fronting your property at the completion of each day's activities.
- g) For all electrical services permitted, a disconnect must be located at or above the _____-foot contour that is accessible during flooding.
- h) You should contact your local government official(s) to ensure that this facility complies with all applicable local floodplain regulations.
- i) The entire closed-loop coil heating and air conditioning system and its support apparatus must be either placed below elevation _____ (to provide a five-foot clearance for water craft at minimum pool elevations of _____) or located underneath a TVA approved water-use facility or other TVA approved structure. The supply and return lines must be buried as they cross the reservoir drawdown zone in areas of water depth less than five feet (minimum pool). The liquid contents of the closed-loop heating and air conditioning system must be propylene glycol or water, and the applicant or authorized agent must provide TVA with written verification of this fact.
- j) You agree that only those facilities which have been approved by TVA prior to construction will be placed within the harbor limits and that permanent mooring buoys, boat slips, or other harbor facilities will not be placed outside the harbor limits.
- k) You agree that all storage, piping, and dispensing of liquid fuel shall comply with applicable requirements of the "Flammable and Combustible Liquids" section of the National Fire Codes and any additional requirements of federal, state, and local laws and regulations.
- l) You agree that the water use facility hereby approved will be used for private and for no other purpose unless approved in writing from TVA.
- m) You agree that if the construction project covered by this permit is not initiated within (18) months after the date of issuance, this permit will then automatically expire and you must submit a new 26a permit application for TVA approval with the applicable fee.

2. Ownership Rights

- a) No fill will be placed higher than elevation _____ maximum shoreline contour (msc), and every precaution will be taken not to disturb or alter the existing location of the _____-foot contour elevation through either excavation or placement of fill.
- b) You are advised that TVA retains the right to flood this area and that TVA will not be liable for damages resulting from flooding.
- c) You shall notify TVA of any sale or transfer of land, which would affect the landward limits of harbor area, as far in advance of such sale or transfer as possible.
- d) This approval of plans is only a determination that these harbor limits will not have any unacceptable effect on TVA programs or other interests for which TVA has responsibility. Such approval does not profess or intend to give the applicant exclusive control over the use of navigable waters involved.
- e) You recognize and understand that this authorization conveys no property rights, grants no exclusive license, and in no way restricts the general public's privilege of using shoreland owned by or subject to public access rights owned by TVA. It is also subject to any existing rights of third parties. Nothing contained in this approval shall be construed to detract or deviate from the rights of the United States and TVA held over this land under the Grant of Flowage Easement. This Approval of Plans does not give any property rights in real estate or material and does not authorize any injury to private property or invasion of private or public rights. It merely constitutes a finding that the facility, if constructed at the location specified in the plans submitted and in accordance with said plans, would not at this time constitute an obstruction unduly affecting navigation, flood control, or public lands or reservations.

3. Shoreline Modification and Stabilization

- a) For purposes of shoreline bank stabilization, all portions will be constructed or placed, on average, no more than two feet from the existing shoreline at normal summer pool elevation.
- b) You agree that spoil material will be disposed of and contained on land lying and being above the 743-foot contour. Every precaution will be made to prevent the reentry of the spoil material into the reservoir.
- c) Bank, shoreline, and floodplain stabilization will be permanently maintained in order to prevent erosion, protect water quality, and preserve aquatic habitat.
- d) You agree to reimburse TVA \$_____, which is the current value of the _____ acre feet of power storage volume displaced by fill into the reservoir.

4. Water Intake

- a) If the reservoir falls below the elevation of the intake, the applicant will be responsible for finding another source of raw water.
- b) You must install and maintain a standard regulatory hazard buoy at the end of the intake to warn boaters of the underwater obstruction. The word "intake" should be added to the buoy and be attached using a five-foot cable.
- c) The screen openings on the intake strainer must be 1/8-inch (maximum), to minimize the entrapment of small fish.
- d) This approval does not constitute approval of the adequacy or safety of applicant's water system. TVA does not warrant that the water withdrawn and used by applicant is safe for drinking or any other purpose, and applicant is solely responsible for ensuring that all water is properly treated before using.

5. Bridges and Culverts

- a) You agree to design/construct any instream piers in such a manner as to discourage river scouring or sediment deposition.
- b) Applicant agrees to construct culvert in phases, employing adequate streambank protection measures, such that the diverted streamflow is handled without creating streambank or streambed erosion/sedimentation and without preventing fish passage.
- c) Concrete box culverts and pipe culverts (and their extensions) must create/maintain velocities and flow patterns which offer refuge for fish and other aquatic life, and allow passage of indigenous fish species, under all flow conditions. Culvert floor slabs and pipe bottoms must be buried below streambed elevation, and filled with naturally occurring streambed materials. If geologic conditions do not allow burying the floor, it must be otherwise designed to allow passage of indigenous fish species under all flow conditions.

- d) All natural stream values (including equivalent energy dissipation, elevations, and velocities; riparian vegetation; riffle/pool sequencing; habitat suitable for fish and other aquatic life) must be provided at all stream modification sites. This must be accomplished using a combination of rock and bioengineering, and is not accomplished using solid, homogeneous riprap from bank to bank.
- e) You agree to remove demolition and construction by-products from the site--for recycling if practicable, or proper disposal--outside of the 100-year floodplain. Appropriate BMPs will be used during the removal of any abandoned roadway or structures.

6. Best Management Practices

- a) You agree that removal of vegetation will be minimized, particularly any woody vegetation providing shoreline/streambank stabilization.
- b) You agree to installation of cofferdams and/or silt control structures between construction areas and surface waters prior to any soil-disturbing construction activity, and clarification of all water that accumulates behind these devices to meet *state* water quality criteria *at the stream mile where activity occurs* before it is returned to the *unaffected portion of the stream*. Cofferdams must be used wherever construction activity is at or below water elevation.
- c) A floating silt screen extending from the surface to the bottom is to be in place during excavation or dredging to prevent sedimentation in surrounding areas. It is to be left in place until disturbed sediments are visibly settled.
- d) You agree to keep equipment out of the reservoir or stream and off reservoir or stream banks, to the extent practicable (i.e., performing work "in the dry").
- e) You agree to avoid contact of wet concrete with the stream or reservoir, and avoid disposing of concrete washings, or other substances or materials, in those waters.
- f) You agree to use erosion control structures around any material stockpile areas.
- g) You agree to apply clean/shaken riprap or shot rock (where needed at water/bank interface) over a water permeable/soil impermeable fabric or geotextile and in such a manner as to avoid stream sedimentation or disturbance, or that any rock used for cover and stabilization shall be large enough to prevent washout and provide good aquatic habitat.
- h) You agree to remove, redistribute, and stabilize (with vegetation) all sediment which accumulates behind cofferdams or silt control structures.
- i) You agree to use vegetation (versus riprap) wherever practicable and sustainable to stabilize streambanks, shorelines, and adjacent areas. These areas will be stabilized as soon as practicable, using either an appropriate seed mixture that includes an annual (quick cover) as well as one or two perennial legumes and one or two perennial grasses, or sod. In winter or summer, this will require initial planting of a quick cover annual only, to be followed by subsequent establishment of the perennials. Seed and soil will be protected as appropriate with erosion control netting and/or mulch and provided adequate moisture. Streambank and shoreline areas will also be permanently stabilized with native woody plants, to include trees wherever practicable and sustainable (this vegetative prescription may be altered if dictated by geologic conditions or landowner requirements). You also agree to install or perform additional erosion control structures/techniques deemed necessary by TVA.

Additional Conditions

Once a state chartered homeowners association is established, the owners of the Cove at Blackberry Ridge LLC. are required to have this permit re-permitted into the homeowner's association name.

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Appendix B - TVA Public Notice

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Public Notice

Tennessee Valley Authority
July 9, 2007

Proposed action

Exchange of water-access rights

Location

Watts Bar Reservoir, Rhea and Roane Counties, Tennessee

Description

The Cove at Blackberry Ridge LLC has submitted a request to relinquish 150 feet of water-access rights in Rhea County in exchange for obtaining 145 feet of water-access rights along the shoreline of Watts Bar Reservoir in Roane County. The applicant offers to establish a 50-foot buffer zone along the shoreline to be relinquished. This accords with TVA's maintain-and-gain policy under its Shoreline Management Policy, which ensures the maintenance of shorelines and the gain of additional public benefits if lands are to be exchanged.

The applicant is proposing a 20-slip community boat dock facility and a 12-foot-wide concrete boat-launch ramp along the 145 feet of requested shoreline access.

The proposal also contains an offer to partner with TVA in funding a shoreline stabilization project on Wading Bird Island, located on Watts Bar Reservoir in Roane County.

TVA is interested in receiving comments on the potential of the proposed action to affect the environment or historic properties, and would like to identify any other issues associated with this proposal. These comments will be used to help TVA reach a decision on the proposed action.

Please note that any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

All written comments on this proposed action must be received on or before August 18, 2007, and should be directed to:

David B. Harrell
TVA Watts Bar - Clinch Watershed Team
260 Interchange Park Lane
Lenoir City, TN 37772-5664
865-632-1327
E-mail: dbharrell@tva.gov

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Appendix C – Section 106 Correspondence

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Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

September 21, 2007

Ms. Jennifer Barnett
Tennessee Division of Archaeology
1216 Foster Avenue, Cole Building #3
Nashville, Tennessee 37210

TVA, THE COVE AT BLACKBERRY RIDGE SUBDIVISION, DEED MODIFICATION, PROPERTY WATER ACCESS RIGHTS EXCHANGE, PROPOSED COMMUNITY BOAT DOCK AND LAUNCHING RAMP, WATTS BAR RESERVOIR, TENNESSEE RIVER MILE 577.4R, ROANE COUNTY, TENNESSEE

Dear Ms. Barnett:

TVA has received a deed modification and permit request from The Highlands Property Group, LLC, for the proposed construction of community water use facilities at the Cove at Blackberry Ridge (CBR) subdivision. The shoreline fronting CBR does not currently have water access rights, and TVA is considering a deed modification to allow access rights on 142 feet (approximately 0.22 Acres) of shoreline for a community boat dock and launching ramp (AREA A). To obtain those rights, the applicant is proposing to close water access rights of 150 feet (approximately 0.25 acres) on another section of Watts Bar Reservoir shoreline that is under their ownership (AREA B). In addition, the applicant is proposing to partner in funding to assist with the shoreline stabilization on Wading Bird Island (AREA C) on Watts Bar Reservoir. These locations are depicted on the enclosed maps.

TVA Cultural Resources staff visually inspected the shoreline of AREA B and did not identify any archaeological features or resources. The shoreline is rocky and steep and there is a low potential for rock shelters or caves. It is TVA Cultural Resources' opinion that the removal of water access rights in AREA B will have no effects on historic properties.

TVA considers the Area of Potential Effects (APE) for the deed modification and construction of community water use facilities regarding archeological resources, to be the TVA land that is in AREA A. Archival research identified 11 previously recorded archaeological sites within 2km of the APE. However, none lie directly within the APE. Following the archival research, a cultural resources survey was conducted. Please find enclosed the draft report titled *Cultural Resources Survey of a Proposed Community Boat Dock, Roane County Tennessee*. The investigation did not identify any archaeological resources and the terrain was extensively eroded.

TVA has reviewed the enclosed report and agrees with the recommendations of the authors. Therefore, since no historic properties were identified within the APE, it is TVA

Ms. Jennifer Barnett
Page 2
September 21, 2007

Cultural Resources' opinion that the proposed deed modification approval and installation of the community boat dock and launching ramp will not affect any historic properties eligible for, or listed, in the National Register of Historic Places (NRHP).

Wading Bird Island (AREA C) has not previously been inspected for archaeological resources. TVA Cultural Resources staff will conduct a field reconnaissance at AREA C during winter drawdown to determine if any archaeological resources are present along the shoreline. This will be conducted prior to ground disturbance and stabilization procedures.

Pursuant to 36 CFR Part 800, we are seeking your concurrence with TVA's findings and recommendations regarding the following:

- TVA considered APE;
- Eleven previously recorded historic properties were identified in the vicinity, but do not fall within the APE;
- The deed modifications (AREA A and AREA B) and property water access right exchange will have no effect on any properties listed in or eligible for listing in the NRHP.
- The installation of community facilities at AREA A will have no effect on any properties listed in or eligible for listing in the NRHP.
- The shoreline of Wading Bird Island (AREA C) will be reviewed for cultural resources prior to any stabilization procedures on the island.

Should you have any questions or comments, please contact Tom Maher at 865-632-7452 or tomaher@tva.gov.

Sincerely,



Thomas O. Maher, Ph.D.
Manager
Cultural Resources

Enclosures



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

October 2, 2007

Mr. Thomas Maher
Tennessee Valley Authority
400 W. Summit Hill Drive
WT 11D - Cultural Resources
Knoxville, Tennessee 37902

RE: TVA, BLACKBERRY RIDGE SBDVSN/TRM 577.4R, UNINCORPORATED,
ROANE COUNTY

Dear Mr. Maher:

The above-referenced undertaking has been reviewed with regard to National Historic Preservation Act compliance by the participating federal agency or its designated representative. Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739).

Given the extent of the proposed water facilities and their direct association with the proposed residential subdivision, our office does not concur with your agency's definition of the area of potential effect for this undertaking. We request that you consider the entire subdivision development as the area of potential effect for this undertaking. In order to complete our review of this undertaking, we request a detailed archaeological survey report on the redefined area of potential effect.

Until such time as this office has rendered a final comment on this project, your Section 106 obligation under federal law has not been met. Please inform this office if this project is canceled or not funded by the federal agency. Questions and comments may be directed to Jennifer M. Barnett (615) 741-1588, ext. 105.

Your cooperation is appreciated.

Sincerely,

E. Patrick McIntyre, Jr.
Executive Director and
State Historic Preservation Officer

EPM/jmb



Choctaw Nation of Oklahoma

P.O. Box 1210 • Durant, OK 74702-1210 • (580) 924-8280

Gregory E. Pyle
Chief

Gary Batton
Assistant Chief

October 8, 2007

Pat Bernard-Ezzell
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1499

Dear Pat Bernard-Ezzell:

We have reviewed the following proposed project (s) as to its effect regarding religious and/or cultural significance to historic properties that may be affected by an undertaking of the projects area of potential effect.

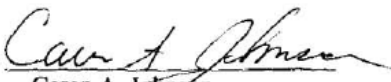
Project Description: The Cove at Blackberry Ridge Subdivision, Deed Modification, Property water access rights exchange, proposed community boat Dock and launching ramp, Watts Bar Reservoir, Tennessee River Mile 577.4R

County-State: Roane County, Tennessee

Comments: After further review of the above mentioned project (s), to the best of our knowledge it will have no adverse effect on any historic properties in the project's area of potential effect. However, should construction expose buried archaeological or building materials such as chipped stone, tools, pottery, bone, historic crockery, glass or metal items, this office should be contacted immediately @ 1-800-522-6170 ext. 2137.

Sincerely,

Terry D. Cole
Tribal Historic Preservation Officer
Choctaw Nation of Oklahoma

By: 
Caren A. Johnson
Administrative Assistant

CAJ: vr



the
Chickasaw
Nation HEADQUARTERS

Arlington at Mississippi / Box 1548 / Ada, OK 74821-1548 / (580) 436-2603

Bill Anoatubby
Governor

Jefferson Keel
Lieutenant
Governor

October 15, 2007

Ms. Pat Ezzell
Historian/Native American Liaison
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902-1499

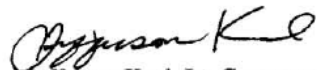
Dear Ms. Ezzell:

Thank you for your letter of notification regarding the Tennessee Valley Authority's proposed community boat dock and launching ramp at the Watts Bar Reservoir in Roane County, Tennessee.

We are unaware of any specific historic properties or traditional cultural, religious and/or sacred sites at this time. However, in the event of inadvertent discoveries, we expect all construction activities to cease and we be notified according to all applicable state and federal laws.

If you have any questions, please contact Ms. Gingy Nail, historic preservation officer, at (580) 332-8685.

Sincerely,


Jefferson Keel, Lt. Governor
The Chickasaw Nation



God Bless America!



**United Keetoowah Band
Of Cherokee Indians in Oklahoma**

P.O. Box 746 • Tahlequah, OK 74465
2450 S. Muskogee • Tahlequah, OK 74464
Phone: (918) 431-1818 • Fax: (918) 431-1873
www.ukb-nsn.gov

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Barry Dotson
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Albert Shade
Tahlequah District

October 17, 2007

Ms. Pat Ezzell
Tennessee Valley Authority
400 West Summit Hill Dr.
Knoxville, TN 37902-1499

Dear Pat:

We are in receipt of your letter dated September 25, 2007 regarding the Cove at Blackberry Ridge Subdivision, Deed Modification, Property Water Access Rights Exchange, Proposed Community Boat Dock and Launching Ramp, Watts Bar Reservoir, Tennessee River Mile 577 (Roane County, Tennessee).

We have no objection to the above referenced deed modification, but ask for the stipulation to be included that if any inadvertent discoveries are made, work will cease and we will be contacted.

As, always, thank you for consulting with the UKBC.

Best Regards,

Lisa C. Stopp
Interim Director, Language, History and Culture
Acting Tribal Historic Preservation Officer

October 29, 2007

Mr. E. Patrick McIntyre, Jr.
Executive Director and
State Historic Preservation Officer
Tennessee Historical Commission
Department of Environment and Conservation
2941 Lebanon Road
Nashville, Tennessee 37243-0442

Dear Mr. McIntyre:

TENNESSEE VALLEY AUTHORITY (TVA), THE COVE AT BLACKBERRY RIDGE
SUBDIVISION/TENNESSEE RIVER MILE 577.4R, UNINCORPORATED ROANE
COUNTY, TENNESSEE

In response to your October 2 letter to Thomas O. Maher, Manager, Cultural Resources, TVA has reevaluated and further considered the area of potential effects (APE) for the Cove at Blackberry Ridge Subdivision in Roane County, Tennessee.

TVA appreciates and values the State Historic Preservation Officer's comments. After considerable deliberation, TVA remains convinced that our determination of the APE for this project is correct. Since the Federal agency ultimately determines the APE, TVA believes that the Section 106 responsibilities regarding the Cove at Blackberry Ridge Subdivision have been fulfilled.

Should you have any questions or comments, please contact Thomas O. Maher at (865) 632-7452 or tomaher@tva.gov.

Sincerely,

(Original signed by Bridgette K. Ellis)

Bridgette K. Ellis
Senior Vice President
and Federal Preservation Officer
Office of Environment and Research
WT 11A-K

TOM:SBW

cc: Buff L. Crosby, LP 5U-C
Daniel H. Ferry, WT 11B-K
Thomas O. Maher, WT 11D-K
Khurshid K. Mehta, WT 6A-K (w/incoming)
Anda A. Ray, WT 11A-K
EDMS, WT 11A-K

Howard, Anthony Eric

From: Ezzell, Patricia Bernard
Sent: Friday, November 30, 2007 1:25 PM
To: Howard, Anthony Eric
Subject: FW: STOF Response: Blackberry Ridge: Boat Ramp/Dock, Watts Bar Reservoir, and Wading Bird Island, Roane County, TN

From: Rhianna Rogers [mailto:RhiannaRogers@semtribe.com]
Sent: Thursday, November 01, 2007 3:35 PM
To: Ezzell, Patricia Bernard
Subject: STOF Response: Blackberry Ridge: Boat Ramp/Dock, Watts Bar Reservoir, and Wading Bird Island, Roane County, TN

Pat Bernard Ezzell, Historian/ Native American Liaison
Tennessee Valley Authority
400 West Summit Hill Dr.
Knoxville, Tennessee 37902-1499

Thursday, November 01, 2007

THPO: 000943

SEMINOLE TRIBE OF FLORIDA
◇ TRIBAL HISTORIC PRESERVATION OFFICE ◇

<p>Tribal Historic Preservation Officer TINA M. OSCEOLA Executive Director</p> <p>WILLARD S. STEELE Tribal Historic Preservation Officer</p> <p>DR. MARION SMITH Compliance Review Supervisor</p> <p>BENJAMIN G. BURY Tribal Archaeologist</p>		<p>Tribal Officers:</p> <p>MITCHELL CYPRESS Chairman</p> <p>RICHARD BOWERS Vice Chairman</p> <p>PRISCILLA D. SAYEN Secretary</p> <p>MICHAEL D. TIGER Treasurer</p>
--	--	--

Subject: Blackberry Ridge: Boat Ramp/Dock, Watts Bar Reservoir, and Wading Bird Island, Roane County, TN

The Tribal Historic Preservation Office of the Seminole Tribe of Florida (STOF-THPO) has reviewed the work associated with Blackberry Ridge (i.e., the construction of Boat Ramp and Dock and the stabilization of Watts Bar Reservoir and Wading Bird Island in Roane County, TN.) STOF-THPO concurs with the determination of "no historic properties" for the Boat Ramp and Dock made by the TVA. In regards to the areas near Wading Bird Island and the Watts Bar Reservoir, STOF-THPO will await the results of the cultural resources survey before making any determinations about this portion of the project. Please reference **THPO-000943** in any future correspondence about this project.

We thank you for the opportunity to review the information that has been sent to date regarding this project.

Sincerely,



Direct routine inquiries to:

Rhianna Rogers, Reviewing Archaeologist
Tribal Historic Preservation Office
Seminole Tribe of Florida
Ah-Tah-Thi-Ki Museum
HC-61, Box 21A

FOR: Willard Steele, Tribal Historic Preservation Officer
Seminole Tribe of Florida
Ah-Tah-Thi-Ki Museum
HC-61, Box 21A

11/30/2007



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

November 7, 2007

Ms. Bridgette K. Ellis
Senior Vice President
Office of Environment and Research
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37402-1401

RE: TVA, THE COVE AT BLACKBERRY RIDGE SUBDIVISION,
TENNESSEE RIVER MILE 577.4R, UNINCORPORATED ROANE
COUNTY

Dear Ms. Ellis:

In response to your letter, received on November 5, 2007, we have reviewed your reiteration of your disagreement with our recommendation concerning the area of potential effects for this undertaking. Before we respond to your most recent determination, we wish to reiterate the reasons for making our previous recommendation concerning this project's area of potential effects.

The initial consultation documentation we received from your agency outlined a multi-faceted undertaking. The proposed undertaking includes a deed modification, 26A permitting of water facilities and off-site bank stabilization. On October 2, 2007, we informed Dr. Maher that, given the geographical extent of the proposed water facilities under the authority of a Tennessee Valley Authority 26A permit and their clear association with the proposed residential subdivision slated for Blackberry Ridge, we did not concur with the

strict boundary of the Tennessee Valley Authority's area of potential effects.

In addition to the 26A permitting, the undertaking includes a deed modification to provide the Blackberry Ridge development with water access rights for the proposed 26A permitted water facilities. The property currently has no such access rights. Without such an agreement, the developer will be unable to provide water-use facilities to potential residents. These permit-related activities and deed modifications might indirectly and cumulatively affect historic properties, such effects being associated with the Blackberry Ridge development. Therefore we considered the entire Blackberry Ridge subdivision development within the boundary of the proper area of potential effects (please see attached project map).

That being the case, on October 2, 2007, we requested a detailed archaeological survey report for the broad area of potential effects. Such a report would have identified and evaluated any archaeological resources within the area of potential effects that were eligible for listing in the National Register of Historic Places as required by 36 CFR Part 800.4

Please allow me to remind you that 36 CFR Part 800.4(a)(1) states: **In consultation with the SHPO/THPO**, the agency official shall determine and document the area of potential effects, as defined in Sec. 800.16(d). (emphasis added). 36 CFR Part 800.16(d) defines the area of potential effects as: the geographic area or areas within which an undertaking may **directly or indirectly** cause alterations in the character or use of historic properties if any such properties exist (emphasis added). Central to this consultation requirement is the need for consensus between the agency official and the SHPO concerning the geographic boundary of the area of potential effects because the project is assumed in the regulation to have the possibility of both direct and indirect effects upon historic properties. The SHPO is specifically named as the consulting party with whom the agency official consults concerning defining the boundary of the project's area of potential effects because, as 36 CFR Part 800.2c)(1) clearly states, the State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with Section 101(b)(3) of the Act, the SHPO advises and assists Federal agencies in carrying out their Section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

This means that the Advisory Council on Historic Preservation, reflecting specific statutory provisions of the National Historic Preservation Act, has identified the SHPO within the 36 CFR Part 800 regulation as the responsible agent that is competent to identify the state's cultural heritage. It also means that the Council has presumed the SHPO to be competent to assist the agency official identify both direct and indirect effects associated with a specific federal undertaking and to advise the agency official accordingly when determining the boundary of an area of potential effects. These facts are especially evident because 36 CFR Part 800.16(d) also states: The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Because you have disagreed with our recommendation by strictly limiting the boundary of the area of potential effects of this undertaking to the geographical area directly affected by the Section 26A permit action, we find that you are now unable successfully to carry out the remainder of your responsibility to identify historic properties that may be effected by the referenced project as required by 36 CFR Part 800.4 or to assess potential project effects upon those properties as required by 36 CFR Part 800.5

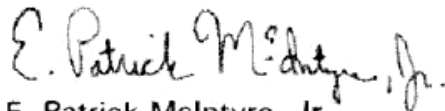
Given your strict construction of the area of potential effects, you cannot completely and accurately review existing information on historic properties within the proper area of potential effects, including any data concerning possible historic properties not yet identified. Nor can you seek accurate and complete information from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties. Nor can you gather accurate and complete information from any Indian tribe identified pursuant to Section 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register.

Since you cannot successfully fulfill your responsibilities under 36 CFR Part 800.4(a), you also cannot successfully fulfill your responsibilities under 36 CFR Part 800(4)(b) to identify historic properties that may be affected by the referenced undertaking; that is in consultation with the SHPO/ THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects. And since you cannot accurately identify historic properties within the project's proper area

of potential effects, you cannot apply the National Register of Historic Places criteria codified at 36 CFR Part 63 to evaluate them for National Register eligibility. And since you cannot correctly evaluate any such properties for National Register eligibility, you cannot successfully apply the Criteria of Adverse Effects to any historic properties that have been so identified as required by 36 CFR Part 800.5.

Simply put, because you have not taken both the direct and indirect project effects of your proposed Section 26A permit action, and your deed modification, and your off-site bank stabilization into account when determining the boundary of this project's area of potential effects, despite our consultation to the contrary, you cannot successfully complete Section 106 review with respect to this undertaking. This being the case, you have foreclosed our opportunity meaningfully to consult on this undertaking. We feel that further consultation with you on this undertaking will not be productive. Therefore, we terminate consultation with you regarding this undertaking and direct you to the Advisory Council on Historic Preservation for Council comment.

Sincerely,



E. Patrick McIntyre, Jr.
Executive Director and
State Historic Preservation Officer

EPM/jyg

xc: John M. Fowler, Advisory Council on Historic Preservation

Attachments:

Stringfield, I Kathleen

From: Ezzell, Patricia Bernard
Sent: Monday, November 19, 2007 8:38 AM
To: Howard, Anthony Eric
Cc: Stringfield, I Kathleen
Subject: FW: The Cove at Blackberry Ridge Subdivision Deed Modification project

[EBCI - official response on Blackberry Cove.](#)

[Kathleen, we need to put this in the files.](#)

Pat

From: Tyler B. Howe [mailto:tylehowe@nc-chokeee.com]
Sent: Monday, November 19, 2007 8:40 AM
To: Ezzell, Patricia Bernard
Subject: The Cove at Blackberry Ridge Subdivision Deed Modification project

Pat:

I have reviewed the attached letter regarding the proposed *The Cove at Blackberry Ridge* Subdivision Deed Modification project. This office recognizes that the TVA cultural resources staff inspected the shoreline to "identify any archeological features or resources." The EBCI THPO also recognizes that the shoreline within the site is steep and rocky, having a low potential for "rock shelters or caves." Furthermore, this office concurs with the archeologist's recommendations that no archeological sites eligible for inclusion on the National Register of Historic Places were discovered during the recent phase I archeological field survey. As such, it is the opinion of the EBCI THPO that the proposed project may proceed as planned. Should those plans change, or human remains or cultural resources be discovered during the construction phase, all work should cease, and this office notified to continue the consultation process as mandated under Section 106 of the NHPA.

Additionally, this office anticipates reviewing a field survey of the Wading Bird Island phase I should the above mentioned project proceed.

Please do not hesitate to contact me should you have any questions or comments.

Sincerely,

Tyler B. Howe
Tribal Historic Preservation Specialist
Eastern Band of Cherokee Indians
828-554-6852

From: Ezzell, Patricia Bernard [mailto:pbezzell@tva.gov]
Sent: Thursday, November 01, 2007 3:38 PM
To: Tyler B. Howe
Subject: recent letters from TVA
Importance: High

Hi Tyler,

11/26/2007

If you have comments on Blackberry Ridge and TN National Golf Course, please send those in **ASAP**. Same with the MRLMP PA letter and site locations re: that lands plan. The other attachments we have a little bit of time.

Thank you so much, and it was great talking to you today!

Pat

Pat Bernard Ezzell
Historian/Native American Liaison
Tennessee Valley Authority
(865) 632-6461



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

December 4, 2007

Mr. Don Klima
Director of the Office of Federal Programs
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 803
Washington, DC 20004

TENNESSEE VALLEY AUTHORITY (TVA), COMMUNITY WATER-USE FACILITIES AT THE COVE AT BLACKBERRY RIDGE AT TENNESSEE RIVER MILE 577.4R, ROANE COUNTY, TENNESSEE

Dear Mr. Klima:

TVA received a request from a private developer, Highlands Property Group, to grant an easement for shoreline access and issue a Section 26a permit for construction of community water-use facilities at the Cove at Blackberry Ridge (CBR) on Watts Bar Reservoir (Map 1, Area A; and Map 2). The shoreline fronting CBR does not currently have water access rights; the easement would provide access rights to this stretch of the shoreline for a community boat dock and launching ramp. Consistent with TVA's "maintain and gain" policy for the shoreline of the Tennessee River and its tributaries, the applicant is proposing, through a deed modification, to extinguish water access rights on another section of the Watts Bar Reservoir that is currently under the applicant's ownership (Map 1, Area B). To provide additional public benefits, the applicant will grant TVA \$15,000 for shoreline stabilization work on Wading Bird Island (Map 1, Area C). Thus, TVA's undertaking involves the grant of a recreation easement for shoreline access to Area A and the issuance of a Section 26a permit to construct a community boat dock and launching ramp in this easement area.

The area of potential effect (APE), proposed by TVA for this undertaking, included TVA land that is the subject of the recreation easement and on which the community water-use facilities would be constructed (Map 1, Area A; and Map 3). The APE also included Area B and Area C. Any potential effects on these areas would be indirectly related to the construction of the water-use facilities in Area A. On September 21, 2007, TVA sent the Tennessee State Historic Preservation Officer (SHPO) a letter delineating the proposed APE and a report documenting the survey results within this APE. The letter and report were also sent to 14 federally-recognized Indian tribes that are consulting parties in the Section 106 process. TVA sought the SHPO's concurrence with the finding that no historic properties would be affected within Area A and Area B. In regards to Area C, TVA will review the shoreline to verify the absence of historic properties along the Wading Bird Island shoreline prior to stabilizing this shoreline.

Mr. Don Klima
Page 2
December 4, 2007

The SHPO responded in a letter dated October 2, 2007, disagreeing with TVA's delineation of the proposed APE and declining to comment on the survey report. In this letter, the SHPO requested that TVA "consider the entire subdivision development as the area of potential effect for this undertaking." As a result of this request, TVA re-evaluated its delineation of the APE but did not uncover any new information that would prompt any change to the previously proposed APE. Accordingly, in a letter dated October 29, 2007, TVA thanked the SHPO for its comments, but respectfully declined to change the APE to include the subdivision development. The SHPO, in a letter dated November 7, 2007, terminated any further consultation and directed TVA "to the Advisory Council on Historic Preservation for Council comment." Of the 14 Indian tribes that were consulted, five tribes (The Chickasaw Nation, Eastern Band of Cherokee Indians, Seminole Tribe of Florida, Choctaw Nation of Oklahoma and United Keetoowah Band of Cherokee Indians in Oklahoma) responded indicating that no historic properties to which they attach religious and cultural significance would be affected by this undertaking. Three of those tribes requested additional information regarding Wading Bird Island (Area C) after the field inspection is conducted.

In delineating the APE, TVA considered the direct and indirect effects of the undertaking as set forth in Section 800.16(d) of the Advisory Council's regulations. The direct effects would be those suffered in Area A as a result of the excavation and ground disturbance caused by the construction of the community dock and launching ramp. Indirect effects, if any, would be those experienced in Area B and Area C. Beyond these areas, the SHPO requested the inclusion of the entire subdivision in the APE based on an assertion that the construction of the subdivision is an indirect effect of TVA's undertaking to allow construction of the water-use facilities. However, we do not agree that the building of the private subdivision is an indirect effect of TVA's undertaking. The ground-breaking for the construction of the subdivision occurred in July 2006. Map 4 is an aerial photograph of the area taken late in 2006, confirming that infrastructure development was well underway at the time the developer submitted his request to TVA to construct a water-use facility on May 1, 2007. In fact, activities relating to the first phase of the development were substantially complete at the time TVA received the application for water-use facilities.

While the water-use facilities in question may provide residents of the Cove at Blackberry Ridge subdivision an added amenity, these facilities are not critical to the establishment of that subdivision. In fact, several subdivisions in this general area do not have water-use facilities as an amenity. For example, the Paint Rock Wildlife Estates Subdivision located adjacent to Paint Rock Wildlife Refuge, and the Engert and Pershing Subdivision located adjacent to Polecat Creek were built without an attached community water-use facility. Further, the Cove at Blackberry Ridge Subdivision will have other amenities such as a swimming pool, tennis courts and club house, further diminishing the importance of the water-use facilities in the establishment of that subdivision. Even without the proposed water-use facilities, residents of the Cove at Blackberry Ridge Subdivision could use the two public boat launching ramps in the vicinity: the Adolps Boat Launching Ramp and the other ramp is located on Stamp Creek.

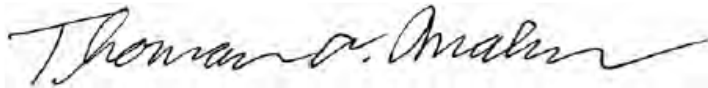
Mr. Don Klima
Page 3
December 4, 2007

The Cove at Blackberry Ridge Subdivision is designed to include 155 lots, covering an area of approximately 185 acres of private land. The estimated cost of the development is \$ 8.6 million, and the average cost of a lot will be \$130,000. The shoreline access easement comprising the federal undertaking, that is the subject of this Section 106 review, covers less than 0.25 acres. The cost of building the water-use facilities will be a small fraction of the cost of developing and building the subdivision. Under these circumstances, federal control and responsibility does not extend beyond the shoreline access area, further justifying TVA's delineation of the APE to cover Areas A, B and C, but not to include the private subdivision.

TVA believes that we have engaged in meaningful consultation with the SHPO to determine the APE for this undertaking. Despite this consultation, no agreement could be reached on the extent of the APE. We understand that under the regulations of the Advisory Council, the federal agency is ultimately responsible for making the final determination of the APE. As the next step in the Section 106 process, TVA is forwarding its finding of "no historic properties affected" to the Advisory Council on Historic Preservation pursuant to the Council's regulations at 36 CFR § 800.4(d)(1)(ii). All correspondence and documentation relating to the finding is enclosed for your review. In accordance with 36 CFR § 800.4(d)(1)(iv), we respectfully request the Advisory Council to provide its opinion on this finding.

If you or your staff have any questions please do not hesitate to contact me at 865-632-7452 or tomaher@tva.gov.

Sincerely,



Thomas O. Maher, Ph.D.
Manager
Cultural Resources

Enclosures

cc (Enclosures):

Dr. Richard Allen
Policy Analyst
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Post Office Box 948
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Ms. Augustine Asbury
Cultural Preservation Coordinator
Alabama Quassarte Tribal Town
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Mr. Don Klima
Page 4
December 4, 2007

Ms. Tina Battise
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Historic Preservation Officer
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Mr. Gary Bucktrot
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Mr. Tyler Howe
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Ms. Karen Kaniatobe
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Shawnee, Oklahoma 74801

Mr. Don Klima
Page 5
December 4, 2007

Mr. E. Patrick McIntyre
Executive Director and
State Historic Preservation Officer
Tennessee Historical Commission
Department of Environment and Conservation
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Tribal Historic Preservation Officer
The Chickasaw Nation
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Ms. Rhianna Rogers
Reviewing Archaeologist
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Mr. Ron Sparkman
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Ms. Lisa Stopp
Interim Director, Language, History and Culture &
Acting Tribal Historic Preservation Officer
United Keetoowah Band
of Cherokee Indians in Oklahoma
Post Office Box 746
Tahlequah, Oklahoma 74464



Preserving America's Heritage

January 16, 2008

Thomas O. Maher, Ph.D.
Manager, Cultural Resources
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902-1499

Ref: *Proposed Water-Use Facilities for Cove at Blackberry Ridge Residential Development
Tennessee River Mile 577.4R, Watts Bar Reservoir, Roane County, Tennessee*

Dear Dr. Maher:

In a letter dated December 4, 2007, you notified the Advisory Council on Historic Preservation (ACHP) that the Tennessee Valley Authority (TVA) and the Tennessee State Historic Preservation Officer (SHPO) could not resolve a disagreement regarding the scope and boundaries of the Area of Potential Effects (APE) for the referenced undertaking. As a result, TVA has requested that the ACHP review its findings in accordance with Section 800.4(d)(1)(ii) of our regulations, "Protection of Historic Properties" (36 CFR Part 800).

On September 21, 2007, the TVA sent out a letter to the SHPO delineating the APE for the undertaking and a report documenting the results of an identification survey for a portion of that APE. The APE the agency proposed consisted of: (1) the 0.25-acre area of direct impact for development of the water-use facilities (boat dock and launching ramp); (2) a separate location on another section of Watts Bar Reservoir where the applicant will extinguish water access rights; (3) a second separate area of Watts Bar Reservoir where the applicant will provide funds to TVA for shoreline stabilization work in order to provide additional public benefit. The APE the agency defined did not include the 185-acre residential development in the uplands portion of the project.

In letters dated October 2, 2007, and November 7, 2007, the Tennessee SHPO disagreed with your delineation of the APE. The SHPO believes that the APE should encompass the entire proposed residential development. The SHPO argues that the development is clearly and directly associated with the water-use facilities and would not be built on the reservoir if the water access were not intended. The SHPO believes that there is a possibility of both direct and indirect effects to historic properties within the entire proposed development as a result of construction of the water-use facilities. Therefore, to be consistent with the definition at Section 800.16(d), the uplands residential development should be included in the APE. In its November 7, 2007, letter, the Tennessee SHPO terminated consultation and directed the TVA to request comment from the ACHP.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

In your letter of December 4, 2007, to the ACHP, you have justified TVA's delineation of the APE by contending that the water-use facilities are not critical to the establishment of the subdivision. You note that several subdivisions in the area do not have water-use as an amenity and indicate that there are two public boat-launching ramps in the near vicinity. You also relate that the construction of the subdivision began in July 2006 and that activities related to the first phase of the development were substantially complete at the time TVA received the application for water-access facilities. This implies that the developer had not originally intended to construct water-access facilities as a component of the overall development project. Finally, you contend that the cost for construction of the water-use facilities is a small fraction of the cost of the larger development and covers only 0.25 acres within the larger 155-acre project, and as a result, federal control and responsibility should be limited to the shoreline water-access area.

It is difficult to conclude, based on the information provided, the timing of the permit application, and the location of the development, that the applicant did not intend to include water-access facilities as a prominent component of the residential development project. On the face of it, the course of events described could be interpreted as an instance of intentional or unintentional segmentation. The applicant has initiated a project and carried out some level of site preparation and most of the first phase of the development, potentially limiting the ability to identify historic properties located within the larger uplands development. The applicant then subsequently, in mid-project, has applied for a permit to construct water-access facilities associated with the development.

In order to proceed with the Section 106 process for this undertaking, TVA must ascertain if water-access facilities were part of the planning, financing, and marketing for the proposed residential development prior to the initiation of the site preparation activity and first phase of development activity. If TVA can conclusively determine that the water-access facilities were not part of the original planning, promotion, and marketing of the residential development, then it may be reasonable to conclude that the development is not dependent upon or directly linked to the construction of the water-access facilities. In that case the agency should provide further clarification and documentation of that fact to the SHPO and the ACHP and then reinitiate consultation with the SHPO and proceed with the Section 106 process in consultation with appropriate consulting parties, taking the steps necessary to identify and evaluate historic properties, and assess and resolve any adverse effects in portions of the APE that have not yet been surveyed.

However, if TVA cannot make such a determination, the ACHP recommends that the agency expand the APE to include the uplands portion of the proposed development project. TVA will then have to determine whether Section 110(k) of National Historic Preservation Act (NHPA) applies to this undertaking, because the applicant has already carried out site preparation work and most of the first phase of development in the uplands. Section 110(k) of the NHPA prohibits a federal agency from granting a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid Section 106 of the NHPA, has intentionally significantly adversely affected an historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur. TVA must determine if Section 110(k) is applicable to this undertaking, and, if so, whether or not the circumstances justify granting the permit.

If pursuant to 36 CFR 800.9(c)(2), TVA determines, based on the actions of the applicant, that Section 110(k) is applicable but that circumstances may justify granting the assistance, the agency official shall notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation shall include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those

tribes, and other parties known to be interested in the undertaking. TVA shall then proceed with the undertaking in accordance with the compliance process set forth in Sections 800.3 through 800.6, including the resolution of adverse effects. If TVA makes a determination that Section 110(k) does not apply, TVA should document its position and explain its proposed course of action to conclude the Section 106 review process. If TVA is making a finding of "no historic properties affected" or "no adverse effect," TVA needs to consult with the SHPO and other consulting parties and consider their comments in concluding the Section 106 review.

We look forward to hearing from TVA regarding its proposed response to this matter. If you have any questions or require further assistance, please contact Dr. John T. Eddins at 202-606-8553 or via e-mail at jeddins@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

February 14, 2008

Ms. Jennifer Barnett
Tennessee Division of Archaeology
Cole Building #3
1216 Foster Avenue
Nashville, Tennessee 37210

Ms. Barnett:

TENNESSEE VALLEY AUTHORITY (TVA), PROPOSED BANK STABILIZATION,
WATTS BAR RESERVOIR TENNESSEE RIVER MILE 544L, ROANE COUNTY,
TENNESSEE

TVA is proposing to stabilize Wading Bird Island on Watts Bar Reservoir (TRM 544L) in Roane County, Tennessee (see enclosed map). The proposed treatment would consist of placing Class II riprap along the eroding shoreline. The riprap will be placed by barge and no bank reshaping would occur. Approximately 200 linear feet of riprap is projected.

On December 11, 2007, TVA Cultural Resources staff visited the island to conduct a reconnaissance level survey. The island was heavily eroded and appeared to have very minimal topsoil remaining (photo). No archaeological material or features were observed.

Therefore, pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations at 36 CFR Part 800, TVA:

- has determined that no historic properties will be affected by the proposed bank stabilization;
- is seeking your concurrence with this finding.

If you have any questions or comments, please contact Tom Maher at tomaher@tva.gov or 865-632-7452.

Sincerely,

A handwritten signature in black ink that reads "Thomas O. Maher".

Thomas O. Maher, Ph.D.
Manager
Cultural Resources

Enclosures



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

February 25, 2008

Dr. Thomas Maher
Tennessee Valley Authority
400 W. Summit Hill Drive
WT 11D - Cultural Resources
Knoxville, Tennessee 37902

RE: TVA, BANK STAB./TRM 544L/WADING BIRD IS, UNINCORPORATED, ROANE COUNTY

Dear Dr. Maher:

The Tennessee State Historic Preservation Office has reviewed the above-referenced undertaking received on Friday, February 22, 2008 for compliance by the participating federal agency or applicant for federal assistance with Section 106 of the National Historic Preservation Act. The Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739).

After considering the documentation submitted, we concur that there are no National Register of Historic Places listed or eligible properties affected by this undertaking. This determination is made either because of the location, scope and/or nature of the undertaking, and/or because of the size of the area of potential effect; or because no listed or eligible properties exist in the area of potential effect; or because the undertaking will not alter any characteristics of an identified eligible or listed property that qualify the property for listing in the National Register or alter such property's location, setting or use. Therefore, this office has no objections to your proceeding with the project.

If your agency proposes any modifications in current project plans or discovers any archaeological remains during the ground disturbance or construction phase, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act. You may direct questions or comments to Jennifer M. Barnett (615) 741-1588, ext. 105. This office appreciates your cooperation.

Sincerely,

E. Patrick McIntyre, Jr.
Executive Director and
State Historic Preservation Officer

EPM/jmb



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

February 29, 2008

Mr. Don Klima
Director of the Office of Federal Programs
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 803
Washington, DC 20004

TENNESSEE VALLEY AUTHORITY, COMMUNITY WATER-USE FACILITIES AT THE
COVE AT BLACKBERRY RIDGE AT TENNESSEE RIVER MILE 577.4R, ROANE
COUNTY, TENNESSEE

Dear Mr. Klima:

In response to your January 16 letter, the Tennessee Valley Authority (TVA) appreciates the Advisory Council on Historic Preservation's (Council) participation in this process under Section 106 of the *National Historic Preservation Act*. Ms. Vaughn requested that TVA review the planning, financing and marketing information for the development of the Cove at Blackberry Ridge (CBR) subdivision to ascertain whether this information is consistent with the area of potential effects (APE) delineated by TVA for its undertaking. We have examined documents relating to the planning, financing and marketing of the CBR development that were filed with other governmental agencies or were otherwise publicly available. This examination has provided TVA an opportunity to review documents filed by CBR independent of the developer's submittal to TVA. For reasons set out below, this independent verification confirms our earlier delineation of the APE.

Regarding planning documents, we contacted Roane County (County) to obtain the tax maps that were filed by the developer with the County government in June 2007 (Exhibit 1). For context, we have included Exhibit 1-1 that superimposes TVA's proposed APE (labeled APE) on the overall subdivision plat. Since the maps (Exhibit 1) were filed by the developer with the County for tax purposes, they provide a good insight into the developer's planning process. The tax maps depict, among other things, the layout of the subdivision lots for Phase I. The maps also identify the planned infrastructure: water and sewer lines, drainage structures, power lines and poles, and subdivision roads. No water-access facilities are identified on these maps, signifying that planning for the CBR development was not dependent upon the construction of the water-access facilities.

We also obtained, from the office of the County Registrar of Deeds, documents relating to the developer's purchase and financing of the CBR property. Enclosed is a copy of the Warranty Deed for Blackberry Cove (Exhibit 2), entered into June 21, 2005. The property consists of two tracts (160 acres and 46 acres) and was acquired from Bowater, Inc. for \$819,200. Additionally, there are two Deeds of Trust recorded on the property. The first Deed of Trust (Exhibit 3) is held by The Peoples Bank to secure indebtedness for a Promissory Note, dated July 24, 2006, in the amount of \$800,000 with a maturity date of January 24, 2008. The second Deed of Trust (Exhibit 4) is held by Mountain

Mr. Don Klima
Page 2
February 29, 2008

Commerce Bank to secure the indebtedness for a Promissory Note, dated April 24, 2007, in the amount of \$4,000,000 with a maturity date of April 24, 2009. These purchasing and financing documents do not mention water-use facilities nor any intent on the part of the developer to make water-use facilities a central and integral part of the subdivision development. Further, as pointed out in our December 4, 2007 letter to the Council, the cost of constructing water-use facilities would be a small fraction of the overall cost of developing and building the subdivision.

As to the marketing of the CBR private subdivision, enclosed are website advertisements and promotional brochures used to market the development (Exhibit 5). The marketing technique seeks to attract prospective buyers by highlighting the positive features of the development. The brochures use phrases such as "lakefront property," "waterfront living," and "dramatic views of the water." The promotional literature highlights a detailed feature of the infrastructure by noting that the "natural environment will be maintained with all utilities underground." Amenities such as the "clubhouse, swimming pool, and tennis courts" are also emphasized in the brochures. Yet, the brochures make no mention of community water-use facilities. Further, the brochure provides an artist's rendition of the layout of the subdivision, depicting a shoreline without any community water-use facilities. The absence of any mention of water-use facilities in brochures designed to promote the subdivision is a fairly good indicator that water-use facilities were not intended to be an integral or primary feature of the development. The fact that the development has progressed so far in its Phase I development is a further indicator that the impacts of the development on private land are not caused by the limited federal undertaking. Federal control and responsibility does not extend beyond the shoreline access area covered by TVA's proposed APE.

Having examined the additional documents relating to the planning, financing and marketing of the CBR subdivision, TVA maintains that the APE for its federal undertaking does not extend beyond the shoreline access area (approximately 0.25 acres) delineated in our letter of December 4, 2007, to the Council. We once again request the Council, pursuant to its regulations at 36 CFR § 800.4(d)(1)(ii), to review our finding of "no historic properties affected" within this delineated APE. To facilitate your review, we have enclosed (Exhibits 6 and 7) letters from the Tennessee State Historic Preservation Officer (TNSHPO) to the United States Army Corps of Engineers (USACE), in which the TNSHPO concurs with USACE's finding of "no historic properties affected" relating to CBR. The USACE's undertaking, as set out in the attached public notice (Exhibit 8), was to issue permits for the community water-use facilities under Section 10 of the *River and Harbors Act* and Section 404 of the *Clean Water Act*. TVA's undertaking, by contrast, is to grant a recreation easement and issue Section 26a permit for the construction of the same community water use facilities. The APE for USACE's undertaking is the same as the APE delineated by TVA for its proposed undertaking.

We would appreciate the Council's comments within the 30 days allotted in the regulations. We are anxious to fulfill our Section 106 obligations and hope to conclude the Section 106 process for this project. The TNSHPO has already provided concurrence, albeit to the USACE, that no historic properties are affected within the APE. Of course, if you have comments as to the effects within the APE, we will be glad to consider those comments.

Mr. Don Klima
Page 3
February 29, 2008

If you, or your staff, have any questions please do not hesitate to contact me at 865-632-7452 or by e-mail at tomaher@tva.gov.

Sincerely,

Original signed by Thomas O. Maher

Thomas O. Maher, Ph.D.
Manager
Cultural Resources

AEH:TOM:IKS

Enclosures

cc (Enclosure):

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Mr. Don Klima
Page 4
February 29, 2008

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Mr. Don Klima
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February 29, 2008

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Ms. Lisa Stopp
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Acting Tribal Historic Preservation Officer
United Keetoowah Band
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Preserving America's Heritage

April 10, 2008

Dr. Thomas O. Maher, Ph.D.
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400 West Summit Hill Drive
Knoxville, TN 37902-1499

Ref: *Proposed Water-Use Facilities for Cove at Blackberry Ridge Residential Development
Tennessee River Mile 577.4R, Watts Bar Reservoir
Roane County, Tennessee*

Dear Dr. Maher:

On March 4, 2008, the Advisory Council on Historic Preservation (ACHP) received your letter, dated February 29, 2008, regarding the referenced undertaking associated with the Cove at Blackberry Ridge (CBR) residential development. Your letter is a response to the ACHP's letter of January 16, 2008, in which we requested the Tennessee Valley Authority (TVA) provide additional information on and justification for its delineation of the Area of Potential Effects (APE) for the undertaking, pursuant to Section 800.4(a)(1) of the ACHP's implementing regulations (36 CFR Part 800) for Section 106 of the National Historic Preservation Act (NHPA).

The TVA involvement with CBR development includes granting an easement for shoreline access and issuance of a Section 26a permit for construction of a community water-access facility on Watts Bar Reservoir. TVA has determined that the APE should encompass only: (1) the 0.25-acre area of direct impact for development of the water-use facilities (boat dock and launching ramp); (2) a separate location on another section of Watts Bar Reservoir where the applicant will extinguish water access rights; and (3) a second separate area of Watts Bar Reservoir where the applicant will provide funds to TVA for shoreline stabilization work in order to provide additional public benefit. The APE TVA has defined does not include the 185-acre residential development in the uplands portion of the CBR project. However, it is the Tennessee State Historic Preservation Officer's (SHPO) view that the APE should encompass the entire proposed residential development, because it believes the development is clearly and directly associated with the water-use facilities and would not be built on the reservoir but for the water access.

In a letter to the ACHP dated December 4, 2007, TVA justified its delineation of the APE by contending that the water-use facilities are not critical to the establishment of the subdivision. The letter noted that several subdivisions in the area do not have water-use as an amenity and indicated that there are two public boat-launching ramps in the vicinity. TVA also noted that the construction of the subdivision began in July 2006, and that activities related to the first phase of the development were substantially complete by the time TVA received the application for water-access facilities. Based on these circumstances, TVA expressed the view that there was

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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insufficient evidence to support a conclusion that the developer had originally intended to construct water-access facilities as a component of the development.

In the ACHP's letter of January 16, 2008, we requested that TVA take further steps to address this issue. Specifically, we asked TVA to ascertain whether the water-access facilities were part of the planning, financing, and marketing for the proposed residential development prior to the initiation of the site preparation activity and first phase of development activity. We suggested that if TVA could conclusively demonstrate that the water-access facilities were not part of the original planning, promotion, and marketing of the residential development, then it would be reasonable to conclude that the development was not intended to be dependent upon or directly linked to the construction of the water-access facilities.

Based on the information included with your letter of February 29, TVA has reviewed documentation related to the planning and promotion of the CBA development, including:

- tax maps that the developer filed with Roane County in June 2007 depicting the proposed layout of subdivision lots and planned infrastructure including utilities and subdivision roads;
- documents related to the developer's purchase and financing of the CBR property; and
- website advertisements and promotional brochures used to market the development, including the artist's rendition of the proposed layout of the development, used on the website and in promotional brochures.

According to your analysis, these documents do not mention water-use facilities, nor the intent of the developer to make water-use facilities a central and integral part of the subdivision development. The artist's rendition does not show any water-access facilities along the shoreline.

Based on the information and opinion supplied by TVA, it appears that the project proponent began a lakeside development without the specific intention of building water-access facilities, similar to other nearby developments without water-access facilities referenced by TVA. After completing initial phases of development in the uplands portions of the project area, it appears that the developer subsequently decided to include water-access facilities, resulting in the need for an easement for shoreline access and a Section 26a permit from TVA, which then required TVA compliance with Section 106. In addition, introduction of water-use facilities required a permit under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act from the Corps of Engineers (Corps).

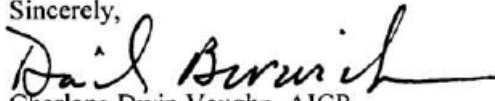
Based on the information and analysis TVA has provided, and absent any contradictory evidence, the ACHP will not challenge TVA's delineation of the APE for this project. We note, however, that given the location of the development and the timing of the permit application, it is still difficult to rule out questions regarding whether the applicant's original intent was to include water-access facilities as a component of the finished development project.

Our position in this case is not intended to signal that we will concur with a policy that limits the APE for Section 106 review in similar cases to the area specifically requiring an easement or Section 26a permit. Further, if additional cases were to arise that demonstrate a pattern of delayed requests for shoreline access easements associated with lakeside or waterfront residential developments after preliminary development activities have been initiated, the ACHP would need to consider whether intentional project segmentation is taking place. If such actions are taken by an applicant for federal assistance with the intent to avoid the requirements of Section 106 and the actions result in significant adverse effects to historic properties, such actions would meet the

definition of anticipatory demolition in the ACHP's regulations and in NHPA. Section 110 (k) of the NHPA prohibits a Federal agency from granting a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the ACHP, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant (16 U.S.C. §470h-2 (k)). We therefore urge TVA to take steps to notify and inform its permit applicants and the applicant community of their responsibility to assist and cooperate with TVA in meeting its responsibility to comply with Section 106 and Section 110 (k) of NHPA. Failure to do so may result in significant adverse effects to historic properties as well as the potential for applicants to be denied the permits or licenses they seek.

In the case of the CBR development, to conclude the Section 106 process, the ACHP recommends that TVA provide to the SHPO and other consulting parties documentation of its proposed course of action, including further clarification and documentation of its justification for determining the APE, and seek to reinstate consultation with the SHPO if possible. To meet its Section 106 responsibilities for this undertaking, TVA must proceed with the Section 106 process in consultation with SHPO, and appropriate consulting parties, take the steps necessary to identify and evaluate historic properties, in those portions of the APE that have not yet been surveyed, and assess and resolve any adverse effects. Should you have any questions or wish to discuss this matter further, please contact Dr. John T. Eddins at 202-606-8553, or by e-mail at jeddins@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP

Assistant Director

Federal Permitting, Licensing, and Assistance Section

Office of Federal Agency Programs



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

April 18, 2008

Mr. E. Patrick McIntyre, Jr.
Executive Director
Tennessee Historical Commission
Clover Bottom Mansion
2941 Lebanon Pike
Nashville, Tennessee 37243-0442

Dear Mr. McIntyre:

We respect your decision to terminate consultation with TVA regarding this project. Both of our positions on The Cove at Blackberry Ridge are well documented in the Section 106 process. Based on the information collected so far, we think TVA's portion of the Section 106 process is complete. We plan to approve a Section 26a permit and easement to The Cove at Blackberry Ridge for the construction of a community water facility.

The Advisory Council on Historic Preservation (ACHP) in their letter of April 10, 2008, indicated they would not challenge TVA's delineation of the area of potential effects (APE) for The Cove at Blackberry Ridge. The ACHP has also suggested we begin consultation again regarding The Cove at Blackberry Ridge, "...if possible." In our original letter to you, dated September 21, 2007, we enclosed a survey report of the APE and no historic properties were identified. This is the same report submitted to you by the Nashville District of the U.S. Army Corps of Engineers (USACE) for the same area requiring a USACE permit. Enclosed you will find a copy of your letter to USACE dated January 14, 2008, agreeing with the conclusion of that report. The Tennessee Valley Authority (TVA) agrees with USACE and the Tennessee State Historic Preservation Officer's (TNSHPO) findings.

We would like to establish a working group of TVA staff and TNSHPO staff to improve our packaging of information and communication with your office. We believe that a mutual exchange of information regarding the Section 106 process and our respective responsibilities, combined with the rapid growth being experienced in the Tennessee River Valley, would be beneficial. We are open to any suggestions that your office may have.

We highly value our ability to call on your expertise when planning TVA projects and addressing permit requests from the public. These informal interactions between our staffs are vital in maintaining relationships and discussing professional opinions. As a

Mr. E. Patrick McIntyre, Jr.
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April 18, 2008

federal corporation, we must balance public service with private property rights in Tennessee. The issues are not unique, but the Valley is, and we wish to retain its cultural heritage, while allowing it to grow.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas O. Maher". The signature is written in a cursive, flowing style.

Thomas O. Maher, Ph.D.
Manager
Cultural Resources

Enclosure



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

January 14, 2008

Ms. Kim Franklin
U.S. Army Corps of Engineers, Nashville District
Regulatory Branch
3701 Bell Road
Nashville, Tennessee 37214

RE: COE-N, ARCHAEOLOGICAL ASSESSMENT, PN# 07-93/COVE AT
BLACKBERRY RIDGE, UNINCORPORATED, ROANE COUNTY, TN

Dear Ms. Franklin:

At your request, our office has reviewed the above-referenced archaeological survey report in accordance with regulations codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739). Based on the information provided, we concur that the Corps of Engineers' area of potential affect contains no archaeological resources eligible for listing in the National Register of Historic Places.

If project plans are changed or archaeological remains are discovered during construction, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act.

Your cooperation is appreciated.

Sincerely,

E. Patrick McIntyre, Jr.
Executive Director and
State Historic Preservation Officer

EPM/jmb

16 JAN 2008

