

Appendix M

Joint Public Notice Comment Responses

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CHAPTER 2.0. Public Involvement Process**2.1. General.**

As previously discussed, USACE and TVA issued JPN 09-03 (Appendix C) on 19 March 2009 to advertise the proposed action. The JPN was distributed to a list of interested parties that included federal, state, and local agencies, elected officials, private/public organizations, news agencies, adjacent property owners, and other interested stakeholders.

Sixty-two comments (52 letters and 10 e-mails) were received in response to the JPN. The distribution of comments is as follows: Three agency letters with two conditional comments from the Tennessee Historical Commission (THC) and one comment from the United States Fish and Wildlife Service (USFWS) (see Appendix F), 58 private individual objections (48 letters and 10 e-mails); and one favorable letter from a private individual. Thirty-five of the private individual commenters objected to the proposal and requested a public hearing. On 5 April 2010, the Friends of Norris Reservoir provided one additional objection to the proposal in the form of a letter to the editor of the *LaFollette Press* newspaper. Four additional e-mail objections were received after 13 May 2010. Therefore, including the other comments received after the public notice had expired, 67 comments were received. In addition to regular comments, three congressional inquiries were received during the application's public interest review process (see Section 2.3 below).

2.2. Public Notice Comments.

The USACE and TVA have evaluated the substantive issues raised by the commenters during the public notice comment period in Section 3.0. A summary of the USACE/TVA response to the comments, where appropriate, has been included in Section 5.5. The applicant also provided a response to the comments (see Appendix G), and this information is summarized in Section 2.3 below.

2.2.1. Agency Responses.**2.2.1.1. United States Fish and Wildlife Service.**

By letter dated 17 April 2009 (see Appendix F), USFWS stated that based on the information and collection records available at the present time, no federally listed or proposed threatened or endangered species are known to occur within the project impact area. Therefore, it considers the requirements of Section 7 of the ESA fulfilled. In addition, it believes that no significant impacts to fish and wildlife or their habitats would result from the proposal. For the above reasons, USFWS stated that it would have no objection to the authorization of the proposed work.

Response: Comments noted. No issues requiring a response were identified.

2.2.1.2. Tennessee Historical Commission.

TVA offered to be the lead federal agency in matters of compliance with Section 106 of the NHPA of 1966, and the USACE accepted this role. TVA wrote to THC that the proposed undertaking could affect historic properties and recommended that a Phase 1 cultural resources survey should be conducted over the proposed area of potential effect (APE). TVA determined the archaeological APE for the undertaking involves the proposed marina and dock footprint, the boat-launching area, three parking areas, a concrete cart path, and an access road. The recommended APE for historic structures is a 0.5-mile radius surrounding the proposed marina development.

THC responded to TVA agreeing with the APE and requesting that two known archaeological sites should either be avoided by all ground-disturbing activities or subjected to Phase 2 archaeological testing. Furthermore, THC concurred that the remainder of the APE should be surveyed for the presence of archaeological resources. Phase 2 testing and geomorphology investigations were conducted, and test results were negative.

A Phase 1 cultural resources survey of the remainder of the APE identified two previously unrecorded archaeological resources and five previously unrecorded historic structures within the APE. In a letter to THC, one site was recommended potentially eligible for listing in the National Register of Historic Places (NRHP). TVA recommended implementation of a preservation covenant in the applicant's deed to reduce potential impacts to the potentially eligible site and requested concurrence. THC concurred with TVA's finding that the site is potentially eligible for listing and that the site would not be adversely affected with the implementation of the preservation covenant. To ensure compliance, the archeological covenant would be incorporated into the deed as required by SHPO prior to issuance of final permits. Copies of this correspondence are included in Appendix F.

2.2.2. Public Responses.

As indicated in Section 2.1, 64 comments were received from members of the public. Thirty-five of the commenters requested a public hearing. All but one of the comments received were against the proposal. The main concerns stated by the objectors included safety, navigation, recreation, aesthetics, noise, erosion, water quality, property values, and property rights. The respondent commenting in favor of the proposal indicated that the project is imperative to the county's economic growth.

Response: The comments are noted. This draft EA evaluates the resources identified as the main concerns by the commenters.

2.2.3. Congressional Correspondence.

Three congressional inquiries were received during the application's public interest review process. By letter dated 3 August 2009, Congressman Lincoln Davis requested assistance for constituent William Bennett, executive director of Galilee Bible Camp. The camp is located in the proposed marina cove approximately 400 feet upstream and on the opposite shoreline. Mr. Bennett opposes the project and would like to be assured that a public hearing will be held before a final permit decision is made. The second congressional inquiry, dated 10 September 2009, came from Senator Lamar Alexander's office on behalf of Tom Painter, resident of Deerfield Resort. The letter requested that USACE contact Mr. Painter and provide him with additional project information. Mr. Painter opposes the construction of the proposed marina and cited issues such as overdevelopment, bank erosion, water quality, impact on Galilee Bible Camp, and increased danger among his concerns. The third congressional contact was from Congressman Lincoln Davis, who on 14 September 2009 wrote on behalf of Mr. Painter citing the same issues he had expressed to Senator Alexander. Copies of this correspondence are included in Appendix F.

Response: In all three instances, the USACE responded that additional information had been requested from the applicant and that changes to the proposal had already occurred (Appendix F). For example, the applicant has reduced the number of boat slips from 799 to 500 slips in the revised project plans and is planning to construct the marina in phases based on occupancy levels (Appendix B). The applicant has indicated that his initial plans involve providing slips for approximately 60 vessels, and 60 more slips would be added per phase through Phase 7 once occupancy reached 70 percent. Eighty slips would be added for Phase

8. Additional modifications to the proposal have occurred that could result in further reductions in navigation, recreation, water quality, and aesthetic impacts, among others. The USACE has determined that a public hearing will not be held. TVA concurred with this approach. However, there will be a public release of this draft EA and a 30-day public comment period. TVA plans to release a public notice regarding the opportunity to review and comment on this draft EA.

2.3. Applicant's Rebuttal.

On 4 May 2009, USACE sent the comments/objections that were received in response to the JPN to the applicant for resolution or rebuttal (Appendix G). In a letter dated 11 May 2009 (Appendix G), the applicant addressed the substantive issues raised. Please note that the following response statements (Sections 2.3.1, 2.3.2, 2.3.3, 2.3.4, and 2.3.5) are the applicant's responses to comments and these responses do not reflect USACE or TVA's views. Analyses of these and other resource issues and considerations are addressed in Sections 3.0 and 5.0.

2.3.1. General.

Commenters questioned the need for a new marina and the size and phasing of this project.

Response: My research indicates that existing commercial marinas in the area are operating at their capacity.

Response: Construction of Phase 1, will begin within 18 months of receipt of the marina permit. The initial phase will include the wave attenuator, a scaled down retail area, fuel dispensing system, and Phase 1 slips.

Response: Subsequent phases will be constructed based in an 80 percent occupancy rate of existing slip standard. Once Phase 1 is 80 percent occupied, then Phase 2 will begin and continue this process through completion of all phases.

Since the 11 May 2009 response letter was prepared, the applicant has revised his phased construction plan (Appendix B). The revised plan is refelected in Section 1.2, Project Description.

2.3.2. Navigation Safety.

Commenters expressed concerns about the docks extending beyond established harbor limits, the wave attenuator extending past the mouth of the cove, and increased boating traffic resulting in boat congestion in the cove.

Response: Revised harbor space will not occupy more than one-third of the existing cove's width during summer pool.

Since the 11 May 2009 response letter was prepared, the applicant has revised the requested harbor space and it would not occupy more than one-third of the existing cove's width year-round (instead of summer pool).

2.3.3. Roadway Safety.

Commenters posed questions regarding the roadways that would be used to access the marina and whether improvements to these roads are planned or would be required.

Response: Demory Road is the most direct route from Highway 63 [sic] US 25W, TN63 to the proposed marina. It is difficult to determine the daily increase in traffic other than the marina employees. No roadway improvements are currently planned or required by the county. (Please see attached letter (Appendix F) from the Campbell County Highway Department).

2.3.4. Environmental.

Commenters requested information regarding planned measures to prevent water quality impacts from debris and petroleum products from happening, and information about plans for a marine pump-out station and sewage handling was requested.

Response: Currently the passing vessels and wind facilitate the movement of debris into the cove as it has for many years. It is the applicant's opinion that there is no organized effort to keep this cove free of debris, and this would change once a marina occupies the cove with an incentive to keep the surrounding shoreline clean and safe.

Response: The vessels that currently utilize this area for launching do not abide by the governing bodies' rules for fueling. The marina would have a state-of-the-art fueling system as well as an emergency response plan and constant monitoring of the fueling process.

Response: There will be marina pump-out stations at the dock which will initially be pumped to a holding tank on land and then transported to LaFollette Utilities Sewage Treatment Plant for disposal (pump and haul).

Commenters indicated measures should be taken to reduce the potential impacts to wildlife habitat and air quality.

Response: If needed, I (the applicant) will riprap the marina's shoreline. It is my opinion that having a no-wake harbor would decrease the shoreline erosion.

Response: Currently the property is being used illegally for hunting (hunters are trespassing), dumping trash, and tree cutting. The marina will utilize the property in a manner that will promote better stewardship for wildlife.

Response: The marina would not produce air emissions that will be harmful to the environment. Currently, there are federal and state regulations in place to regulate marine engine emission.

Commenters questioned whether the applicant would commit to measures to reduce noise impacts.

Response: Construction work and operating hours will be similar to those of existing marinas and home construction sites.

Response: If authority were bestowed upon me by the federal or state agencies that adopt and enforce noise pollution regulations, I would be happy to commit to enforcing these measures.

2.3.5. Socioeconomics.

Commenters expressed concerns that the development of a large marina would devalue their property in the immediate vicinity of the proposed marina.

Response: I have spoken with local realtors regarding property devaluation. They have all agreed that there would be no negative impact to property values as a result of the proposed marina.

Commenters expressed concern that recreational activities at Galilee Bible Camp would be severely affected.

Response: As a steward of Norris Lake, access to the reservoir by the general public and equally by Galilee Bible Camp are goals that all marinas and the community as a whole should strive to achieve. The general public, Turkey Cove, and Galilee Bible Camp would maintain two-thirds of the cove for use at summer pool.

Commenters indicated that plans to minimize visual impacts as proposed in the JPN are welcomed.

Response: I plan to create the least impact on the environment, aesthetics of the marina property, and Norris Reservoir as feasibly possible. Natural neutral colors will be utilized in the marina construction.

5.4. Public Hearing.

Thirty-five requests for a public hearing were received from members of the public during the public involvement period. In a memorandum dated 21 January 2011, Ronald E. Gatlin, Regulatory Branch chief, denied the public hearing requests (Appendix M). Among the reasons for denying the hearing, the document cites that the public had ample opportunities to express their views and opinions regarding the application, all concerns expressed were understood and addressed, and a hearing would not have provided any additional information to assist in reaching a final decision on the DA permit request.

5.5. Consideration of Public Comments.

Comments were received from 64 individuals (mostly area residents). Only one comment favored the proposal. The main concerns stated by the objectors included navigation, recreation, aesthetics, noise, erosion, water pollution, property values, and property rights. The sole respondent commenting in favor of the proposal indicated that the project was imperative to the county's economic growth. The public comments have been reviewed and evaluated by USACE in the paragraphs that follow.

5.5.1. Navigation.

Many commenters indicated that there are already many marinas serving the area and the increased traffic and congestion would affect navigation safety.

Evaluation: The applicant has indicated that existing commercial marinas in the area are operating at capacity (Section 2.3.1). Although USACE and TVA have not verified this statement, with the developmental growth underway near Norris Reservoir, there is potential for slip rental demand to increase over time. Most applicants conduct a marketing analysis to decide whether to enter into a business enterprise such as a marina, and the USACE and TVA rely on those studies. On the issues of congestion and safety, the water-related recreation discussion in Section 3.4 explains that additional boat traffic would be generated by the marina. Based on observed boating patterns across the Tennessee River system, TVA estimates that only 25 percent of vessels stored at commercial marinas and private docks are likely to be in use during a typical summer weekend. The number for a peak use summer holiday weekend would be 35 percent. Based on boat-launching ramp parking space usage, estimates for boat-launching ramp usage for the same two periods ranged from 60 percent to 75 percent of full capacity. Even at full development (i.e., all construction phases competed), less than 150 additional vessels would likely be in use on a nonholiday summer weekend. Given the water surface available in the study area of the reservoir, it appears that nonholiday summer weekend boating activity could be accommodated without exceeding generally accepted optimum recreational boating density thresholds of 6.0 to 7.6 surface acres per boating unit on nonholiday summer weekend days. However, peak use holiday weekend boating capacity estimates exceed optimum recreational boating density thresholds. TVA plans to consult with TWRA regarding the implications of this finding, and the outcome of the planned consultation will be included in the final EA.

5.5.2. Recreation.

Several commenters expressed concerns, particularly Galilee Bible Camp, that the proposed action would prevent safe swimming and canoeing in the cove.

Evaluation: The site of the proposed marina is privately owned with no road infrastructure or developed water-access facilities. Only limited opportunities exist at present for public use and water-based recreation at the project site and in the associated cove. With the increased lake access and moorage, water-related recreation opportunities would most likely increase as well. This would provide a positive benefit and attraction for some residents and potential homeowners.

Because this increase would be achieved gradually during buildout of Pointe Marina; the increased demand and use would not substantially affect overall reservoir (water-related) recreation. Increased boating use within the study area would not jeopardize recreational boating on Norris Reservoir, as long as recreational boaters follow safe boating practices and State of Tennessee boating laws. Although there would be an increase in recreational boating traffic, it is expected that this impact on recreational boating opportunities would be minor, and safety would not be significantly reduced.

A small number of private residences occur at the head of the cove, and the Galilee Bible Camp property is located approximately 1,000 feet west of the marina limits. USACE estimates that few vessels would likely use this area west of the marina, particularly the Galilee Bible Camp frontage. Some outside fishing boats intending to navigate to the head of the cove would first need to go by the length of the marina and in so doing should be moving at a “no-wake” speed as required by Tennessee boating laws.

5.5.3. Aesthetics.

Several commenters indicated that the large facility would spoil the natural beauty of the landscape and obstruct reservoir views.

Evaluation: Experts agree that there are no uniform definitions or interpretive codes for visual quality. What is particularly pleasing in terms of visual quality to one individual may not be necessarily pleasing to another, i.e., there is no generally accepted rule as to what constitutes beauty.

Views of the proposed activities would be available from different locations on Norris Reservoir. However, observer views to and from the cove are generally limited to the foreground viewing distance due to topography, vegetation, and existing land use patterns. At the confluence of the embayment, views do open to the north, south, and east into the middleground (0.5 mile up to 4 miles from the observer), but those views are limited due to the width and length of the main channel. The addition of several individual docking structures with a combined total space for 500 vessels would alter the existing landscape within the cove. However, since there are six marinas/resorts within a few miles of the proposed facilities, the views available of the proposed commercial marina would remain in context with views already present at those other marina locations.

Finally, recreational reservoir users would likely notice an increase in the number of watercraft in the vicinity of the proposed project. These increases in usage patterns would vary seasonally but would generally remain in context with the surrounding landscape character. Impacts to visual resources associated with the proposed action would be relatively minor.

5.5.4. Noise.

Some commenters indicated that the proposed marina would significantly increase noise levels in the cove to unbearable levels.

Evaluation: Noise levels would increase slightly to moderately above background values during typical construction and operation activities. The loudest noise at the facility would probably occur during the construction phase and would be a short-term effect. However, one attenuating factor during this phase is that the construction activities would be performed during daylight hours. Expected long-term noise generators include passenger and heavy vehicles, recreational vessels, and PWC. The added boating activity would most likely occur on the same days and during the same times as the current boating activity on the reservoir. Most shoreline residents likely already

hear watercraft noise from the reservoir. The additional activity would increase the frequency of hearing watercraft, but it would not increase the noise level of the watercraft itself. Increased noise levels associated with the construction and operation of the facility would be more noticeable during the fall and winter periods when the transmission absorption effect created by foliage offers the lowest protection. However, during that same period, noise-producing recreational activities are usually at the lowest levels. Likewise, during the peak periods for outdoor activity (summer), the transmission absorption effect of foliage would offer the highest protection. Summing up, short- and long-term noise impacts would only be minor to moderate and not in the range of unbearable levels.

5.5.5. Erosion.

Commenters indicated that the additional boat traffic and wake they generate would increase erosion in the cove.

Evaluation: The construction and operation of the proposed facilities is not likely to considerably change the site's shore erosion rate. There are many variables that contribute to shoreline erosion and no measurable means of determining erosion as a direct result of recreational boating in an area. However, minor erosion along shorelines where boat slips are located generally occurs. Therefore, Pointe Marina has indicated that, if necessary, it would stabilize the marina shoreline with riprap. The Pointe Marina believes that the proposed wave attenuator would reduce erosion forces in the cove stemming from main channel backflows. If Section 26a and DA permit approvals are issued, a special condition would be added to require Pointe Marina to riprap the marina shoreline if more than a normal amount of erosion is observed by the USACE and/or TVA during shoreline assessments. Because marina-originated boating activity would be circumscribed to the area between the marina boat-launching ramp and main channel, a considerable erosion rate increase along Galilee Bible Camp's shoreline and the head of the cove is not expected.

5.5.6. Water Pollution.

Commenters expressed concerns that the cove will become contaminated with pollutants generated by the marina activities.

Evaluation: Only minor water quality impacts are expected to occur at the project site from the construction and operation of the marina. Since fuel would be sold at the marina, water quality impacts would range from minor (inadvertent leakage of petroleum products from vessel engines) to major (spills from the gas dispensers). In case of a large spill, Pointe Marina will be required to respond in accordance with their SPCC Plan, which is required by the state fire marshall's office. Since the marina is located at the mouth of the cove, river currents would help disperse the discharges quickly in the channel's water column. Pointe Marina has indicated that there will be marina pump-out stations at the docks, which will initially be pumped to a holding tank on land and then transported to LaFollette Utilities Sewage Treatment Plant for disposal. No substantive change is expected to occur in water temperature, color, odor, or nutrients from the boat slips or the small amount of disturbance associated with site preparation and construction.

TDEC is responsible for enforcement of state standards for construction sites and storm water runoff under Section 402 of the CWA. Under Section 401 of the same act, TDEC has evaluated the impacts of discharging fill material into the waterway by issuing water quality certification for the proposed work on 15 April 2009. The document provides assurance that water quality standards will not be violated if the work is conducted in accordance with the conditions set forth in the certification.

The property is currently being used by private individuals for unauthorized dumping and camping, and neighbors have indicated that users leave large amounts of trash and refuse behind when they depart. These materials have the potential for reaching the waterway and contributing to pollution. The presence of the marina would minimize or eliminate this occurrence.

5.5.7. Property Values.

Commenters indicated that properties in the cove and nearby subdivisions would be devaluated by the existence of a commercial marina.

Evaluation: The marina operation has the potential to generate substantial economic benefits for Pointe Marina and would likely enhance its property values. There would be a short-term stimulus to the local economy from the sale of goods and services in support of construction activities. Increased tax revenues would be derived because of the planned facilities. Concerns have been expressed that the construction of the docks would lower the value of nearby properties. The potential impact that facilities such as the one proposed may have on residential property values is highly debatable among real estate professionals. Potential economic effects on residential property values in the immediate area are speculative and would depend on market demand and current economic health. Considering the phased development approach planned by Pointe Marina, the choice and color of the building materials, and the well-buffered setting of the site (inside a cove), adverse impacts if any, would be minimal for most residents. Impact potential would decrease in direct proportion to the distance to the marina facilities.

5.5.8. Property Rights.

Commenters raised various issues concerning property ownership. One commenter stated that the proposed project land is apparently owned by the local Methodist church, and it appears that deed restrictions exist that would limit the use of the land for religious, educational, and recreational purposes. Several commenters criticized TVA for selling the property they originally acquired when building Norris Dam and allowing commercial development in it. These commenters believe the property should have been developed into a park and/or offered back to the original property owners or their descendents.

Evaluation: TVA owns approximately 293,000 acres of public land located along the Tennessee River system. Because TVA owns such a large amount of land along rivers and reservoirs, some individuals believe that TVA owns subject Tract XNR-585, where the Pointe Marina is proposed. However, the subject property has been in private ownership since 1948. TVA understands that the uses on that property by private individuals have occurred without permission of the property owner. Below is a timeline explaining the ownership and covenants associated with this property.

Historically, the property that makes up Tract XNR-585, locally known as Heatherly's Point, was purchased in fee by TVA from Harley Hatmaker, Harrison Heatherly, and Hobart Heatherly. In 1948, by Special Warranty Deed (Deed), TVA sold XNR-585 down to the 1,020-foot contour elevation (NSP) under authority of Section 4(k)(a) of the TVA Act of 1933. Section 4 (k)(a) was historically used by TVA to dispose of land or landrights for recreational uses to stimulate commercial recreation development. As stated in the Deed, the purpose of the sale of this tract was for religious, educational, and recreational use. Even though TVA sold the fee ownership of this tract to the 1,020-foot contour, it retained the right to flood the property to the 1,052-foot contour during spring floods and to the 1,034-foot contour at other times of the year. The Deed stated that buildings for human habitation could not be constructed below the 1,052-foot contour. The explicit right to construct water use facilities with prior approval from TVA was given in this deed. Finally, the Deed also requires that the subject tract would not be resold except as a whole.

In 1958, the Deed was modified to require that the land be used solely for recreational purposes. The Deed of Modification also changed the language associated with the resale of the subject tract to include that the land will not be leased, sold, or otherwise alienated except as a whole to better reflect the intent of the original deed.

The most recent deed, a Deed of Exchange, was executed in 1975. A Deed of Exchange is a tool widely used that allows development to a lower contour elevation. The Deed of Exchange for the subject tract allows construction of buildings down to the 1,044-foot contour. This Deed of Exchange also strengthens TVA's ability to prevent any fill or excavation of material located below the 1,044-foot contour. The proposed boat-launching ramp would be constructed on grade, and fill would not be placed below the 1,044-foot contour for construction of the ramp. With the Deed of Exchange, TVA also abandoned the right to flood to the 1,052-foot contour but retained the right to flood to the 1,044-foot contour.

Further Evaluation: USACE regulations at 33 CFR 320.4(g) state that authorization of work by the DA does not convey any property rights, either in real estate or material, or any exclusive privileges. Furthermore, a DA permit does not authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations. The same regulation also states that a riparian landowner has a general right of access to NWUS. However, this right of access is weighed through the DA public interest review process against the similar rights of access held by nearby riparian landowners and to the public's right of navigation on the water surface. The proposed water use facilities would not substantially impede water access of nearby property owners or seriously interfere with boaters' surface water rights. No issues are known to USACE nor were any identified through our public interest review process that would violate private property rights.