Attachment 5
(38 pages)

April 20, 2006

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

Dear Ms. Barnett:

TVA, ARCHAEOLOGICAL ASSESSMENT, PROPOSED DEED MODIFICATION, RHEA COUNTY, TENNESSEE

The Tennessee Valley Authority (TVA) is reviewing a request from Defoor Brothers Development (Developer) for a deed modification on a 2.5 acre tract on Nickajack Reservoir in Hamilton County, TN. (Tennessee River Mile 464.5R) The proposed deed modification will allow the developer to place fill within the current 100 year flood elevation for a residential development. Fill will be borrowed from a small tract located in the vicinity (Figure 1).

TVA determined the area of potential effects (APE) for this undertaking to be the 2.5 acre to be developed and the proposed borrow area. A field inspection of the APE was conducted by TVA staff on August 11, 2005. At this time, it was determined that the borrow area had a low potential for archaeological resources to be present. Examination of soil boring data indicated that the development tract contained fill that extended to depths of 1 foot to 8 feet across the property. At the request of TVA, the applicant conducted a Phase I archaeological survey that included deep testing within the APE. Please find attached a draft copy of the report titled *Phase I Archaeological Survey of a Proposed 2.5 Acre Development Parcel at Tennessee River (RM 464.5R) in Chattanooga, Hamilton, Tennessee.* One archaeological site was identified during this survey. TVA has reviewed the report and agrees with the report author's recommendation that site 40HA524 will require additional testing to determine its eligibility for listing in the National Register of Historic Places. In addition, TVA has several comments regarding the report. These comments are enclosed for your review.

It is our understanding the applicant wishes to pursue Phase II testing for this project to determine the sites eligibility status. TVA has prepared a scope of work (SOW) for this testing (enclosed).

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

1. is initiating consultation with your office;
2. has determined the APE to be the 2.5 acre development tract and borrow location;
3. finds that the borrow location has a low potential for archaeological resources to be present;
4. has determined that the project as currently proposed as the potential to affect site 40HA524 and that Phase II testing will be necessary to determine the eligibility for this site;
5. seeks your comments with the SOW for Phase II testing;
6. is consulting with the Eastern Band of Cherokee Indians, United Keetoowah Band, Cherokee Nation of Oklahoma, Chickasaw Nation, Muscogee (Creek) Nation of Oklahoma, Thlopthlocco Tribal Town, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Alabama-Coushatta Tribe, Eastern Shawnee Tribe of Oklahoma, Shawnee Tribe, Absentee Shawnee of Oklahoma, Seminole Indian Tribe, Seminole Nation of Oklahoma, Jena Band of Choctaw Indians, and the Choctaw Nation of Oklahoma regarding historic properties that may have religious and/or cultural significance; and
7. seeks your concurrence with these findings and recommendations.

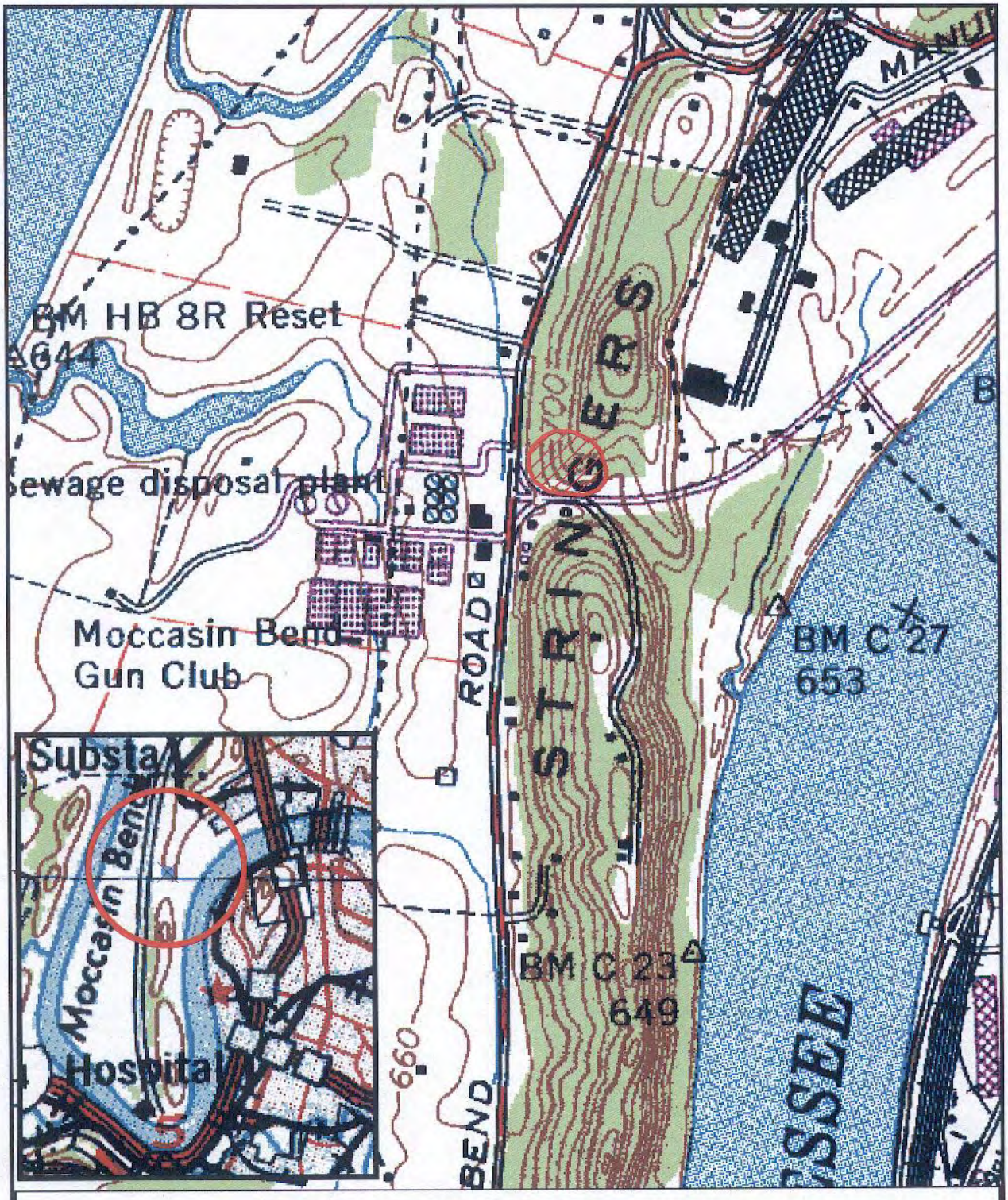
If you have any questions concerning this project feel free to contact Erin Pritchard at (865) 632-2463 or via email at eepritchard@tva.gov.

Sincerely,

J. Bennett Graham
Manager
Cultural Resources

ENCLOSURES

cc: Dan Fisher, PSC 1E-C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TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

April 27, 2006

Mr. J. Bennett Graham
Tennessee Valley Authority
400 W. Summit Hill Drive
WT 11D - Cultural Resources
Knoxville, Tennessee 37902

RE: TVA, PHASE I ARCHAEOLOGICAL ASSESSMENT, DEFOORS CONDO DEV'T/MOCCASIN BEND, CHATTANOOGA, HAMILTON COUNTY.

Dear Mr. Graham:

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 project area contains archaeological resources potentially eligible for listing in the National Register of Historic Places and agree with the proposed Phase II archaeological testing scope of work included with your correspondence. Archaeological site 40HA524 should either be avoided by all ground-disturbing activities or subjected to Phase II archaeological testing.

Upon receipt of the Phase II testing report or avoidance strategy, we will complete our review of this undertaking as expeditiously as possible. Please submit a minimum of two copies of each final report to this office in accordance with the Tennessee Historical Commission Review and Compliance Section Reporting Standards and Guidelines. Complete and/or updated Tennessee Site Survey Forms should be submitted to the Tennessee Division of Archaeology. 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. 17.

Your cooperation is appreciated.

Sincerely,

Herbert L. Harper
Executive Director and
Deputy State Historic
Preservation Officer

HLH/jmb

Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

November 14, 2006

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

Dear Ms. Barnett:

TVA, ARCHAEOLOGICAL ASSESSMENT, PROPOSED 26A PERMIT, HAMILTON COUNTY, TENNESSEE

As per previous consultation with your office, the Tennessee Valley Authority (TVA) is reviewing a 26a permit request from Defoor Brothers Development (Developer) for the placement of fill on a 2.5 acre tract on Nickajack Reservoir in Hamilton County, Tennessee (Tennessee River Mile 464.5R). The Developer intends to construct a residential structure.

Phase I survey of the property identified one archaeological site (40HA524) that was determined potentially eligible for listing in the National Register of Historic Places (NHRP). This site was recently subjected to Phase II testing to determine its eligibility status. The resulting report titled *Phase II Archaeological Investigations of a 2.5 Acre Development Parcel at Tennessee River Mile 464.5R in Chattanooga, Hamilton County, Tennessee* has been forwarded to your office by Alexander Archaeological Consultants, Inc. Site 40HA524 consists of a multi-component, deeply stratified site occupied as early as the Early Archaic through the Mississippian Period. TVA has reviewed the report and agrees with the author's recommendation that 40HA524 meets the criteria of eligibility for listing in the NRHP. Specifically, the site is eligible under Criterion D.

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

1. finds that 40HA524 meets the criteria of eligibility for listing in the NRHP;
2. has determined that the project as currently proposed would have an adverse effect on site 40HA524;
3. is discussing alternatives with the Developer that might minimize or avoid the anticipated effect;

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4. is consulting with the Eastern Band of Cherokee Indians, United Keetoowah Band, Cherokee Nation of Oklahoma, Chickasaw Nation, Muscogee (Creek) Nation of Oklahoma, Thlopthlocco Tribal Town, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Alabama-Coushatta Tribe, Eastern Shawnee Tribe of Oklahoma, Shawnee Tribe, Absentee Shawnee of Oklahoma, Seminole Indian Tribe, Seminole Nation of Oklahoma, Jena Band of Choctaw Indians, and the Choctaw Nation of Oklahoma regarding historic properties that may have religious and/or cultural significance; and
5. seeks your concurrence with these findings and determinations.

If you have any questions concerning this project feel free to contact Erin Pritchard at (865) 632-2463 or via email at eepritchard@tva.gov.

Sincerely,

Thomas O. Maher
Manager
Cultural Resources

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

June 5, 2008

Mr. E. Patrick McIntyre, Jr.
Deputy State Historic Preservation Officer
Tennessee Historical Commission
2941 Lebanon Pike
Nashville, Tennessee 37243-0442

Dear Mr. McIntyre:

TVA, MEMORANDUM OF AGREEMENT AND SCOPE OF WORK FOR DATA RECOVERY OF 40HA524, DEFOORS CONDOS, PROPOSED 26A PERMIT, HAMILTON COUNTY, TENNESSEE

As per our previous consultation with your office, the Tennessee Valley Authority (TVA) is reviewing a 26a permit request from Defoor Brothers Development (Developer) for a the placement of fill on a 2.5-acre private property tract on Nickajack Reservoir in Hamilton County, Tennessee (Tennessee River Mile 464.5R). The Developer intends to construct condominiums. Enclosed is our previous correspondence regarding this project.

TVA determined, in consultation with your office, that site 40HA524 meets the criteria of eligibility for listing in the National Register of Historic Places. In addition, it was determined that the project, as proposed, would adversely affect this historic property. TVA worked with the Developer to find alternatives to the site plan that would avoid or minimize adverse effects to the site. (See enclosed alternatives.) After careful consideration of these options, the Developer determined that the site cannot be avoided and will proceed with the project as previously planned.

Pursuant to 36 CFR Part 800.6(c), TVA proposes to enter into a Memorandum of Agreement (MOA) with your office to mitigate the effects of this undertaking. A draft MOA is enclosed for your review. TVA is also inviting the Eastern Band of Cherokee Indians, United Keetoowah Band, Cherokee Nation of Oklahoma, Chickasaw Nation, Muscogee (Creek) Nation of Oklahoma, Thlopthlocco Tribal Town, Kialegee Tribal Town, Alabama-Quassarte Tribal Town, Alabama-Coushatta Tribe, Eastern Shawnee Tribe of Oklahoma, Shawnee Tribe, Absentee Shawnee of Oklahoma, Seminole Indian Tribe, Seminole Nation of Oklahoma, Jena Band of Choctaw Indians, and the Choctaw Nation of Oklahoma to be concurring parties to the MOA.

TVA has prepared a scope of work for Phase III data recovery of the site. In response to this scope of work, the Developer has submitted a proposal for the proposed excavation (enclosed). Please provide any comments you may have on the proposed mitigation.

Pursuant to 36 CFR Part 800.6 of the Advisory Council's regulations, TVA is notifying the Council of the adverse effect findings for the proposed project. Documentation pursuant to 36 CFR 800 Part 800.11(e) is also enclosed for your review.

TVA is seeking your comments on the proposed MOA to mitigate adverse effects. If you have any questions regarding this undertaking, please contact Erin Pritchard at 865.632.2463 or by email at eepritchard@tva.gov.

Sincerely,

Original signed by Thomas O. Maher

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

Enclosures
cc: Ms. Jennifer Barnett
Tennessee Division of Archaeology
1216 Foster Avenue, Cole Bldg. #3
Nashville, Tennessee 37210

Defoors Condo Project
Alternatives for consideration* - Section 106 Compliance

Alternative 1. Proceed with project as currently planned.
The project as currently proposed would result in an adverse effect to archaeological site 40HA524. The adverse effect has been determined because: 1) the current plans call for the excavation of an underground parking facility; 2) the proposed plans will result in the "capping" of the site which will no longer allow access to the scientific data that qualifies it for listing in the National Register of Historic Places (NRHP); and 3) Building a large building on the property could result in the compaction of soils which could adversely effect the archaeological deposits contained within.

Section 106 Finding: Adverse Effect to 40HA524

Process to be completed: TVA would be required to consult with the Tennessee State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), sixteen Federally recognized Indian tribes (Tribes) with an interest in this area; and other consulting parties (including, but not limited to, the applicant). A Memorandum of Agreement (MOA) will be prepared to address the adverse effects to the site. This MOA will stipulate the treatment plan as agreed upon by TVA, the SHPO, and other consulting parties. The expected treatment plan would be data recovery of the site. Data recovery consists of the excavation of site 40HA524 to the extent that we can answer specified research question that will be defined in a specific research design prepared by TVA in consultation with the above parties. The research design will be included in the MOA. Additional costs will be incurred for requirements under the National Environmental Policy Act (NEPA).

Estimated Schedule: Consultation and preparation of the MOA would likely take several months to prepare and complete. Once the MOA is executed, data recovery of the site can proceed. Data recovery could take 3-4 months. TVA would receive a management summary within 2-3 weeks of completion of the fieldwork. This summary would need to be reviewed by all consulting parties. At this time, if agreed upon by all consulting parties and specified in the MOA, construction of the proposed condo site can begin. Construction can proceed as originally planned. Preparation of the final report could take 6-8 months and receipt of final report is not required prior to initiation of construction.

Total Time:	
Consultation/MOA preparation	3-4 months
Data Recovery/Field investigation	3-4 months
Management Summary (MS)	2-3 weeks
Consulting party review of MS	30 days
Preparation of final report	6-8 months

Estimated Costs: Costs would include the contract budget for excavation and report preparation which is estimated to be anywhere from $300,000 to $600,000 depending on the consultant and the research design. In addition to these costs, TVA would have administrative costs associated with the project that would include consultation with all parties, MOA preparation, field visits, and other related

administrative costs associated with these activities. These costs are estimated to be from $15,000 to $20,0000. If there is significant Tribal concern regarding this project, we may be asked to conduct an onsite consultation meeting with the Tribes. If this should happen, there could be an additional $50,000 in costs.

Total Costs: $365,000 - 665,000

Alternative 2. Applicant redesigns plans that would result in only partial impacts to the site.
In this situation, the applicant could redesign plans so that only a portion of the archaeological site would be impacted. An example of this would be if the building (including underground parking facility) was readjusted to an L-shaped design or moved north of its existing planned location. TVA would find that only a portion of the site was being adversely affected through capping and compression of soils (see Alternative 1).

Section 106 Finding: Adverse Effect to 40HA524

Process to be completed: The process would be similar to Alternative 1 in that TVA would need to consult with the SHPO, the ACHP, Tribes, and other consulting parties on their determination of adverse effect. An MOA and research design would be prepared and we would proceed with partial excavation of site 40HA524. Additional costs will be incurred for requirements under the National Environmental Policy Act (NEPA).

Estimated Schedule: Similar to Alternative 1 - Consultation and preparation of the MOA would likely take several months to prepare and complete. Once the MOA is executed, data recovery of the site can proceed. Data recovery could take less time, perhaps only 2-3 months. TVA would receive a management summary within 2-3 weeks of completion of the fieldwork. This summary would need to be reviewed by all consulting parties. At this time, if agreed upon by all consulting parties and specified in the MOA, construction of the proposed condo site can begin. Construction can proceed as originally planned. Preparation of the final report could take 6-8 months and receipt of final report is not required prior to initiation of construction.

Total Time:	
Consultation/MOA preparation	3-4 months
Data Recovery/Field investigation	2-3 months
Management Summary (MS)	2-3 weeks
Consulting party review of MS	30 days
Preparation of final report	4-6 months

Estimated Costs: Costs would be somewhat less than Alternative 1 but would likely not be significant due to the nature of the archaeological site and the logistics required to conduct excavations in a floodplain. An estimate for excavation and report preparation is $250,000 to $500,000 depending on the consultant and the research design. In addition to these costs, TVA would have the same administrative costs associated with consultation, MOA preparation, field visits, and other related administrative costs associated with these activities. These costs are

estimated to be from $15,000 to $20,0000. If there is significant Tribal concern regarding this project, we may be asked to conduct an onsite consultation meeting with the Tribes. If this should happen, there could be an additional $50,000 in costs.

Total Costs: $315,000 - 565,000

Alternative 3. Redesign the facility to where the parking lot fronts the river the building is behind. The building can include plans for an underground parking facility.

If the development can be designed to where the building is located on the road side of the property (north), outside the site 40HA524 boundary, and the parking lot can be moved to the riverside (with conditions), then it might be possible for TVA to make a "No Adverse Effect" finding for the project. The parking lot would be restricted to the portion of 40HA524 with an existing cap of fill disturbance in order to protect archaeological deposits from disturbance resulting from its construction. The riverside terrace portion of the site that does not have a deposit of fill on the surface would need to be avoided by all construction activity. In this case, the parking lot capping would be considered a "reversible" effect, meaning that it would be possible to remove a parking lot to access the site in the future. In this case, the developer would be required to put a conservation easement or preservation covenant in the deed in order to ensure the future protection of the property. If these conditions are met, archaeological data recovery and the execution of an MOA would not be required.

Section 106 Finding: No Adverse Effect with conditions

Process to be completed: TVA would need to receive and review revised plans for the development. If plans meet the specified conditions, TVA would consult with the SHPO, Tribes, and other consulting parties to notify them of our finding of "no adverse effect". These parties would have 30 days to object to this finding. If the SHPO concurs and TVA does not receive any objections within the 30 day period, TVA can proceed with permit approval. If the SHPO does not concur, TVA would be required to consult with the ACHP.

Estimated Schedule: The schedule would include the time it takes to work with the applicant to prepare plans to avoid or reduce impacts to the site. TVA would then need time to prepare proper consultation materials to submit to all parties mentioned above. These parties would have 30 days to object.

Total time: Approximately 2-4 months (not including amount of time needed for applicant to acquire a redesign of the project)

Estimated Costs: Costs would include TVA's administrative costs to coordinate plans with the developer and prepare consultation documentation. These costs could range from $10,000-15,000.

Alternative 4. Redesign building so that it is avoiding a majority of site 40HA524. Underground parking facility is removed or relocated to the north/road side of the property below surface parking.

Building plans would been to be moved approximately 20-25 meters back (north) of existing location. This would result in the capping of only a small portion of the site and would be considered insignificant. Placement of any necessary construction footers would need to be restricted to the existing disturbed deposits. If pilings are used, they would need to be reviewed by TVA to determine if they would result in a significant effect to the site. TVA would review the plan for pilings and make this determination in close consultation with the SHPO. The remaining portion of the site would need to be maintained as a "green space". Certain facilities and vegetation could be placed in this area upon review of plans. A conservation easement or preservation covenant would need to be placed in the deed in order to protect the site for the future.

Section 106 Finding: No Adverse Effect with conditions

Process to be completed: TVA would need to receive and review revised plans for the development. If the redesigned plans meet the specified conditions, TVA will consult with the SHPO, Tribes, and other consulting parties to notify them of our "no adverse effect" finding. These parties would have 30 days to object to this finding. If the SHPO concurs and TVA does not receive any objections within the 30 day period, TVA can proceed with permit approval. If the SHPO does not concur, we would be required to consult with the ACHP.

Estimated Schedule: The schedule would include the time it takes to work with the applicant to prepare plans to avoid or reduce impacts to the site. TVA would then need time to prepare proper consultation materials to submit to all parties mentioned above. These parties would have 30 days to object.

Total time: Approximately 2-4 months (not including amount of time needed for applicant to acquire a redesign of the project)

Estimated Costs: Costs would include TVA's administrative costs to coordinate plans with the developer and prepare consultation documentation. These costs could range from $10,000-15,000.

***NOTES:**

All alternative schedules and estimated costs are assuming best case scenario. It is not anticipated at this time that TVA would receive major objections to these alternatives. If human remains are identified during excavation, there will likely be a significant delay in the excavation schedule for the project as all work will need to cease in the immediate vicinity of the discovery.

TVA cultural resources staff considered the alternative whereby the building is placed in the currently planned location (without the excavation of an underground parking facility). At this time, staff finds that this alternative would result in an adverse effect (with costs/time delays being the same as Alternative 1). Our finding of adverse effect is based on the following: 1) the proposed plans will result in the "capping" of the site which will no longer allow access to the scientific data that qualifies it for listing in the National Register of Historic Places (NRHP); and 2) Building a large building on the property could result in the compaction of soils which

could adversely effect the archaeological deposits contained within. Cultural staff believes that the SHPO would concur with our findings.