

Document Type: EA – Administrative Record
Index Field: Final Environmental Document
Project Name: Cherokee Valley-Walden Creek
Project Number: 2007-3

FINAL ENVIRONMENTAL ASSESSMENT

CHEROKEE VALLEY SUBDIVISION

**MOUNTAIN RIDGE LLC – REQUEST FOR
SECTION 26a APPROVAL OF PROPOSED FACILITIES
IN FLOODPLAIN OF LOST BRANCH
AND WALDEN CREEK**

SEVIER COUNTY, TENNESSEE

TENNESSEE VALLEY AUTHORITY
JANUARY 2007

Direct Questions to:

Stanford E. Davis
NEPA Administration
Tennessee Valley Authority
400 West Summit Hill Drive, WT 11D
Knoxville, Tennessee 37902
Phone: 865.632.2915
Fax: 865.632.3451
e-mail: sedavis2@tva.gov

Page intentionally blank

FINAL ENVIRONMENTAL ASSESSMENT

REQUEST FOR SECTION 26a APPROVAL OF PROPOSED FACILITIES IN FLOODPLAIN OF LOST BRANCH AND WALDEN CREEK SEVIER COUNTY, TENNESSEE

TENNESSEE VALLEY AUTHORITY

JANUARY 2007

The Proposed Decision and Need

Mountain Ridge LLC (Mountain Ridge) proposes to construct a 55-foot-long, 10-foot by 6-foot box culvert in Lost Branch to provide for an entrance road for its proposed residential development along Walden Creek. The Cherokee Valley Subdivision would occupy a portion of a 15.6-acre private tract of land located at 1560 Wear Valley Road (U.S. Highway 321/State Route 73), Pigeon Forge, Sevier County, Tennessee (Figure 1). Lost Branch drains into Walden Creek on the east end of the property. Mountain Ridge also proposes to construct an encased aerial sewer line crossing Walden Creek, a storm water outfall into Walden Creek; and place 16,145 cubic yards of fill, a portion of which would be located within the limits of the 100-year floodplain of Walden Creek.

Construction of the box culvert, sewer line crossing, storm water outfall, and placement of fill in the 100-year floodplain would constitute permanent obstructions to flows in Lost Branch and Walden Creek; therefore, approval under Section 26a of the Tennessee Valley Authority (TVA) Act is required.

Background

Cherokee Valley Subdivision would contain 32 lots. Part of the proposal involves construction of some houses within the limits of the 100-year floodplain of Walden Creek; therefore, Mountain Ridge must demonstrate that there is no practicable alternative to such development at this location. Floodplain development permitted or authorized by TVA must comply with requirements of Executive Order (EO) 11988 (Floodplain Management) and not adversely affect natural floodplain values.

Representatives of the applicant, TVA, U.S. Army Corps of Engineers (USACE), and Tennessee Department of Environment and Conservation (TDEC) held an onsite interagency preapplication meeting in February 2006. Discussion focused on determinations of permitting jurisdiction, project scope, and the potential for impacts on water quality and archaeological resources. At TVA's request, Mountain Ridge prepared a Phase I Cultural Resources Survey. In June 2006, TVA initiated consultation with the Tennessee Historical Commission, State Historic Preservation Officer (SHPO). In its response, the SHPO concurred with TVA's determination of the area of potential effect (APE), that the project area contains an archaeological site potentially eligible for listing on the National Register of Historic Places (NRHP), and that the site should be subject to further testing and evaluation or avoided. Subsequently, a Phase II survey was conducted in June 2006 on site 40SV183. Based on this survey, TVA proposed to execute a memorandum of agreement (MOA) to address the treatment of adverse effects on this site.

The SHPO concurred that the archaeological site contains resources eligible for inclusion on the NRHP, the site would be adversely affected by the proposed undertaking, and that these adverse affects could be mitigated through implementation of a Data Recovery Plan (see the Cultural Resources Subsection under Affected Environment and Evaluation of Impacts below).

The proposed activities qualified for authorization under various USACE nationwide permits. These permits include No. 7 (Outfall Structures and Maintenance), for the storm water outfall; No. 12 (Utility Line Activities), for the sewer line crossing (both of these permits would affect Walden Creek); and No. 14 (Linear Transportation Crossing), for the culvert in Lost Creek. USACE verified its conditional authorization for these activities on April 4, 2006.

A second onsite meeting between TVA and USACE was held in August 2006. A more detailed examination of the limits of the archaeological site and likely affected portion of the Walden Creek floodplain area was conducted. TVA has prepared this environmental assessment (EA) to evaluate the anticipated effects of this project, with emphasis on the National Register-eligible archaeological site and on floodplain values.

Other Potential Cumulative Actions

The following actions have the potential to affect the same resources as those affected by the Mountain Ridge residential development project. Resources potentially cumulatively affected by culvert and floodplains development on Walden Creek are those aquatic resources downstream and in the West Prong and Little Pigeon Rivers.

The federally threatened snail darter and federally endangered pink mucket occur in the lower French Broad and Holston Rivers. To minimize the potential for individual and cumulative impacts to these species from the anticipated increase in the number of shoreline alteration approval requests, and to streamline the Section 26a review process, TVA established a set of standards and guidelines for construction of private water-use facilities (TVA 2003). This applies to newly proposed facilities between French Broad River miles (FBRM) 3.7 and 32.3 and Holston River miles 4.4 and 52.3 (Idid 2003). TVA reviewed the anticipated impacts of adopting the standards and guidelines in an EA available at <http://www.tva.gov/environment/reports/frenchbroad/index.htm>.

In February 2005, TVA and USACE completed an EA and approved a Sevierville Water Systems (SWS) proposal to construct a raw water treatment plant (WTP), associated intake, and finished water line on McCroskey Island in Sevier County. This intake is proposed to serve as a new primary source of potable water (USACE and TVA 2005a; available at <http://www.tva.gov/environment/reports/sevierville/index.htm>) for Sevier County. The intake would be located at FBRM 27.5L, about five miles below Douglas Dam and at the mouth of the West Prong Pigeon River. The finished water line would cross the island back channel at FBRM 27.1L. The WTP is proposed to consist of a firm capacity 12 million gallons per day plant, utilizing state-of-the-art, ultra-filtration membrane and control systems, coagulation to remove disinfection by-product precursor organics, and raw water pumping and transmission from the French Broad River to the WTP through approximately 1,600 feet of 36-inch-diameter ductile iron pipe. The proposed intake line is being installed in phases over approximately 16 to 20 months and is nearing completion. Intake installation would temporarily disturb approximately 1.3 acres of riverbed. During more detailed project planning and construction, SWS requested modifications that resulted in reevaluations of effects of development of a staging and launch area at FBRM 27.9, riverbed core drilling and mussel relocation, and relocation of the finished water line route

from the WTP to the main line. With mitigation, no impacts to aquatic endangered species, biodiversity, or archaeological resources would occur. Effects on water quality and quantity would be minor.

In August 2005, TVA, in cooperation with USACE, completed an EA and TVA granted Section 26a approval of a Sevierville Public Building Authority (PBA) proposal to construct an Events Center Complex to promote tourism to the community (USACE and TVA 2005b; available at <http://www.tva.gov/environment/reports/sevierville3/index.htm>). PBA and a private developer would construct a convention center, hotel, planetarium, golf course and clubhouse, and associated retail development on approximately 152 acres of jointly owned property. The site is generally located west of the Little Pigeon River and east of Old Knoxville Highway, within the city limits of Sevierville. A portion of the property is also located along Gist Creek Road. The proposal would require fill in 8 acres of floodplain wetlands and alterations to two small streams confluent to the Little Pigeon River near Mile 3.3. The PBA also asked that TVA Customer Services and Marketing consider providing federal financial assistance to study the feasibility of meeting the heating and cooling needs of the convention center using geothermal technology. Effects on water quality would be minor, and wetland mitigation credits would be purchased from the Indian Creek Advance Wetland Mitigation Site in Oliver Springs, Tennessee.

Pigeon Forge is a rapidly developing tourist destination. Bordering the Great Smoky Mountains National Park, it attracts visitors from throughout the county and the world. Private and public development projects near Walden Creeks are increasing. TVA and other federal and state permitting authorities anticipate future requests for approval of several projects within the downstream West Prong Pigeon River drainage in Pigeon Forge. These projects are Eagle's Landing Golf Course, Main Street Market Place, West Terrace Development, Pigeon Falls Village and Pigeon Falls Lane, and additional improvements to Middle Creek Road, Teaster Lane, and Jake Thomas Road. Preliminary meetings with consultants, on behalf of the city of Pigeon Forge or private developers, and initial reviews have occurred and submittals of additional revised plans are expected in the near future. Additional downstream projects in Pigeon Forge would also comply with the requirements of the National Flood Insurance Program (NFIP). Because of environmental protection commitments and mitigation measures that are normally required for TVA, USACE, and TDEC permit approvals, cumulative effects to water resources and historic properties in the watershed are expected to be minor.

Alternatives and Comparison

This EA considers three alternatives: (1) No Action, (2) the Proposed Action, and (3) the Proposed Action with Mitigation. If the project is not approved, the economic benefits to Mountain Ridge and its investors, as well as the Pigeon Forge community, would be foregone. If the project were approved as originally proposed, it could negatively affect floodplain values and a National Register-eligible archaeological site. As indicated in the Affected Environment and Evaluation of Impacts Section below, the economic viability of the project depends on locating some houses in the floodplain. Under Alternative 3, the preferred alternative, Mountain Ridge would minimize impacts of the project on the floodplain and historic properties.

Affected Environment and Evaluation of Impacts

Site Description

The proposed subdivision lies in eastern Tennessee within the Blue Ridge Mountain Physiographic Province, west of Gatlinburg and the Great Smoky Mountains National Park. The Cherokee Valley Subdivision would lie along the south side of Walden Creek and south of Walden Creek Road with an access road from Wear Valley Road over a culvert in Lost Creek. Elevations on the 15.6-acre tract range from about 990 feet mean sea level (msl) along Walden Creek to about 1,150 feet msl on the wooded hillside to the southwest. The portion of the site proposed for residential development is slightly sloping pastureland with Ramsey silt loam soil, a part of which lies in the Walden Creek floodplain (see the Floodplain Management section below). The majority of the eastern and western part of the tract is a forested hillside (see Figure 1). The 890-acre Lost Creek watershed, which is nearly completely forested, lies almost entirely to the east of the property on the opposite side of Wear Valley Road. Broader valleys throughout the area, including Wear Valley, have historically supported and continue to support a variety of small agricultural uses, including cattle production, hay land, and some cropland. Topography in the area ranges from rolling to hilly to moderately steep and mountainous. Generally, this area has a great diversity of plants and abundance of stream fishes and terrestrial wildlife. The plant communities and wildlife species in this area are common to the region. Streams appear to have fair to good water quality and would likely support designated uses.

Impacts Evaluated

TVA conducted a preliminary review and evaluation of the proposed project. TVA determined that impacts to natural features such as prime or unique farmland; groundwater; unique or important terrestrial habitats; parklands; state or national forests, trails, greenways, wilderness, scenic or other ecologically critical areas; and wetlands were either non-existent or minor and insignificant. No federally or state-listed threatened or endangered aquatic or terrestrial plants or animals are known from the site or vicinity and no listed species would be directly or indirectly impacted by the proposal. Improvements to Wear Valley Road in the vicinity of the proposed subdivision have occurred in recent years and the project would not result in a significant change in traffic volumes, congestion, or decrease in safety. Other than temporarily during construction, noise and dust levels would not significantly increase. Other than normally expected solid waste, no air or land emissions of pollutants, hazardous waste, or waste requiring special handling and disposal, or negative social impacts are anticipated. Socioeconomic impacts are expected to be minimally positive and beneficial.

Cultural Resources

TVA, in consultation with the SHPO, determined the project's APE to be the entire subdivision and directed the preparation of subsequent historic properties surveys. No historic architectural properties were found in the area. One previously unreported archaeological site, 40SV183, was found on the site. TVA and the SHPO agreed that site 40SV183 contains important information about the Middle Woodland Prehistoric Period (200 B.C. to A.D. 600) and is eligible for listing on the NRHP. This archaeological site would be adversely affected by earth-moving activities during the development of the subdivision. All impact avoidance and minimization options were examined, and TVA, in consultation with the SHPO, determined that the adverse effect to site 40SV183 cannot be avoided. The Advisory Council on Historic Preservation has been notified of the adverse effect finding. Pursuant to 36 CFR Part 800, a final MOA to address mitigation of adverse effects was executed among TVA, the SHPO, and Mountain Ridge on November 6, 2006 (Attachment 1). Federally recognized Indian tribes were invited to be consulting parties. The United Keetoowah Band (UKB) of the Cherokee Indians in Oklahoma and Eastern

Band Cherokee Indians (EBCI) requested consulting party status in this agreement. Both UKB and EBCI were provided an opportunity to sign the MOA as concurring parties.

TVA, in consultation with the SHPO, Mountain Ridge, UKB, and EBCI, would ensure that the stipulations of the MOA are carried out prior to commencement of any ground-disturbing activities within the boundaries of archaeological site 40SV183. These stipulations, which are described in detail in Appendix B of the MOA, include monitoring, reporting, and data recovery at site 40SV183. With implementation of the MOA, this project is expected to have insignificant effects on historic properties. The additional projects under development in Pigeon Forge and downstream along the West Prong Little Pigeon River which require federal authorization are not expected to affect historic properties. The could be cumulative effects from developments not requiring federal authorization and the associated consultation with the SHPO.

Floodplain Management

The proposed project involves the construction of a culvert, aerial sewer line, outfall, and houses within the 100-year floodplain. Consistent with EO 11988, a culvert, aerial sewer line, and outfall are considered to be repetitive actions in the floodplain that would result in minor impacts.

Many of the proposed houses would be constructed within the limits of the 100-year floodplain and are, therefore, also subject to the requirements of EO 11988. Based on information provided by the developer, Mountain Ridge purchased the property with the intention of developing a residential subdivision. Through the environmental review process, it was discovered that a portion of the development area would be within the Walden Creek 100-year floodplain.

The proposed development will be undertaken on private land. No request has been made for the use of any TVA land or land rights. TVA's only action is the issuance of a Section 26a permit for the placement of a sewer line and a storm water outfall in Walden Creek, a box culvert in Lost Branch, and the placement of fill in the 100-year floodplain of Walden Creek. Accordingly, TVA has very limited control on the selection of alternative sites for locating such a development. Discussions with the developer have confirmed that the current tract is the only one available to the developer for undertaking a development of this kind in the area. TVA also considered the prospect of having the developer limit the footprint of the development such that the placement of lots in the 100-year floodplain could be avoided. However, this prospect proved impracticable since a majority of the lots have footprints in the floodplain. Allowing lots only in areas that are outside the floodplain would have limited the development to far fewer than the 32 lots currently proposed, making the development economically infeasible. TVA therefore concludes that there is no practicable alternative to locating the development in the floodplain.

In order to minimize adverse floodplain impacts, the lowest floor of the habitable structures in the 100-year floodplain would be elevated to at least 1 foot above the 100-year flood elevation. This is consistent with local floodplain regulations. In addition, no fill material would be placed within the Walden Creek floodway. By preventing fill in the 100-year floodway, there would not be unacceptable increases in upstream flood elevations. The City of Pigeon Forge participates in the NFIP. Consistent with TVA conditions to minimize floodplain impacts, this residential development project would minimize impacts to the floodplain as outlined in a December 1, 2006, e-mail from John Jagger, community development director for the City of Pigeon Forge (Attachment 2). As long as Mountain Ridge adheres to these conditions, the project is not expected to increase the level or

extent of upstream flooding and would meet the requirements of the NFIP and all local ordinances. Under the preferred alternative (Alternative 3), anticipated impacts on local flooding and floodplain values would be insignificant. Additional projects downstream and in Pigeon Forge would also comply with the requirements of the NFIP. Therefore, TVA does not anticipate adverse cumulative effects on floodplains in the area.

Public Review

Cherokee Valley Subdivision received preliminary approval from the Pigeon Forge Planning Commission in December 2005. The planning commission holds regular meetings in public forums. It also approved final plans that ensure that the development meets the requirements of local ordinances, including floodplains. TVA also consulted with USACE, TDCE, SHPO, and Indian tribes during the environmental review process.

Commitments

TVA General and Standard Conditions to prevent sediment and minimize potential adverse water quality and aquatic life impacts would be implemented. TVA, in consultation with the SHPO, Mountain Ridge, UKB, and EBCI, would ensure that the stipulations of the MOA are carried out prior to commencement of any ground-disturbing activities within the boundaries of archaeological site 40SV183.

In addition to the placement of fill material to raise the elevations of some houses in the subdivision, Mountain Ridge would design these houses to be equipped atop stilts or pedestals to meet the requirements of the NFIP and all local floodplain ordinances. Houses built within the floodplain must have the lowest habitable floor at an elevation at least 1 foot above the level of the 100-year flood. No fill material would be placed within the Walden Creek floodway (unless engineered to assure that there is “no rise” in the floodwaters).

TVA Preparers

Freddie C. Bennett, Regional Watershed Specialist, Environmental Stewardship and Policy (ES&P)

Stanford E. Davis, Senior Specialist, NEPA Services, ES&P

Roger A. Milstead, Flood Risk and Data Manager, River Operations

Danny E. Olinger, Archaeologist, Cultural Resources, ES&P

Karen C. Stewart, Land Use Representative, Holston-Cherokee-Douglas Watershed Team, ES&P

Agencies and Others Consulted

Advisory Council on Historic Preservation

City of Pigeon Forge, Tennessee

Tennessee Department of Environment and Conservation

Tennessee Historical Commission, State Historic Preservation Office

U.S. Army Corps of Engineers, Nashville District

References

Executive Order 11988, Floodplain Management, 42 Federal Register 26951 (May 24, 1977).

Tennessee Valley Authority. 2003. *Final Environmental Assessment – Private Water Use Facilities on the French Broad River Miles 3.7 and 32.3 and the Holston River Miles 4.4 and 52.3, Jefferson, Knox, Sevier, and Grainger Counties, Tennessee.* TVA, Resource Stewardship, March 2003.

Tennessee Valley Authority Act of 1933, as amended, 16 USC Sections 831-831dd (1994).

U.S. Army Corps of Engineers and Tennessee Valley Authority. 2005a. *Environmental Assessment – Proposed Raw Water Intake and Water Treatment Plant at Mile 27.5, Left Bank, French Broad River, and Proposed Submarine Finished Water Pipeline Crossing at Mile 27.1, Left Bank, French Broad River (Back Channel), in Sevier County, Tennessee.* Nashville: USACE, Regulatory Branch, and Knoxville: TVA, Resource Stewardship, February 2005.

———. 2005b. *Final Environmental Assessment – Sevierville Public Building Authority Proposed Wetland Fill, Adjacent to Little Pigeon River Mile 3.3, Left Bank, Sevier County, Tennessee.* Nashville: USACE, Regulatory Branch, and Knoxville: TVA, Resource Stewardship, August 2005.

Attachments

Attachment 1 - Memorandum of Agreement (MOA) among Tennessee Valley Authority, Tennessee State Historic Preservation Officer, and Mountain Ridge LLC Cherokee Valley Subdivision, signed on November 6, 2006

Attachment 2 – December 1, 2006, e-mail from John Jagger, community development director for the City of Pigeon Forge regarding compliance with local floodplain ordinance

Attachment 1
Memorandum of Agreement Among Tennessee Valley Authority,
Tennessee State Historic Preservation Officer, and Mountain Ridge LLC
Cherokee Valley Subdivision,
Signed on November 6, 2006

Page intentionally blank

MEMORANDUM OF AGREEMENT

Among the Tennessee Valley Authority, the Tennessee State Historic Preservation Officer, and Mountain Ridge Development, LLC pursuant to 36 CFR Part 800

WHEREAS, the Tennessee Valley Authority (TVA) proposes to issue a permit (the Undertaking) pursuant to Section 26a of the TVA Act to Mountain Ridge Development, LLC (Permittee) for a road crossing of Lost Branch near its confluence with Walden Creek in Sevier County, Tennessee, and

WHEREAS, said stream crossing is essential to the development of Cherokee Valley residential subdivision, and

WHEREAS, TVA, in consultation with the Tennessee State Historic Preservation Officer (SHPO), has determined that the area of potential effects (APE) of issuing the TVA permit would be the external boundary of the subdivision for archaeological resources, and the APE for other historic properties would be the visual line-of-sight from the subdivision as depicted on the map made a part of this agreement as Appendix A, and

WHEREAS, a survey has been conducted to identify historic properties within the APE, and

WHEREAS, one historic property, archaeological site 40SV183, was identified within the APE, and

WHEREAS, TVA and the SHPO agree that site 40SV183 is eligible for listing in the National Register of Historic Places, and

WHEREAS, TVA, in consultation with the SHPO, has determined that the Undertaking would have an adverse effect on site 40SV183, and

WHEREAS, TVA, in consultation with the SHPO, has exhausted all avoidance and minimization options, and determined that the adverse effect to site 40SV183 cannot be avoided, and

WHEREAS, TVA has notified the Advisory Council on Historic Preservation (Council) of the finding of adverse effect, and

WHEREAS, TVA has invited the following federally recognized Indian tribes that may attach religious or cultural significance to site 40SV183 to be consulting parties: the Cherokee Nation, the Eastern Band of Cherokee Indians (EBCI), the United Keetoowah Band (UKB), the Muscogee (Creek) Nation, the Alabama-Coushatta Tribe, Alabama-Quassarte Tribal Town, Kialegee Tribal Town, Thlopthlocco Tribal Town, Shawnee Tribe, Absentee-Shawnee Tribe of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Chickasaw Nation, Choctaw Nation of Oklahoma, and Jena Band of Choctaw Indians, and

WHEREAS, the UKB and the EBCI have requested to be consulting parties and TVA has invited the UKB and the EBCI to concur in this agreement, and

WHEREAS, all costs associated with the implementation of this agreement shall be borne by the Permittee,

NOW THEREFORE, TVA, the SHPO, and the Permittee agree that the undertaking shall be implemented in accordance with the following stipulations to satisfy TVA's Section 106 responsibilities. The TVA Federal Preservation Officer, or the designee thereof, shall act for TVA in all matters concerning the administration of this Agreement.

Stipulations

TVA, in consultation with the SHPO, the Permittee, and other consulting parties, will ensure that the stipulations of this agreement are carried out prior to the commencement of any ground-disturbing activities within the boundaries of archaeological site 40SV183.

I. ARCHAEOLOGICAL DATA RECOVERY

Archaeological data recovery shall be conducted in accordance with "A Proposal for Cultural Resources Monitoring and Data Recovery at 40SV183, Sevier County, Tennessee," which is attached to this agreement as Appendix B.

II. REPORTS

TVA, in consultation with the SHPO and other signatories, shall ensure that all archaeological investigations undertaken for compliance with this agreement are recorded in formal written reports that meet the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Archaeological Resource Management Studies. All signatories shall be afforded thirty (30) days to review and comment on any archaeological or historical reports submitted under this agreement.

III. INADVERTENT DISCOVERY OF HUMAN REMAINS

To the best of TVA's knowledge, no Native American human remains, associated or unassociated funerary objects, sacred objects, or objects of cultural patrimony are expected to be encountered in the archaeological investigations. However, should human remains be encountered during data recovery, all ground-disturbing activities in the vicinity of the human remains will be ceased immediately. TVA Cultural Resources, the Tennessee State Archaeologist, and the Sevier County Coroner will be immediately notified.

If Native American human remains are discovered during data recovery, the preferred treatment will be preservation in place. If preservation in place is not feasible, such remains will be treated in accordance with all state laws concerning the treatment of human remains and the Memorandum of Understanding between TVA and the UKB which is attached to this agreement as Appendix C and the Memorandum of Understanding between TVA and the EBCI which is attached to this agreement as Appendix D.

IV. TIMETABLE FOR COMPLIANCE

- A. TVA shall ensure that the foregoing stipulations of this agreement are met prior to commencement of any ground-disturbing activities within the boundaries of archaeological site 40SV183.
- B. Throughout this agreement, unless otherwise stated, the SHPO and other signatories shall have thirty (30) days to review and comment on all reports provided by TVA concerning the data recovery. Comments received from the signatories shall be taken into consideration in preparing the final report. A copy of the final report shall be provided to the signatories.

V. ADMINISTRATIVE CONDITIONS

- A. If Stipulations I-IV have not been implemented within two (2) years, this agreement shall be considered null and void, unless the signatories have agreed in writing as provided in Paragraph V.B below to an extension for carrying out its terms. If no agreement is reached on an extension at the end of this two-year period, TVA, the SHPO, the Permittee, and other consulting parties will resume consultation pursuant to 36 CFR Part 800.
- B. The signatories to this agreement may agree to amend the terms of the agreement. Such amendment shall be effective upon the signatures of all signatory parties to this agreement. The amendment shall be appended to this agreement as an attachment.
- C. Should any signatory object regarding any action carried out or proposed with respect to the undertaking covered by this agreement or to implementation of this agreement, TVA shall consult with the objecting party to resolve the objection. If TVA determines that the objection cannot be resolved, TVA shall request the Council to comment by submitting all pertinent documentation to the Council. TVA shall allow the Council 30 days to review the documentation.

Any comments provided by the Council during the 30-day review period in response to such a request will be taken into account by TVA in resolving the objection of the signatory. While resolving this dispute, TVA's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

- D. If any signatory to this agreement determines that the terms of the agreement cannot be carried out, the signatories shall consult to seek an amendment to the agreement. If the agreement is not amended, any signatory may terminate the agreement. TVA shall either execute a new agreement with the signatories pursuant to 36 CFR Part 800.6(c)(1) or request the comments of the Council pursuant to 36 CFR Part 800.7(a).

EXECUTION OF MEMORANDUM OF AGREEMENT

Execution of this Memorandum of Agreement by the Tennessee Valley Authority, the Tennessee State Historic Preservation Officer, and Mountain Ridge Development, LLC, and implementation of its terms evidence that the Tennessee Valley Authority has, in accordance with Section 106 of the National Historic Preservation Act, taken into account the effects of the project on historic properties and afforded the Council an opportunity to comment.

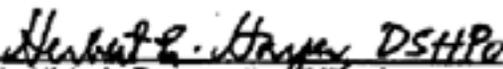
SIGNATORIES:

TENNESSEE VALLEY AUTHORITY

By: 
[Kathryn A. Jackson, Executive Vice President, RSO&E]

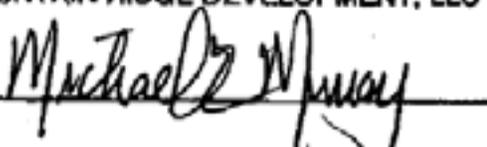
Date: 10.24.06

TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By: 
[State Historic Preservation Officer]

Date: 10/25/06

MOUNTAIN RIDGE DEVELOPMENT, LLC

By: 

Date: 11/6/06

CONCURRENCE BY OTHERS

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA

By: _____

Date: _____

EASTERN BAND OF CHEROKEE INDIANS

By: _____
[The Honorable Principal Chief, Michell Hicks]

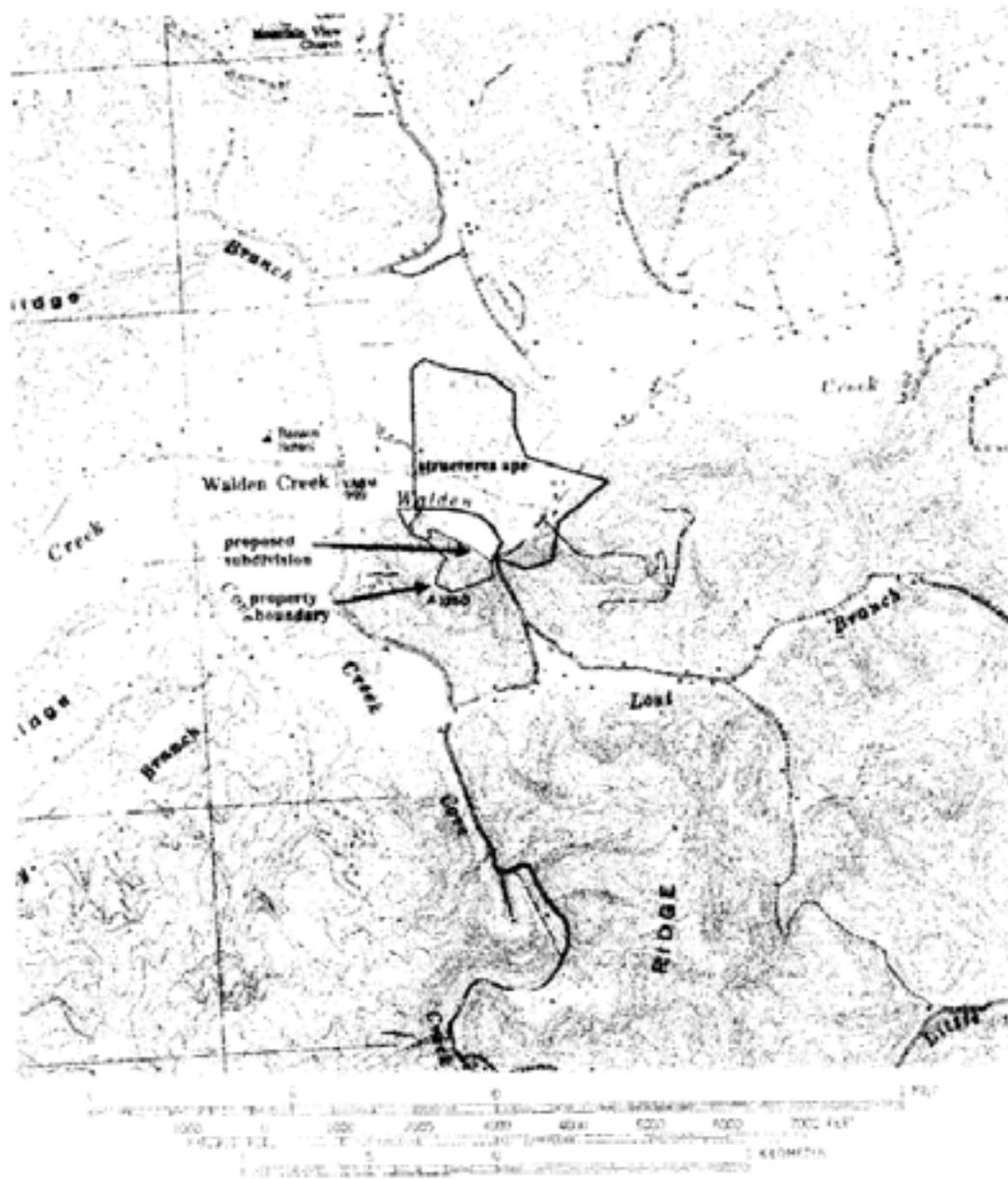
Date: _____

Page intentionally blank

APPENDIX A

Map of the Area of Potential Effects of the Proposed Cherokee Valley Subdivision

Page intentionally blank



Quadrangles: Walden Creek (156SW) and Pigeon Forge (156 SE)

Series: 7.5 minute

Date: photorevised 1987/photorevised 1970

Contour Interval: 20 feet

Figure 1. The study area.

Page intentionally blank

APPENDIX B

A Proposal for Cultural Resources Monitoring and Data Recovery at 40SV183, Sevier County, Tennessee

Page intentionally blank

A Proposal for
CULTURAL RESOURCES MONITORING AND DATA RECOVERY AT
40SV183, SEVIER COUNTY, TENNESSEE

Submitted to: Michael Murray
Mountain Ridge Development, LLC
155 North Maitland Avenue
Altamonte Springs, FL 32701

Submitted by: The University of Tennessee
Office of Research
1534 White Avenue
Knoxville, TN 37996-1529
(865) 974-3466; Fax (865) 974-2805

**Authorized
Representative:**

Performance Period: 7/17/2006-1/31/2007

Principal Investigator: Judith A. Sichler

Page intentionally blank

I. INTRODUCTION

At the request of Michael Murray of Mountain Ridge Development, LLC, the Archaeological Research Laboratory (ARL) at the University of Tennessee has prepared this technical proposal and cost estimate for the monitoring and recovery of cultural resources at Site 40SV183, a Middle Woodland site located at the confluence of Lost Branch and Walden Creek in Sevier County, Tennessee (Figure 1). Phase II investigations by ARL (Gage 2006), indicate that the site possesses well preserved archaeological deposits and, correspondingly, holds the potential for contributing to regional research questions concerning Middle Woodland occupation in the Walden Creek and Wears Valley area. As a result, Site 40SV183 is eligible for nomination to the National Register of Historic Places under Criterion D.

The current proposal addresses an area of the site, measuring approximately 120 m by 50 m, portions of which are to be impacted by earth-moving activities associated with the development of the Cherokee Valley Subdivision. Those portions of this area to be directly impacted by construction activities will be stripped of overlying plow zone deposits and any identified cultural deposits will be excavated.

Previous investigations in the area were undertaken through the review process of the Tennessee Valley Authority (TVA), which serves as the lead permitting agency for the project. They include a Phase I survey performed by Kathy Manning in the Spring of 2006 (Manning 2006). Her investigations, which included the excavation of 56 shovel test pits and auger holes, revealed a prehistoric occupation concentrated within 60 m of the southern bank of Walden Creek, west of its confluence with Lost Branch. Recovered artifacts include lithic debitage and fire-cracked rock, and a single diagnostic projectile point attributable to Late Archaic through Woodland occupations (Manning 2006: Table 1). This portion of the area of potential effect was designated as Site 40SV183 and Manning recommended that the site was potentially eligible for the NRHP.

In June of 2006, the ARL conducted a Phase II investigation of the site to determine the nature and extent of its cultural deposits (Gage 2006). Eleven test trenches and a single 1 m by 1 m test unit were excavated, revealing eight cultural features contained within the deposits just below the plow zone (Figure 1). Geoarchaeological investigations revealed an absence of deeply buried cultural deposits below these features. Due to the presence of cultural deposits with valuable information pertaining to Middle Woodland (ca. 200 B.C. to A.D. 600) occupation of the Wears Valley area, ARL recommended monitoring of the removal of the plow zone and data recovery of any cultural deposits revealed during this process (Gage 2006).

Site-specific location information for Figure 1 is being withheld under authority of the Archaeological Resources Protection Act.

II. SITE SIGNIFICANCE

As a whole, Site 40SV183 represents a small, likely single component occupation, of the Walden Creek drainage. It falls within the early Middle Woodland (Woodland 2) period and indicates interaction between the occupants of the Blue Ridge Province of western North Carolina and eastern Tennessee and the Ridge and Valley Province of Tennessee.

The chronological sequence as well as the cultural interactions of this time period, remains enigmatic at best. Both Pigeon phase and Candy Creek or Patrick phase ceramics are present with the majority assemblages suggesting slightly stronger ties to the occupants of the Ridge and Valley Province.

The excavation of the 11 trenches and one 1 m by 1 m test unit placed throughout portions of Site 40SV183 believed to exhibit the highest potential for containing intact cultural deposits resulted in the identification of a limited area of the site containing extant subsurface features. A total of 16 features were identified within four of the trenches (1, 2, 3, and 11) (Figure 1). Eight of the sixteen features (Features 6, 7, 8, 12, 13, 14, 15, and 16) were determined to be natural in origin.

The remaining eight features are anthropogenic and include two probable post molds (Features 2 and 5), three oval or basin shaped pits (Features 3, 4, and 9), and three pits with relatively dense amounts of FCR (Features 1, 10, and 11). Feature 10 was determined to be a relatively recent historic burned tree root system likely associated with the clearing of the field in which the site exists.

Each of the features lies within or west of Trench I and within or east of Trench 11 (Figure 1). All of these features are located within the western portion of the site and all are represented by only the lower remaining portions with the upper portions having been disturbed or truncated by cultivation and/or erosion.

It is the opinion of this office that Site 40SV183 does contain significant cultural deposits with valuable information pertaining to Middle Woodland (ca. 200 B.C. to A.D. 600) occupation of the Wears Valley area. Although definitive chronological placement of the site will depend upon the date returned from a charcoal sample obtained in Feature 1 (Figure 2), the site is believed to fall within the early Middle Woodland contemporaneous with the Pigeon phase in the Appalachian Summit area (ca. 200 B.C. to A.D. 200), the Patrick phase (200 B.C. to A.D. 350), and the Candy Creek phase in the Ridge and Valley.

As none of these phases are defined with assemblages that match that found at Site 40SV183, their relationship to the site remains ambiguous. Any potential future research should be directed at two main goals: (1) acquiring additional absolute dates to more clearly define its temporal placement; and (2) identifying the cultural influences expressed by the Site's assemblage.



Figure 2. West profile of Feature 1 following bisection.

As much of the site lies within the disturbed context of the plow zone, limited information, aside from general site assemblage, will be gleaned from controlled excavations of the upper approximately 30 cm of the site. Rather, efforts should be directed at sub-plow zone data recovery in the form of feature excavation within areas intended for ground disturbance.

III. DESCRIPTION OF WORK TO BE PERFORMED

In order to mitigate the impact to Site 40SV183, the following methods of investigation have been initially proposed for the archaeological testing program. "Initially" should be stressed, given that conditions, yet unforeseen, may warrant changes in our methods of investigation. Any necessary alterations will be undertaken through consultation with the land owner/developer and TVA.

A. Mechanical Plowzone Removal

Mechanical plowzone removal and test unit excavation conducted during the Phase II testing program indicate that the site has been heavily impacted by a combination of agricultural activities and the fluvial activity of Walden Creek. The result is a perceived absence of intact midden deposits at the site. As such, it is the opinion of ARL that additional hand excavation of these disturbed deposits is not warranted. However, subsurface features (i.e., intruded into the subsoil) are present within the 120 m by 50 m

area. This office proposes to mechanically strip the area of potential effect of plow zone deposits to allow feature recognition. Plow zone deposits will be mechanically removed using a trackhoe possessing a smooth bucket. Features identified during the mechanical excavations will be flagged and investigated to determine if they are natural or cultural in origin.

B. Feature Excavation

Cultural features (e.g., pits, hearths, artifact concentrations) encountered during the mechanical plow zone removal will be excavated using standard control techniques. Each feature will be photographed and mapped, bisected and profiled, and sampled. A minimum 10 liter sample (or the available volume, if less) will be taken from the fill of each feature for flotation/fine screening with the remaining feature fill being screened through 6.4 mm (1/4 inch) mesh screen. All samples recovered from feature context will be processed and those samples containing ethnobotanical material will be submitted for analysis. If merited by an exceptional number of features, lack of notable ethnobotanical material, or other extenuating circumstances, a sampling scheme for the analysis will be determined in consultation with, and subject to, approval by the TVA. Should human interments be encountered during the excavations, this office will map their locations, cover them and leave them in place until the appropriate agencies have been notified.

C. Production of Site Map

A topographic map will be generated, including the natural features of the surrounding landscape, the placement of the mechanical plowzone removal, and the location of all features (cultural and natural) encountered during the excavations.

D. Laboratory Analysis/Report Preparation

In conjunction with the excavations, appropriate laboratory procedures will be implemented. All artifacts, samples (i.e., soil, radiocarbon, etc.), and documentation (i.e., field records, photos, profile drawings, etc.) recovered from the archaeological data recovery program will be processed and/or stabilized. Laboratory analysis will follow standard procedures involving washing of all materials, sorting by artifact class such as lithics, ceramics, bone, shell, botanical remains, etc., and tabulation of all artifacts from the excavation. Special analyses, such as radiocarbon dating, ethnobotanical analysis, faunal analysis, and geomorphological analysis, will be conducted as warranted by the nature of recovered materials.

Again, the analysis will be directed towards answering two particular research questions: (1) what is the absolute age of the occupation or occupations of the Site; and (2) what is the Site's relationship to the currently defined cultural influences in the region. Answers to these questions are intended to serve as a guide for refining the cultural sequence along the boundary of the Ridge and Valley and Blue Ridge Mountain Provinces.

ARL will submit a Management Summary within two weeks of completion of the field investigation which will describe at a minimum the number and location of archaeological investigations and a summary of the distribution of cultural deposits

identified during the investigations. A report of investigations will be generated which details all field/laboratory methodology as well as the results of the data recovery program. The report shall conform to professional standards and the Tennessee Division of Archaeology guidelines.

ARL will submit up to five hard copies, a digital copy (PDF format) on CD, and a hyperlink on ARL's website to a downloadable version of the draft report for review of findings and recommendations.

The report must be submitted to TVA who will review the document and submit it to the State Historic Preservation Officer (SHPO) and the Tribal Historic Preservation Officers (THPO) of culturally affiliated Indian tribes. After receipt of review comments, ARL will incorporate changes requested by TVA, Cultural Resources and the SHPO and THPO and submit up to twenty (20) bound copies of the final report. In addition, a digital copy of the final report, in PDF format, will be made available for review.

E. Site Inventory Form

ARL will complete an updated Tennessee Archaeological Site Inventory Form for the site following completion of the final report of investigations. A copy of this updated site form shall be attached as an appendix to the final report.

IV. PERSONNEL QUALIFICATIONS

Dr. Judith A. Sichler, ARL Research Assistant Professor, will serve as Principal Investigator (Archaeologist-in-General-Charge) for the fieldwork. The Field Director (Archaeologist-in-Direct-Charge) will be drawn from ARL's staff. This individual will exceed the requirements established by the State of Tennessee and the Department of the Interior.

V. ORGANIZATIONAL/INSTITUTIONAL QUALIFICATIONS

The ARL has adequate field equipment for a staff of up to 30 field personnel. ARL has adequate facilities necessary for the proper treatment, analysis, and curation of materials and data likely to be obtained from this project, including artifact washing and drying facilities and artifact identification specialists. The University of Tennessee, Department of Anthropology has a curation facility that meets the federal repository requirements set forth by the Department of the Interior in 36 CFR Part 79.

VI. TREATMENT OF HUMAN REMAINS

Although not expected, should human remains be identified during the testing project, ARL will immediately cease all ground disturbing activities in the vicinity of the human remains. TVA Cultural Resources and the Tennessee Division of Archaeology will be

immediately notified. The treatment of any human remains discovered within the project area will comply with all State laws concerning archaeological sites and treatment of human remains (See Tennessee Code 11-6-107).

If human remains are identified in the field, *in situ* preservation will be discussed as the first alternative for treatment. If *in situ* preservation is not feasible as determined in consultation among TVA, the SHPO, Mountain Ridge Development, and Indian tribes concurring in the Memorandum of Agreement among TVA, the SHPO and Mountain Ridge Development, such remains will be treated in accordance with the stipulations of the Memoranda of Understanding between TVA and the United Keetoowah Band of Cherokee Indians in Oklahoma and between TVA and the Eastern Band of Cherokee Indians.

No photo-documentation of human remains will be done, and no soil from identified burial matrices will be used to conduct soil flotation tests.

VII. CURATION

All archaeological remains, documentation, and pertinent information will be curated at the University of Tennessee, Department of Anthropology's curation facility. This facility meets curation standards established by the United States Department of the Interior under 36 CFR Part 79.

VIII. SCHEDULE

ARL can begin fieldwork within ten days of written notice-to-proceed. Field work is estimated to take approximately twenty days. A management summary will be submitted within two weeks of completion of the field work. ARL estimates that the lab work and draft report preparation will take approximately twelve weeks to complete.

REFERENCES CITED

Gage, Matthew D.

2006 *Phase II Archaeological Evaluation of 40SV183, Sevier County, Tennessee: Management Summary*. Submitted to Michael Murray, Mountain Ridge Development, LLC, Altemonte Springs, Florida. Manuscript on file at the Archaeological Research Laboratory, University of Tennessee, Knoxville.

Manning, Kathleen

2006 *Archaeological Survey (Phase I) of the Proposed Cherokee Valley Subdivision, Sevier County, Tennessee*. Draft report submitted to Michael Brady, Inc., Knoxville.

Page intentionally blank

APPENDIX C

Memorandum of Understanding Between the Tennessee Valley Authority and the United Keetoowah Band of Cherokee Indians in Oklahoma Regarding Consultation Pursuant to Section 106 of the National Historic Preservation Act

Page intentionally blank



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

P.O. Box 746 • Tahlequah, OK 74465
2450 S. Muskogee • Tahlequah, OK 74464
Phone: (918) 456-9200 • Fax: (918) 456-9220
www.ukb-nsn.gov

Lisa Stopp, Acting Tribal Historic Preservation Officer

COUNCIL

George Wickliffe
Chief

Charlie Locust
Assistant Chief

Liz Littlecove
Secretary

Shelbi Wofford
Treasurer

Eddie Sacks
Canadian District

Cliff Wofford
Coowescoowee District

Jerry Hanson
Delaware District

Woodrow Proctor
Flint District

Joyce Fourkiller
Goingsnake District

Susan Adair
Illinois District

Adalene Smith
Saline District

Barry Dotson
Sequoyah District

Albert Shade
Tahlequah District

July 13, 2006

Ms. Pat Ezzell
TVA
400 West Summit Hill Drive
Knoxville, TN 37902-1401

Dear Pat:

Enclosed you will find both copies of the TVAUKB MOU signed by our Chief, George Wickliffe. I look forward to receiving by return mail, a copy signed by Mr. Kilgore.

I, too, look forward to working with you for many years to come. Thank you for your help in making this document happen.

Best Regards,

Lisa C. Stopp
Acting Tribal Historic Preservation Officer
918.456.9200 lstopp@unitedkeetoowahband.org

cc: Chief George Wickliffe

Page intentionally blank

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TENNESSEE VALLEY AUTHORITY AND
THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA
REGARDING CONSULTATION PURSUANT TO SECTION 106
OF THE NATIONAL HISTORIC PRESERVATION ACT**

WHEREAS, this agreement shall be known as the Government to Government Agreement between the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB) and the Tennessee Valley Authority (TVA) regarding Section 106 Tribal Consultation; and

WHEREAS, TVA, an agency of the United States government, may have a need to engage in undertakings that may involve disturbance of sacred sites and/or historic properties that are culturally affiliated with the UKB; and

WHEREAS, pursuant to the National Historic Preservation Act, 16 U.S.C. 470 et seq. (hereinafter NHPA), TVA must consult with any Indian tribe that attaches religious or cultural significance to properties that may be affected by a TVA undertaking whether on federal or other lands (*See* 16 U.S.C. § 470a(d)(6)(B)); and

WHEREAS, the regulations of the Advisory Council on Historic Preservation implementing Section 106 of the NHPA specify that federal agencies provide Indian tribes a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties, articulate their views on the undertaking's effects on such properties, and participate in the resolution of adverse effects (*See* 36 C.F.R. § 800.2(c)(2)); and

WHEREAS, the UKB is a Federally recognized Indian tribe, organized pursuant to the Indian Reorganization Act of 1934, with an inherent right of sovereignty in a government-to-government relationship with executive branch Departments and Agencies of the United States; and

WHEREAS, appropriate treatment of Native American sacred sites and/or historic properties of interest to the UKB requires a responsible balance between Native American cultural values, other public interests, and the mission of TVA;

NOW THEREFORE BE IT RESOLVED, that TVA and the UKB agree that the following procedures shall be instituted:

I. DEFINITIONS

For the purpose of this Memorandum of Understanding (MOU), the following definitions shall apply:

1. **Consultation** means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary of Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provides further guidance on consultation. For activities subject to NAGPRA, consultation will be conducted in accordance with 43 CFR Part 10.
2. **Cultural affiliation** means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group, as defined in 25 U.S.C. § 3001(2).
3. **Day or days** means calendar days.
4. **Federal lands** mean any land other than tribal lands which are controlled or owned by the United States. For this document, Federal lands mean fee simple lands of TVA.
5. **Historic property** means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and material remains related to such a property, as defined in 16 U.S.C. § 470w(5).
6. **Indian tribe** means any tribe, band, nation, or other organized group or community of Indians, (including Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act),) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as defined in 25 U.S.C. § 3001(7).
7. **Preservation** includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities, as defined in 16 U.S.C. § 470w(8).
8. **Sacred site** is any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe or Indian individual determined to be an appropriately authoritative representative by an Indian religion and sanctioned by a Federally recognized Indian tribe as a representative of that tribe, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has, after consultation, informed the agency of the existence of such a site after consultation, as defined in Executive Order 13007: Protection of American Indian Sacred Sites (May 24, 1996).
9. **Traditional cultural property** means a place that is eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community as defined in National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*.
10. **Undertaking** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including
 - a. Those carried out by or on behalf of the agency;
 - b. Those carried out with Federal financial assistance; and
 - c. Those requiring a Federal permit, license, or approval.

II. CLASSES OF UNDERTAKINGS NOT OF INTEREST TO UKB

The UKB has requested that there be no consultation for the following undertakings:

1. Practices or projects that do not have the potential to affect cultural resources because these undertakings do not involve any ground disturbance. Examples of these undertakings would include tree trimming, herbicide application, refuse management, and painting.
2. Practices or projects that do not have the potential to affect cultural resources because these undertakings do not involve new ground disturbance, and the installation of projects will not exceed the depth, extent, or kind of the previous undertaking. Examples include sign repair, guardrail replacement, and repaving.

III. PROCEDURES FOR CONSULTATION INITIATED BY TVA WITH THE UKB

Upon initiation by TVA of the planning for an undertaking within the UKB geographic area of interest delineated in Appendix A to this MOU (TVA/UKB Consultation Area), the following steps shall be pursued:

1. TVA shall operate within a government-to-government relationship with the UKB.
2. TVA shall work with the Point-of-Contact (POC) appointed by the UKB. If a new POC is appointed, then it shall be the responsibility of the UKB to notify TVA in writing within 30 days of any changes. TVA shall similarly notify the UKB of its POC or replacement POCs.
3. TVA shall issue a review notification to the UKB POC once an undertaking is planned.
4. The review notification shall include a description of the project, a map showing the location of the proposed undertaking, a description of how the undertaking shall impact the area, a schedule of when the undertaking shall take place, a list of all tribes contacted, the name of the POC for TVA, the specific input needed from the UKB, and a request for the names and addresses of other persons the UKB recommends be notified or consulted.
5. The UKB will agree or decline to consult on the proposed undertaking within 30 days of receipt of the review notification regarding the proposed undertaking. When necessary and appropriate, TVA will contact the UKB POC to further elaborate on the nature of the proposed undertaking. The UKB's decision to accept or decline the offer of consultation will be documented by TVA. Failure to respond to TVA's offer of consultation will be construed as UKB's declination of the offer, after TVA has made a second attempt of contact within the aforementioned 30-day period (or thereafter) to ensure the initial communication was in fact received.
6. TVA shall begin consultation within 30 days of receipt of statement of interest from the UKB.

7. Consultation shall be conducted to elicit the concerns of the UKB, and TVA shall take all concerns into full consideration to arrive at decisions that respect those concerns when possible.
8. TVA personnel shall consider the demands placed on the UKB by a compliance review process which spans multiple states and agencies and may amend consultation schedules and deadlines when feasible to allow the UKB time to respond or to attend consultation meetings.
9. The UKB shall recognize that TVA has time constraints on projects, and the UKB shall address responses in a timely manner to ensure participation in the compliance review process.

IV. PROCEDURES FOR CONSULTATION INITIATED BY THE UKB WITH TVA

1. If the UKB has reason to believe that TVA is not addressing their concerns, the UKB can contact TVA's POC to discuss these concerns.
2. If the UKB has reason to believe that the TVA POC has not addressed their concerns, then the UKB POC may seek assistance from the next level of management.

V. RESPECT FOR RELIGIOUS AND OTHER CULTURAL BELIEFS

1. When a proposed undertaking shall affect a sacred site or a traditional cultural property of the UKB, TVA personnel shall respect such interests in accordance with the First Amendment to the U.S. Constitution.
2. TVA personnel shall understand that Native American religious practitioners may be unwilling to disclose information about a sacred site and/or traditional cultural properties so as not to violate their cultural values.
3. The UKB shall take into consideration that TVA shall need documentation or a testimonial statement from a tribally recognized cultural expert as to why a specific area is considered a sacred site and/or traditional cultural property, or TVA may not be able to prevent the adverse effect to the site.
4. When a proposed TVA undertaking shall affect human remains and/or associated funerary objects for which UKB may have a right of custody under the Native American Grave Protection and Repatriation Act (NAGPRA) or when human remains and/or associated funerary objects for which UKB may have a right of custody under NAGPRA are inadvertently discovered as a result of a TVA undertaking, such remains and objects shall be treated according to the regulations implementing NAGPRA (See 43 C.F.R. § 10).

VI. CONFIDENTIALITY

1. Participants in the compliance review process shall seek the minimal amount of information that is necessary to complete the undertaking.
2. TVA shall respect the UKB request and need for confidentiality of information regarding sacred sites and/or traditional cultural properties.
3. Any information divulged to TVA from any source, including traditional leaders or members of the tribe, shall be kept confidential to the extent such information is exempted from disclosure under TVA's regulations implementing the Freedom of Information Act. UKB recognizes that TVA may be obligated under the Freedom of Information Act or other applicable law to disclose all non-exempt information generated from discussions with UKB.
4. TVA and the UKB shall implement this MOU consistent with 36 CFR § 800.11(c)(1), regarding disclosure of sensitive information: "Section 304 of the [NHPA] provides that the head of a Federal agency..., after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency...has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act."
5. TVA and the UKB recognize that non-location information on historic or archaeological properties may not necessarily be protected.

VII. TERM OF AGREEMENT

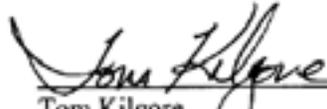
1. From the date of the last party signature, the MOU shall remain in effect for a term of three (3) years and may be amended only with the written consent of all parties hereto at the time of such amendment.
2. Any signatory party may terminate their participation in the MOU upon 30 days' written notice to the other signatories.

ON THIS 4th DAY OF August, 2006, the parties hereby acknowledge, by affixing hereto the signatures of their authorized representatives, that they have read and agree to abide by the statements of the Memorandum of Understanding.

United Keetoowah Band of Cherokee
Indians in Oklahoma


George G. Wickliffe
Chief

Tennessee Valley Authority

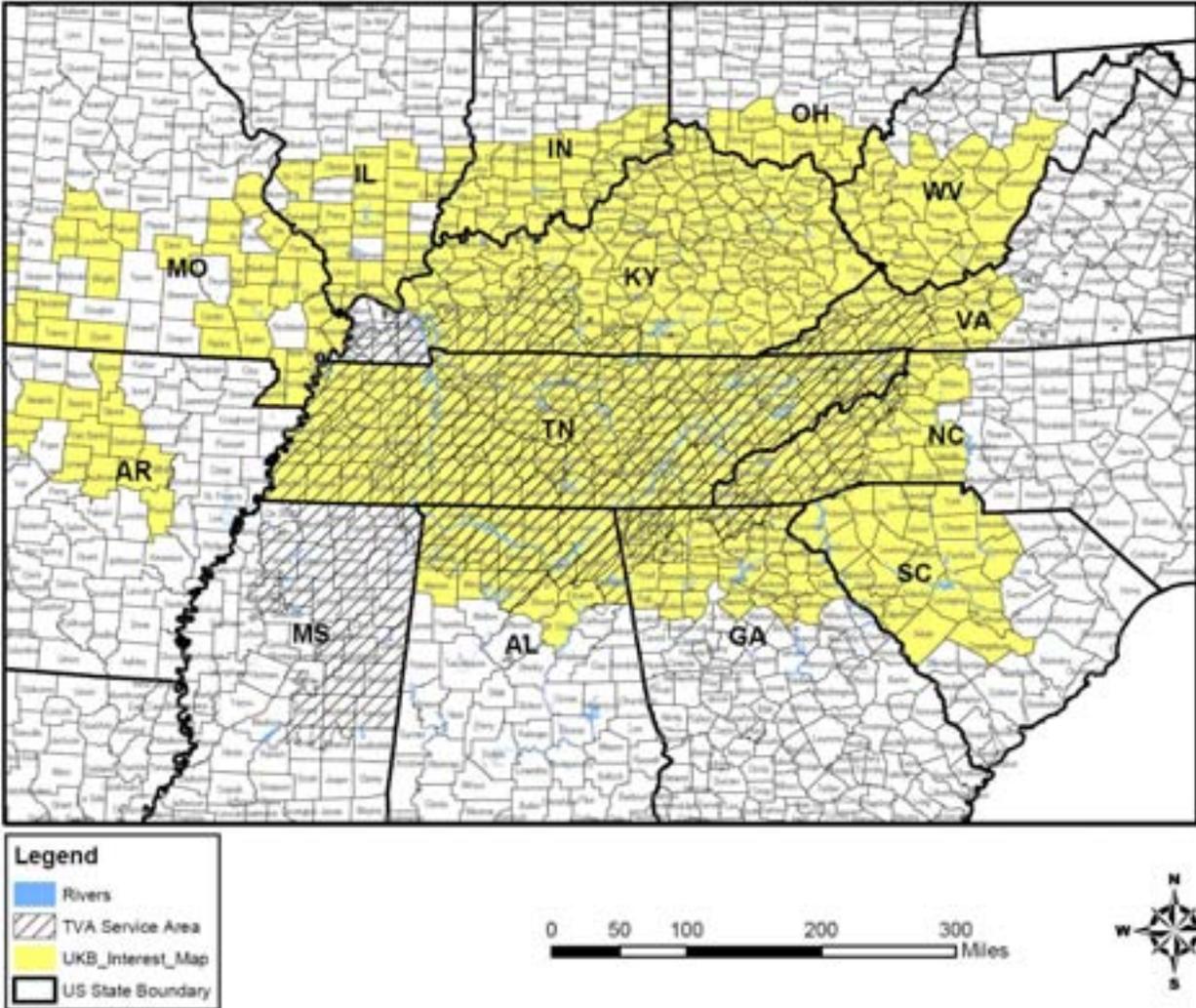

Tom Kilgore
President & Acting Chief Executive Officer

Page intentionally blank

Appendix A
TVA/UKB Consultation Area

Page intentionally blank

Tennessee Valley Authority/United Keetoowah Band Consultation Area



Page intentionally blank

United Keetoowah Band of Cherokee Indians in Oklahoma



Areas of Historic Interest *including* *Current Jurisdictional Area*

Historic Preservation Program

Lisa Stopp
Acting Historic Preservation Officer
P.O. Box 746
Tahlequah, OK 74465

918.456.9200

lstopp@unitedkeetoowahband.org

updated June, 2006

www.ukb-nsn.gov

**State and County Summary
of the United Keetoowah Band of Cherokee Indians in Oklahoma**

ALABAMA	GEORGIA	NORTH CAROLINA
Blount	Banks	Alleghany
Cherokee	Barrow	Ashe
Colbert	Bartow	Avery
Cullman	Catoosa	Buncombe
DeKalb	Chattooga	Burke
Etowah	Cherokee	Caldwell
Franklin	Clarke	Catawba
Jackson	Cobb	Cherokee
Lauderdale	Dade	Clay
Lawrence	Dawson	Cleveland
Limestone	Elbert	Gaston
Madison	Fannin	Graham
Marion	Floyd	Haywood
Marshall	Forsyth	Henderson
Morgan	Franklin	Jackson
St. Clair	Gilmer	Lincoln
Winston	Gordon	Macon
	Gwinnett	Madison
	Habersham	McDowell
	Hall	Mitchell
	Hart	Polk
	Jackson	Rutherford
	Lumpkin	Swain
	Madison	Transylvania
	Murray	Watauga
	Oconee	Wilkes
	Oglethorpe	Yancey
	Paulding	
	Pickens	
	Polk	
	Rabin	
	Stephens	
	Towns	
	Union	
	Walker	
	White	
	Whitfield	
WEST VIRGINIA		
Boone		
Cabell		
Fayette		
Kanawha		
Lincoln		
Logan		
Mason		
McDowell		
Mercer		
Mingo		
Monroe		
Putnam		
Raleigh		
Summers		
Wayne		
Wyoming		

SOUTH CAROLINA

Abbeville
Aiken
Anderson
Calhoun
Cherokee
Chester
Edgefield
Fairfield
Greenwood
Greenville
Kershaw
Lancaster
Laurens
Lexington
McCormick
Newberry
Oconee
Orangeburg
Pickens
Richland
Saluda
Spartanburg
Union
York

VIRGINIA

Bland
Buchanan
Carroll
Dickenson
Floyd
Giles
Grayson
Lee
Montgomery
Pulaski
Russell
Scott
Smyth
Tazewell
Washington
Wise
Wythe

KENTUCKY

Adair
Allen
Anderson
Barren
Bath
Bell
Boone
Bourbon
Boyd
Boyle
Bracken
Breathitt
Breckinridge
Bullitt
Butler
Caldwell
Campbell
Carroll
Carter
Casey
Christian
Clark
Clay
Clinton
Crittenden
Cumberland
Davies
Edmonson
Elliott
Estill
Fayette
Fleming
Floyd
Franklin
Gallatin
Garrard
Grant
Grayson
Green
Greenup
Hancock
Hardin
Harlan
Harrison
Hart
Henderson
Henry
Hopkins
Jackson
Jefferson
Jessamine
Johnson
Kenton
Knott
Knox
LaRue
Laurel
Lawrence
Lee
Leslie
Letcher
Lewis
Lincoln
Livingston
Logan
Lyon
McCreary
McLean
Madison
Magoffin
Marion
Martin
Mason
Meade
Menifee
Mercer
Metcalf
Monroe
Montgomery
Morgan
Muhlenburg
Nelson
Nicholas
Ohio
Oldham
Owen
Owsley
Pendleton
Perry
Pike

OKLAHOMA

Adair
Alfalfa
Blaine
Cherokee
Craig
Creek
Delaware
Dewey
Ellis
Garfield
Grant
Harper
Kay
Kingfisher
Logan
Mayes
Major
Muskogee
Noble
Nowata
Osage
Pawnee
Payne
Rogers
Sequoyah
Tulsa
Wagoner
Washington
Wood
Woodward

KANSAS

Barber
Bourbon
Chautauqua
Cherokee
Commanche
Clark
Cowley
Crawford
Harper
Labette
Linn

Meade
Montgomery
Morton
Seward
Stephens
Sumner

OHIO

Adams
Brown
Clermont
Gallia
Highland
Jackson
Lawrence
Pike
Scioto

WEST VIRGINIA

Boone
Braxton
Cabell
Clay
Fayette
Greenbrier
Kanawha
Lincoln
McDowell
Mercer
Mingo
Monroe
Nicholas
Pocahontas
Putman
Raleigh
Randolph
Roane
Wayne
Webster
Wyoming

MISSOURI

Barry
Barton
Bollinger
Butler
Camden
Cape Girardeau
Carter
Christian
Dade
Dallas
Dent
Dunklin
Iron
Jasper
Jefferson
Laclede
McDonald
Madison
Mississippi
New Madrid
Newton
Ozark
Pemiscot
Perry
Pulaski
Ripley
Scott
Ste. Genevieve
Stone
Taney
Washington
Wayne
Wright

ILLINOIS

Alexander
Clay
Clinton
Edwards
Franklin
Gallatin
Hamilton
Hardin

Jackson
Jefferson
Johnson
Lawrence
Marion
Massac
Pope
Perry
Pulaski
Randolph
Saline
St. Clair
Saline
Union
Wabash
Wayne
Wabash

INDIANA

Clark
Crawford
Davies
Dubois
Dearborn
Floyd
Gibson
Harrison
Jackson
Jefferson
Jennings
Knox
Lawrence
Martin
Ohio
Orange
Perry
Pike
Posey
Ripley
Scott
Spencer
Switzerland
Vanderburgh
Warrick
Washington

KENTUCKY

Powell
Pulaski
Robertson
Rockcastle
Rowan
Russell
Scott
Shelby
Simpson
Spencer
Taylor
Todd
Trigg
Trimble
Union
Warren
Washington
Wayne
Webster
Whitley
Wolfe
Woodford

TEXAS

Cherokee
Rusk
Smith

ARKANSAS

Arkansas
Baxter
Cleburne
Conway
Crittenden
Cross
Desha
Faulkner
Franklin
Johnson
Lincoln
Lonoke

Monroe
Newton
Phillips
Prairie
Searcy
St. Francis
Stone
VanBuren
White

Page intentionally blank

APPENDIX D

Memorandum of Understanding Between the Tennessee Valley Authority and the Eastern Band of Cherokee Indians Regarding Consultation Pursuant to Section 106 of the National Historic Preservation Act

Page intentionally blank

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TENNESSEE VALLEY AUTHORITY AND
THE EASTERN BAND OF CHEROKEE INDIANS
REGARDING CONSULTATION PURSUANT TO SECTION 106
OF THE NATIONAL HISTORIC PRESERVATION ACT**

WHEREAS, this agreement shall be known as the Government to Government Agreement between The Eastern Band of Cherokee Indians (EBCI) and the Tennessee Valley Authority (TVA) regarding Section 106 Tribal Consultation; and

WHEREAS, TVA, an agency of the United States government, has a need to engage in ongoing undertakings that may involve disturbance of sacred sites and/or historic properties that are culturally affiliated with the EBCI; and

WHEREAS, pursuant to the National Historic Preservation Act, 16 U.S.C. 470 et seq. (hereinafter NHPA), TVA must consult with any Indian tribe that attaches religious or cultural significance to properties that may be affected by a TVA undertaking whether on federal or other lands (See 16 U.S.C. § 470a(d)(6)(B)); and

WHEREAS, the regulations of the Advisory Council on Historic Preservation implementing Section 106 of the NHPA specify that federal agencies provide Indian tribes a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties, articulate their views on the undertaking's effects on such properties, and participate in the resolution of adverse effects (See 36 C.F.R. § 800.2(c)(2)); and

WHEREAS, the EBCI is a Federally recognized Indian tribe, organized pursuant to the Indian Reorganization Act of 1934, with an inherent right of sovereignty in a government-to-government relationship with executive branch Departments and Agencies of the United States; and

WHEREAS, appropriate treatment of Native American sacred sites and/or historic properties of interest to the EBCI requires a responsible balance between Native American cultural values, other public interests, and the mission of TVA;

NOW THEREFORE BE IT RESOLVED, that TVA and the EBCI agree that the following procedures shall be instituted:

I. DEFINITIONS

For the purpose of this Memorandum of Understanding (MOU), the following definitions shall apply:

1. **Consultation** means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters

arising in the section 106 process. The Secretary of Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provides further guidance on consultation.

2. **Cultural affiliation** means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group, as defined in 25 U.S.C. § 3001(2).
3. **Day or days** means calendar days.
4. **Federal lands** mean any land other than tribal lands which are controlled or owned by the United States. For this document, Federal lands mean fee simple lands of TVA.
5. **Historic property** means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and material remains related to such a property, as defined in 16 U.S.C. § 470w(5).
6. **Indian tribe** means any tribe, band, nation, or other organized group or community of Indians, (including Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act),) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as defined in 25 U.S.C. § 3001(7).
7. **Preservation** includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities, as defined in 16 U.S.C. § 470w(8).
8. **Sacred site** is any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site, as defined in Executive Order 13007: Protection of American Indian Sacred Sites (May 24, 1996).
9. **Traditional cultural property** means a place that is eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community as defined in National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*.
10. **Undertaking** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including
 - a. Those carried out by or on behalf of the agency;
 - b. Those carried out with Federal financial assistance; and
 - c. Those requiring a Federal permit, license, or approval.

II. CLASSES OF UNDERTAKINGS NOT OF INTEREST TO EBCI

The EBCI have requested that there be no consultation for the following undertakings:

1. Practices or projects that do not have the potential to affect cultural resources because these undertakings do not involve any ground disturbance. Examples of these undertakings would include tree trimming, herbicide application, refuse management, and painting.
2. Practices or projects that do not have the potential to affect cultural resources because these undertakings do not involve new ground disturbance, and the installation of projects will not exceed the depth, extent, or kind of the previous undertaking. Examples include sign repair, guardrail replacement, and repaving.

III. PROCEDURES FOR CONSULTATION INITIATED BY TVA WITH THE EBCI

Upon initiation by TVA of the planning for an undertaking within the EBCI geographic area of interest delineated in Appendix A to this MOU (TVA/EBCI Consultation Area), the following steps shall be pursued:

1. TVA shall operate within a government-to-government relationship with the EBCI.
2. TVA shall work with the EBCI Tribal Historic Preservation Office (THPO), the designated Point-of-Contact (POC) appointed by the EBCI. If a new POC is appointed, then it shall be the responsibility of the EBCI to notify TVA in writing within 30 days of any changes. TVA shall similarly notify the EBCI of its POC or replacement POCs.
3. TVA shall issue a review notification to the EBCI THPO once an undertaking is planned.
4. The review notification shall include a description of the project, a map showing the location of the proposed undertaking, a description of how the undertaking shall impact the area, a schedule of when the undertaking shall take place, a list of all tribes contacted, the name of the POC for TVA, the specific input needed from the EBCI THPO, and a request for the names and addresses of other persons the EBCI THPO recommends be notified or consulted.
5. The EBCI THPO will agree or decline to consult on the proposed undertaking within 30 days of receipt of the review notification regarding the proposed undertaking. When necessary and appropriate, TVA will contact the EBCI THPO to further elaborate on the nature of the proposed undertaking. The EBCI THPO's decision to accept or decline the offer of consultation will be documented by TVA. If TVA has no response to the consultation request after 30 days of receipt of the review notification, TVA will contact the EBCI THPO. Failure to respond to TVA's offer of consultation will be construed as EBCI THPO's declination of the offer.
6. TVA shall begin consultation within 30 days of receipt of statement of interest from the EBCI THPO.

7. Consultation shall be conducted to elicit the concerns of the EBCI THPO, and TVA shall take all concerns into full consideration to arrive at decisions that respect those concerns when possible.
8. TVA personnel shall consider the demands placed on the EBCI THPO by a compliance review process which spans multiple states and agencies and may amend consultation schedules and deadlines when feasible to allow the EBCI THPO time to respond or to attend consultation meetings.
9. The EBCI THPO shall recognize that TVA has time constraints on projects, and the EBCI shall address responses in a timely manner to ensure participation in the compliance review process.

IV. PROCEDURES FOR CONSULTATION INITIATED BY THE EBCI WITH TVA

1. If the EBCI has reason to believe that TVA is not addressing their concerns, the EBCI can contact TVA's POC to discuss these concerns.
2. If the EBCI has reason to believe that the TVA POC has not addressed their concerns, then the EBCI POC may seek assistance from the next level of management.

V. RESPECT FOR RELIGIOUS AND OTHER CULTURAL BELIEFS

1. When a proposed undertaking shall affect a sacred site or a traditional cultural property of the EBCI, TVA personnel shall respect such interests in accordance with the First Amendment to the U.S. Constitution.
2. TVA personnel shall understand that Native American religious practitioners may be unwilling to disclose information about a sacred site and/or traditional cultural properties so as not to violate their cultural values.
3. The EBCI shall take into consideration that TVA shall need documentation as to why a specific area is considered a sacred site and/or traditional cultural property, or TVA may not be able to prevent the adverse effect to the site.
4. When a proposed TVA undertaking shall affect human remains and/or associated funerary objects for which EBCI has a right of custody under the Native American Grave Protection and Repatriation Act (NAGPRA) or when human remains and/or associated funerary objects for which EBCI has a right of custody under NAGPRA are inadvertently discovered as a result of a TVA undertaking, such remains and objects shall be treated according to EBCI's Treatment Guidelines for Human Remains and Funerary Objects (Survey, Excavation, Laboratory/Analysis, and Curation Guidelines) policy, attached to this MOU as Appendix B.

VI. CONFIDENTIALITY

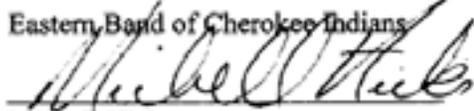
1. Participants in the compliance review process shall seek the minimal amount of information that is necessary to complete the undertaking.
2. TVA shall respect the EBCI request and need for confidentiality of information regarding sacred sites and/or traditional cultural properties.
3. Any information divulged to TVA from any source, including traditional leaders or members of the tribe, shall be kept confidential to the extent such information is exempted from disclosure under TVA's regulations implementing the Freedom of Information Act. EBCI recognizes that TVA may be obligated under the Freedom of Information Act to disclose all non-exempt information generated from discussions with EBCI.
4. TVA and the EBCI shall implement this MOU consistent with 36 CFR § 800.11(c)(1), regarding disclosure of sensitive information: "Section 304 of the [NHPA] provides that the head of a Federal agency..., after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency...has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act."
5. TVA and the EBCI recognize that non-location information on historic or archaeological properties may not necessarily be protected.

VII. TERM OF AGREEMENT

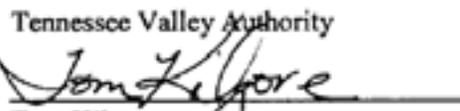
1. From the date of the last party signature, the MOU shall remain in effect for a term of three (3) years and may be amended only with the written consent of all parties hereto at the time of such amendment.
2. Any signatory party may terminate their participation in the MOU upon 30 days' written notice to the other signatories.

ON THIS 31st DAY OF July, 2006, the parties herby acknowledge, by affixing hereto the signatures of their authorized representatives, that they have read and agree to abide by the statements of the Memorandum of Understanding.

Eastern Band of Cherokee Indians


 Mitchell Hicks
 Principal Chief

Tennessee Valley Authority

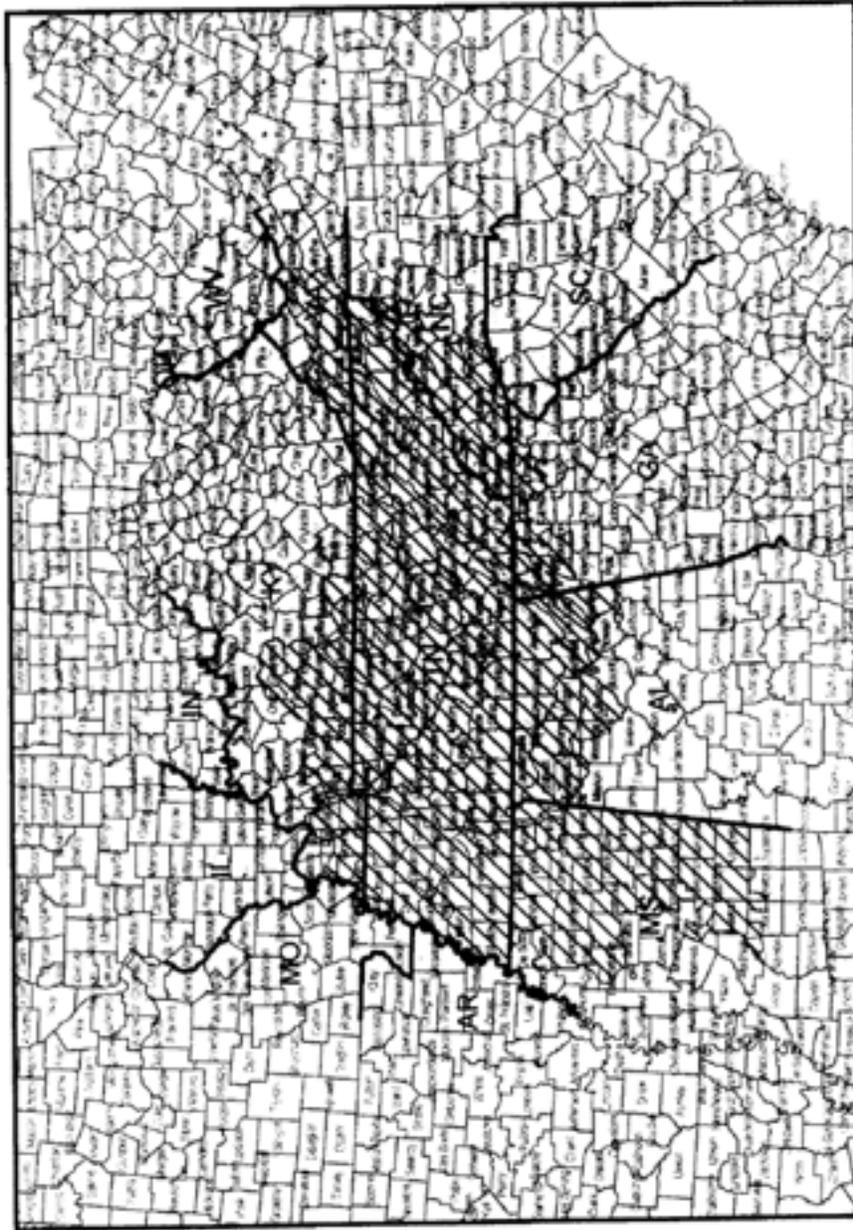

 Tom Kilgore
 Acting Chief Executive Officer

Page intentionally blank

Appendix A
TVA/EBCI Consultation Area

Page intentionally blank

Tennessee Valley Authority/Eastern Band of Cherokee Indians Consultation Area



Geographic Area of Interest

Alabama

Blount
Cherokee
Colbert
Cullman
De Kalb
Etowah
Franklin
Jackson
Lauderdale
Lawrence
Limestone
Madison
Marion
Marshall
Morgan
St. Clair
Winston

Georgia

Banks
Barlow
Barrow
Catoosa
Chattooga
Cherokee
Clarke
Cobb
Dade
Dawson
Elbert
Fannin
Floyd
Forsyth
Franklin
Gilmer
Gordon
Gwinnett
Habersham
Hall
Hart
Jackson
Lumpkin
Madison

Georgia

Murray
Oconee
Oglethorpe
Paulding
Pickens
Polk
Rabun
Stephens
Towns
Union
Walker
White
Whitfield

South Carolina

Aiken
Anderson
Abbeville
Calhoun
Cherokee
Chester
Edgefield
Fairfield
Greenville
Greenwood
Kershaw
Lancaster
Laurens
Lexington
McCormick
Newberry
Oconee
Orangeburg
Pickens
Richland
Saluda
Spartanburg
Union
York

North Carolina

Alleghany
Ashe

North Carolina

Avery
Buncombe
Burke
Caldwell
Cannon
Catawba
Cherokee
Clay
Cleveland
Gaston
Graham
Haywood
Henderson
Jackson
Johnson
Lincoln
Macon
Madison
McDowell
Mitchell
Polk
Rutherford
Swain
Transylvania
Watauga
Wilkes
Yancey

Tennessee

Anderson
Bedford
Bledsoe
Blount
Bradley
Campbell
Carter
Cheatham
Claiborne
Clay
Cocke
Coffee
Cumberland
Davidson
DeKalb
Dickson

Tennessee

Franklin
Giles
Grainger
Greene
Grundy
Hamblen
Hamilton
Hancock
Hardin
Hawkins
Hickman
Houston
Humphreys
Jackson
Jefferson
Knox
Lawrence
Lewis
Lincoln
Macon
Marion
Marshall
Maury
McMinn
Meigs
Monroe
Montgomery
Moore
Morgan
Overton
Perry
Pickett
Polk
Putnam
Rhea
Roane
Robertson
Rutherford
Sequatchie
Sevier
Scott
Smith
Sullivan
Sumner
Stewart

Tennessee

Trousdale
Unicoi
Union
Van Buren
Warren
Washington
Wayne
White
Williamson
Wilson

Kentucky

Adair
Allen
Anderson
Barren
Bath
Bell
Boone
Boyd
Boyle
Bourbon
Brackney
Breathitt
Breckinridge
Bullitt
Butler
Caldwell
Campbell
Carroll
Carter
Casey
Clark
Clay
Christian
Clinton
Crittendon
Daviess
Edmonson
Elliot
Estill
Fayette
Fleming
Floyd
Gallatin

Kentucky

Garrard
Grant
Grayson
Green
Greenup
Hardin
Harlan
Hancock
Harrison
Hart
Henderson
Henry
Hopkins
Jackson
Jefferson
Jessamine
Johnson
Kenton
Knott
Knox
Larue
Laurel
Lawrence
Lee
Leslie
Letcher
Lewis
Lincoln
Livingston
Logan
Lyon
Madison
Magoffin
Marion
Martin
Mason
Meade
Menifee
Mercer
Metcalf
McCreary
McLean
Monroe
Montgomery
Morgan

Kentucky

Muhlenberg
Nelson
Nicholas
Ohio
Oldham
Owen
Owsley
Pendleton
Perry
Pike
Powell
Pulaski
Robertson
Rockcastle
Russell
Rowan
Scott
Shelby
Simpson
Spencer
Taylor
Todd
Trigg
Trimble
Union
Washington
Warren
Webster
Whitley
Wolfe
Woodford

Virginia

Bland
Bristol
Buchanan
Carroll
Dickenson
Floyd
Galax
Giles
Grayson
Lee
Montgomery
Norton

Virginia

Pulaski
Radford
Russell
Scott
Smyth
Washington
Wise
Wythe

West Virginia

Boone
Cabell
Fayette
Kanawha
Lincoln
Logan
Mason
McDowell
Mercer
Ming
Monroe
Putnam
Raleigh
Summers
Wayne
Wyoming

Page intentionally blank

Appendix B

Page intentionally blank

EBCI Treatment Guidelines for Human Remains and Funerary Objects (Survey, Excavation, Laboratory/Analysis, and Curation Guidelines)

It is the wish of the EBCI that whenever possible, human interments be left in situ, unstudied, and protected from current and future disturbance. However, when these parameters cannot be met, the following guidance shall apply:

Archeological Surveys: The EBCI requests that in the event human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered, no photographs of such items be taken. Detailed drawings are permissible, however.

Excavations: The EBCI requests that in the event human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered, no photographs of such items be taken. Detailed drawings are permissible, however. Also, if after consultation with the SHPO and culturally affiliated, federally recognized tribes, the lead agency determines that the excavation of these items is required, the EBCI requests that only the lead archaeologist and a physical anthropologist participate in the removal of these items. The EBCI also requests that, in the case of full excavation of human remains, the entire burial matrix be removed and curated for future reburial. Lastly, EBCI requests to be sent the proposals and research designs that will be provided to the SHPO and State Archaeologist for review and approval prior to the initiation of any excavation activities.

Laboratory Treatment/Analysis: The EBCI requests that any human remains, funerary objects, sacred objects, and/or objects of cultural patrimony not be unnecessarily washed or cleaned, and that only dry brushing be consistently used. Again, we request that no photographs be taken of such objects for documentation or curation purposes, however detailed drawings are acceptable. Furthermore, in terms of human remains, we require that no destructive analyses be permitted, and we would like to have discussions and agreements about the kind of analyses, if any, that will be permitted.

Curation: The EBCI requests that in all cases where it is remotely feasible, that human remains, associated funerary objects, and the burial matrix be stored together. Furthermore, we ask that these type of objects, as well as sacred objects and objects of cultural patrimony, be removed from public viewing or public handling and that researchers not automatically be granted access to such items. Research requests should be submitted to the EBCI Cultural Resources office in the event someone wishes to study such items.

Avoidance/Preservation in Place/Excavation/Reburial: Remember, our preference is always avoidance/preservation in place. Unless there are very good reasons as to why this is not possible, we will not immediately enter into discussions of excavation, removal, study, reburial, etc. That being said, if remains must be moved, it is always our preference that they be out of the ground for only as long as it takes to move them to their new resting place, which should be as close to the original resting place as possible (within line of sight). Sometimes, we do allow minimal study of the remains, especially if it can be done with the remains in situ. If longer study is needed, we prefer a field lab to sending them off some distance to be studied in a lab. The bottom line is that the less time they are exposed to the air, the better it is for the people involved and the Tribe. If reburial is the only option, the most efficient/time sensitive reburial process is preferred. Also, capping of the burials is not typically problematic, especially if there is ample fill dirt between the individual and the foreign capping material.

Page intentionally blank

Attachment 2
December 1, 2006, e-mail from
John Jagger, Community Development Director for the
City of Pigeon Forge
Regarding Compliance With Local Floodplain Ordinance

Page intentionally blank

-----Original Message-----

From: John Jagger [<mailto:jjagger@cityofpigeonforge.com>]

Sent: Friday, December 01, 2006 10:30 AM

To: Stewart, Karen C

Cc: curtj@mbiarch.com

Subject: Cherokee Valley subdivision

Dear Ms. Stewart:

Cherokee Valley subdivision received preliminary approval from the Pigeon Forge Planning Commission in December 2005. Many of the lots are within the 100 year floodplain of Waldens Creek, and some of them are also impacted by the floodway of the creek. Under our local ordinances, houses may be built within the floodplain as long as the lowest habitable floor is elevated at least one foot above the level of the 100 year flood (either by fill or by construction that raises the floor level). We do not allow filling within the floodway (unless engineered to assure that there is no rise in the flood waters), so in most cases where structures are built in the floodway they are constructed on "stilts" (again, with a "no-rise" certification from an engineer). One final note about the project is that preliminary approval is good for one year. The developers of Cherokee Valley need to (1) submit the final plan to the Planning Commission this month, or (2) submit a request to the Planning Commission this month for an extension of the preliminary approval, or (3) resubmit a new preliminary plan at some point in the future. Please feel free to contact me if I may be of further assistance in this matter.

John Jagger
Community Development Director
City of Pigeon Forge
429-7474