

9.0 AGENCY/PUBLIC COMMENTS

November 6, 2002

Mr. Milton H. Hamilton, Jr.
Tennessee State Historic Preservation Officer
Tennessee Department of Environment and Conservation
21st Floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243-0435

Dear Mr. Hamilton:

In response to your August 21 letter to J. Bennett Graham and the September 24 letter from Herbert L. Harper to Jon M. Loney, TVA has reevaluated and given further consideration regarding the area of potential effect (APE) for the Sunset Bay Development in Union County.

TVA appreciates the State Historic Preservation Officer's comments, but after due deliberation, TVA remains convinced that our determination of the APE for this project is correct. The APE has been defined in previous correspondence. Since the federal agency ultimately determines the APE, TVA submits that it has now fulfilled its Section 106 responsibilities regarding the APE for the Sunset Bay Development. Obviously, this fulfillment includes the caveat that we will complete our phased approach on the remaining area that could not be investigated during the initial surveys due to high water levels.

If you have any questions or need further information, please contact J. Bennett Graham at (865) 632-1583.

Sincerely,



Bridgette K. Ellis
Vice President
Resource Stewardship
NRB 2A-N

JBG:CSJ
cc: See page 2

Sunset Bay Residential Development

Mr. Milton H. Hamilton, Jr.

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November 6, 2002

cc: Ms. Jennifer Barnett
Tennessee Division of Archaeology
5103 Edmondson Pike
Nashville, TN 37211

Dr. Joe Garrison
Tennessee Historical Commission
Clover Bottom Mansion
2941 Lebanon Pike
Nashville, Tennessee 37243-0442

Mr. Herbert Harper
Tennessee Historical Commission
Clover Bottom Mansion
2941 Lebanon Pike
Nashville, Tennessee 37243-0442

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

Daniel H. Ferry, NRB 2A-N
J. Bennett Graham, NRB 3C-N
Jon M. Loney, WT 8C-K
William H. Redmond, Jr., NRB 3B-N
John W. Shipp, Jr., MR 2T-C
Files, RS, NRB 2A-N

Prepared by J. Bennett Graham



RECEIVED
Environmental Policy and Planning

September 24, 2002

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

SEP 30 2002

Doc Type: _____
Index Field: _____
Project Name: _____
Project No.: _____

Mr. Jon M. Loney
Environmental Management
400 West Summit Hill Drive
Knoxville, Tennessee, 37902-1499

RE: TVA, SUNSET BAY RESIDENTIAL DEVELOPMENT, UNINCORPORATED, UNION COUNTY

Dear Mr. Loney:

In response to your request, received on Friday, August 30, 2002, we have reviewed the documents you submitted regarding your proposed undertaking. Our review of and comment on your proposed undertaking are among the requirements of Section 106 of the National Historic Preservation Act. This Act requires federal agencies or applicant for federal assistance to consult with the appropriate State Historic Preservation Office before they carry out their proposed undertakings. The Advisory Council on Historic Preservation has codified procedures for carrying out Section 106 review in 36 CFR 800. You may wish to familiarize yourself with these procedures (Federal Register, December 12, 2000, pages 77698-77739) if you are unsure about the Section 106 process.

Considering available information, we find that the project as currently proposed **MAY ADVERSELY AFFECT PROPERTIES THAT ARE ELIGIBLE FOR LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES**. We make this finding because we speculate that there may be historic properties as yet unknown located within the boundaries of Sunset Bay Residential Development that exist beyond the TVA-designated Area of Potential Effect. You should now begin immediate consultation with our office. Please direct questions and comments to Joe Garrison (615) 532-1559. We appreciate your cooperation.

Sincerely,

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

HLH/jyg



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

DON SUNDQUIST
GOVERNOR

MILTON H. HAMILTON, JR.
COMMISSIONER

August 21, 2002

Mr. J. Bennett Graham
Cultural Resources Program
P.O. Box 1589
Norris, TN 37828-1589

RE: TVA, Sunset Bay Development, Unincorporated, Union County

Dear Mr. Graham:

In response to your request, received on Tuesday, July 16, 2002, we have reviewed the documents you submitted regarding your proposed Area of Potential Effect (APE) for this undertaking. Our review of and comment on your proposed APE are among the requirements of Section 106 of the National Historic Preservation Act.

We affirm our finding, stated in previous correspondence, that we concur with TVA's determination that there are no historic properties which will be affected in the portions of the project previously surveyed. We also repeat our concurrence that archaeological survey work in inundated areas of the project may be postponed until the winter draw down.

Considering available information, we do not concur with your agency's interpretation of this undertaking's APE. It is the assessment of the SHPO office that the APE should encompass the entire proposed Sunset Bay Development in order to appropriately address the direct and indirect effects of the federal undertaking, including effects that are reasonably foreseeable, that may occur later in time, be farther removed in distance, or cumulative.

With respect to the APE, your agency has included in the APE only the approximately 65 acres directly associated with the deed modification and the 26(a) permit for the placement of fill. The Sunset Bay Development, the applicant for TVA permits and other actions which constitute this federal undertaking, is located on the Lost Creek Embayment of Norris Reservoir in Union County, and is a 1000-acre residential subdivision and community water use facility.

Specifically, you state that TVA's 26(a) permitting of the community dock and associated launching ramp and harbor limits is not critical to the Sunset Bay Development project; that TVA's deed modification to allow for 15 acres of fill upon which to place houses which are a part of the development is likewise not critical; and, that TVA's deed modification to allow for placement of fill for an entrance road to the Sunset Bay Development is not critical. We disagree with this assessment.

It is the assessment of the SHPO staff that the definition of the APE for this undertaking is a departure from past TVA undertakings in which the APE has been broadly defined in accordance with 36 CFR 800. As the Tennessee State Historic Preservation Officer, I recommend that TVA redefine its definition of the APE for this undertaking to include the entire 1000 acres of the Sunset Bay Development.

Our file on this matter will remain open until all steps in the Section 106 review process have been completed.

Sincerely,


Milton H. Hamilton, Jr.
State Historic Preservation Officer

cc: John M. Fowler, Executive Director, Advisory Council on Historic Preservation
J. Ruben Hernandez, U.S. Army Corp of Engineers



Tennessee Valley Authority, Post Office Box 1589, Norris, Tennessee 37828-1589
July 15, 2002

Ms. Jennifer Barnett
Federal Projects Archaeologist
Tennessee Division of Archaeology
5103 Edmondson Pike
Nashville, Tennessee 37211

Dear Ms. Barnett:

ARCHAEOLOGICAL ASSESSMENT, SUNSET BAY DEVELOPMENT,
65 ACRES, UNINCORPORATED, UNION COUNTY, TENNESSEE

As described in our letter of April 25, 2002, the Tennessee Valley Authority (TVA) has received an application from TN Emmons, LLC, for a deed modification affecting approximately 15 acres of privately-owned land and for approval under Section 26a of the TVA Act for building a community dock and depositing fill material on Norris Reservoir, Union County, Tennessee. These activities are located on the Lost Creek embayment of Norris Reservoir at Clinch River Mile 103R on the White Hollow and Maynardville, Tennessee, 7.5' Quadrangles (TVA-145SW and 145SE). TVA has flowage easement rights between the 1044-foot and 1020-foot mean sea level (msl); below 1020-foot msl is TVA fee land. In the flowage easement, TVA reserves the right to prevent structures, excavation, or the placement of fill below the 1044-foot msl elevation. The TVA approvals are requested in connection with TN Emmons' proposed 1000-acre Sunset Bay residential subdivision. More specifically, the application requests (1) a deed modification affecting approximately 15 acres to allow residential development, upon fill being placed up to the 1044-foot contour, and (2) 26a permit approval for fill for construction of a subdivision entrance road, a 336-slip community dock, associated dock facilities, and harbor limits. Material for the proposed fill would be obtained from a source outside the subdivision. These areas are described and depicted in the enclosed copy of the survey report.

We note from your letter of April 29, 2002, the Tennessee State Historic Preservation Officer disagrees with the APE delineated by TVA. Your office recommends that TVA redefine the APE to encompass the entire 1000-acre Sunset Bay Development. In light of the comments, TVA has re-evaluated the earlier delineation of the APE for this undertaking. Upon re-evaluation, it is TVA's determination that because of the limited federal involvement in the development proposed by TN Emmons, the APE of the federal undertaking are the areas identified in our letter of April 25, 2002. TVA's

Ms. Jennifer Barnett
Page 2
July 15, 2002

involvement would be limited to the approval of a deed modification for 15 acres of the project area and the issuance of a Section 26a permit for the placement of fill below the 1044 msl elevation. Even as to the 15 acres, the developer would be the fee owner of this tract, and TVA's land rights are limited to a flowage easement over this land. The deed modification would allow TN Emmons, as the fee owner of the 15 acres, to add 30 homes to the proposed 700-home development.

Although the applicant prefers the eastern entrance road, an alternative access route (*i.e.*, the southern entrance) could be developed which would not require approval from TVA. The eastern entrance route would more efficiently serve Phase I of the development. Similarly, TVA's Section 26a approval of the community dock and launching ramp is not crucial to a private residential development project. Even without these water use facilities, the private project land could be developed for residential use of the type proposed by TN Emmons.

The APE delineated by TVA in the April 25, letter covers approximately 65 acres excluding the submerged area within the proposed harbor limits of the community dock area. A survey of these 65 acres, comprising the proposed borrow area, eastern entrance road, and areas directly affected by the proposed fill/deed modification, dock facility and shoreline adjacent to the dock facility, was conducted by BHE Environmental, Inc. (BHE) in April and May 2002. The survey identified eight archaeological sites (40UN187, 40UN188, 40UN189, 40UN190, 40UN191, 40UN192, 40UN193, and 40UN194) ranging in age from the prehistoric to historic periods. Based on the lack of intact cultural deposits and the absence of potential to yield additional information important in prehistory or history, all of these sites were recommended as ineligible for listing in the National Register of Historic Places. TVA has reviewed the investigations conducted by BHE and concurs with the recommendations and findings set forth in the enclosed survey report. Accordingly, it is TVA's finding that the proposed federal undertaking will have no effect on historic properties listed in or eligible for listing in the National Register of Historic Places within the APE. The information submitted in this letter and the enclosed survey report constitute the documentation for this finding as provided under 36 C.F.R. § 800.11(d).

The only portion of the APE yet to be investigated for historic properties is the shoreline from approximately the 1015.6-foot contour down to the 985-foot contour within proposed harbor limits of the community dock area. Due to elevations of the reservoir pool at that time, this portion of the APE could not be investigated at the time of the surveys in April and May. Consistent with 36 C.F.R. pt. 800.4(b)(2) and 800.5(a)(3), TVA will use the approach of phased

Ms. Jennifer Barnett

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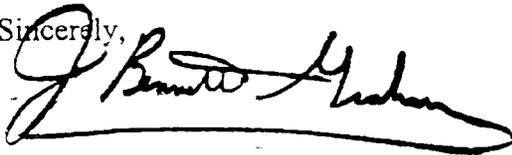
July 15, 2002

identification to comply with the Section 106 requirements for the portion of the APE that is currently submerged. TVA will include restrictions in the proposed Section 26a permit for the harbor and community dock prohibiting ground-disturbing activities in the area within the APE yet to be surveyed until the effects of these activities on historic properties have been assessed.

TVA requests your office's concurrence with the findings of "no historic properties affected."

If you have any questions or comments, please contact me at (865) 632-1583 or fax at (865) 632-1795.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bennett Graham". The signature is fluid and cursive, with a long horizontal flourish at the bottom.

J. Bennett Graham, Manager
and Senior Archaeologist

Enclosures

cc: Mr. David Beverly
Environmental Systems Corporation
200 Tech Center Drive
Knoxville, Tennessee 37912

Dr. Joe Garrison (Enclosures)
Tennessee Historical Commission
Clover Bottom Mansion
2941 Lebanon Pike
Nashville, Tennessee 37243-0442

Ms. Helen Hennon
Environmental Systems Corporation
200 Tech Center Drive
Knoxville, Tennessee 37912

HISTORIC PRESERVATION CONDITIONS OF PERMIT TO CONSTRUCT COMMUNITY DOCK AND HARBOR

The Grantee shall conduct no activities within the area proposed for these facilities until such time as the grantee has completed a survey to identify and evaluate historic properties within said area; submitted documentation of the survey to the Tennessee Valley Authority (TVA); and TVA, the State Historic Preservation Officer (SHPO), and other consulting parties concur that the proposed activity would have no adverse effects on historic properties listed in or eligible for listing in the National Register of Historic Places. If TVA, the SHPO, or other consulting parties find that the proposed activity would have an adverse effect on historic properties, TVA shall execute a Memorandum of Agreement with the Grantee, SHPO and other consulting parties for the treatment of such adverse effects.



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

May 21, 2002

Mr. J. Bennett Graham
Tennessee Valley Authority
Cultural Resources
Post Office Box 1589
Norris, Tennessee 37828-1589

RE: TVA, ARCHAEOLOGICAL ASSESSMENT, SUNSET BAY DEVELOPMENT/50 ACRES,
UNINCORPORATED, UNION COUNTY, TN

Dear Mr. Graham:

At your request, and in accordance with regulations codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739), our office has reviewed the above-referenced archaeological survey report prepared by Thomas Grooms of BHE Environmental, Inc. Based on the information provided, we find that the small portion of the Area of Potential Effect (approximately 50 acres) included in this survey contains no archaeological resources eligible for listing in the National Register of Historic Places.

Referencing our previous correspondence, dated, April 29, 2002, our office does not concur with your Agency's definition of the Area of Potential Effect for this undertaking. It is still this office's position that the entire 1,000-acre proposed Sunset Bay development should be considered as the undertaking's Area of Potential Effect for purposes of Section 106 review. We feel that this expanded project APE will adequately address secondary, cumulative and foreseeable effects of the undertaking upon historic properties.

In addition, we find that the current draft survey report contains numerous typographic errors throughout the text and thus should be edited prior to submittal to this office as a final report for this 50-acre area.

Your cooperation is appreciated.

Sincerely,

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

HLH/jmb

cc: J. Ruben Hernandez, USCOE



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

May 16, 2002

Mr. J. Ruben Hernandez
U.S. Army Corps of Engineers, Nashville District
Regulatory Branch
3701 Bell Road
Nashville, Tennessee 37214

RE: COE-N, PN# 02-38/SUNSET BAY DEVELOPMENT, UNINCORPORATED,
UNION COUNTY

Dear Mr. Hernandez:

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

As stated in the Public Notice, in order to complete our review of this undertaking, this office will need to receive from you a detailed archaeological survey report on the area of potential effect. The Public Notice indicates that the approximate 1,000 acre Sunset Bay development is scheduled to be constructed in phases. Our office suggests that Section 106 compliance may also be fulfilled in phases, in accordance with 36 CFR 800.4(b)(2).

Upon receipt of the survey report, we will complete our review of this undertaking as expeditiously as possible. 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. Bartlett (615) 741-1588, ext. 17.

Your cooperation is appreciated.

Sincerely,

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

HLH/jmb

cc: J. Bennett Graham, TVA Cultural Resources



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

April 29, 2002

Mr. J. Bennett Graham
Tennessee Valley Authority
Cultural Resources
Post Office Box 1589
Norris, Tennessee 37828-1589

RE: TVA, SUNSET BAY DEVELOPMENT/LOST CREEK, UNINCORPORATED, UNION COUNTY, TN

Dear Mr. Graham:

The above-referenced undertaking received by this office on Friday, April 26, 2002 has undergone initial review with regard to National Historic Preservation Act compliance by the participating federal agency or applicant for federal assistance. Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739).

Based upon available information, our office does not concur with TVA Management's definition of the area of potential effect (APE) for the proposed undertaking. We feel that TVA's current APE boundary does not take into account foreseeable, secondary, and cumulative effects generated by this undertaking as required by the 36 CFR Part 800 regulation. We further feel that TVA Management's restrictive and limiting definition of this undertaking's APE is not consistent with your agency's traditional approach to assessing the potential for both the primary and secondary effects of an undertaking upon historic properties. Up until now, that approach has been to define an undertaking's APE broadly to ensure that all possible project effects were assessed.

As you know, 36 CFR 800.16(d) defines an undertaking's APE this way: the "Area of Potential Effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." Based upon the narrative and cartographic documentation provided us by your agency, we assert that this undertaking has the clear potential to directly and indirectly affect historic properties located within the boundary of the entire Sunset Bay Development should such properties exist.

Therefore, our office strongly recommends that TVA redefine this undertaking's APE to encompass the entire approximate 1000 acre Sunset Bay Development.

In order to identify historic properties within the revised project APE as required by 36 CFR Part 800, we request that a qualified professional archaeologist survey the property in accordance with a standard scope of work to be developed by TVA in consultation with this office. The historic properties survey report produced as a result of this survey, along with TVA's determination of the National Register of Historic Places eligibility of any cultural resources discovered, should then be submitted to our office for review and comment.

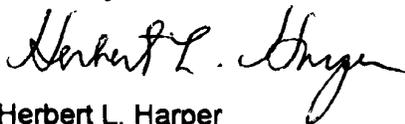
The project documentation submitted by TVA and the applicant indicates that development is scheduled to be completed in phases; our office suggests that Section 106 compliance may also be fulfilled in phases, in accordance with 36 CFR 800.4(b)(2).

Finally, before rendering a final comment on this undertaking, this office will need to receive from you documentation of correspondence with all other consulting parties in this undertaking to ensure that they have been afforded an opportunity to comment.

Upon receipt of the additional documentation and archaeological survey report, we will complete our review of this undertaking as expeditiously as possible. 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 by the federal agency. Questions and comments may be directed to Jennifer Bartlett (615) 741-1588, ext. 17.

Your cooperation is appreciated.

Sincerely,



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

HLH/jmb/jyg

cc: J. Ruben Hernandez, USCOE

April 25, 2002

Ms. Jennifer Bartlett
Tennessee Division of Archaeology
5103 Edmondson Pike
Nashville, Tennessee 37211

Dear Ms. Bartlett:

The Tennessee Valley Authority (TVA) has received an application from TN Emmons, LLC for a deed modification affecting approximately 15 acres of privately-owned land for 26a approval of a community dock and deposit of fill material on Norris Reservoir, Union County, Tennessee (see enclosed map). These activities are located on the Lost Creek embayment of Norris Reservoir at Clinch River Mile 103R on the White Hollow and Maynardville, Tennessee, 7.5' Quadrangles (TVA-145SW and 145SE). TVA has flowage easement rights between the 1044-foot and 1020-foot mean sea level (msl); below 1020-foot msl is TVA fee land. The TVA approvals are requested in connection with TN Emmons' proposed 1000-acre Sunset Bay residential subdivision.

More specifically, the application requests (1) a deed modification affecting approximately 15 acres to allow residential development, conditioned on fill being placed up to the 1044-foot contour, and (2) 26a permit approval for fill for construction of a subdivision entrance road, a 336-slip community dock, associated dock facilities, and harbor limits. Material for the proposed fill would be obtained from a source outside the subdivision. These activities are described in detail in the enclosed copy of the application and depicted on the enclosed topographic maps.

TVA is conducting an environmental assessment (EA) review of the project. Based on the limited TVA involvement in relation to the larger development envisioned by TN Emmons, TVA management has determined that the deed modification and 26a approval constitute the federal action for National Environmental Policy Act purposes and the federal undertaking for Section 106

Ms. Jennifer Bartlett
April 25, 2002
Page 2

review purposes. TVA management has delineated the following areas to be within the area of potential effect of the undertaking.

- Area below elevation 1044-foot msl that would be impacted by the placement of fill, riprap, and culvert for the east entrance road.
- Three areas proposed for deed modification (fill and/or structures) below elevation 1044-foot msl which includes the two peninsulas on which 30 lots/homes are proposed to be built, and the common lot on which a parking facility is proposed to support use of nearby community dock and other recreation facilities.
- Area of the community dock, dock access walkway (i.e., catwalk), deck, and boat launching ramp (including all areas of placement of fill for construction and riprap for stabilization).
- Borrow areas (on or offsite) from which fill material is obtained to raise land elevations to 1044-foot msl (or above) or to use in project construction.
- Shoreline (1044-foot contour down to the 980-foot contour) within proposed harbor limits of the community dock area.

Pursuant to 36 CFR § 800.4(a), TVA requests your comments regarding the APE it has established for the proposed undertaking.

If you have any questions or comments please contact me at (865) 632-1583 or fax at (865) 632-1795.

Sincerely,

J. Bennett Graham
Senior Archaeologist

Enclosures

Ms. Jennifer Bartlett
April 25, 2002
Page 3

cc: Dr. Joe Garrison (Enclosures)
Tennessee Historical Commission
Clover Bottom Mansion
2941 Lebanon Pike
Nashville, Tennessee 37243-0442

Ms. Helen Hennon
Environmental Systems Corporation
200 Tech Center Drive
Knoxville, Tennessee 37912

Mr. David Beverly
Environmental Systems Corporation
200 Tech Center Drive
Knoxville, Tennessee 37912

bc: Stan Davis, WT 8C-K
Bridgette K. Ellis, NRB 2A-N
Linda J. Fowler, ABL 1A-N
Barry B. Walton, ET 11A-K



RECEIVED
MAR 27 2002
ESC-RISC

March 19, 2002

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

Ms. Lehla Lee
ESC
200 Tech Center Drive
Knoxville, Tennessee, 37912

RE: TVA, SUNSET BAY DEVELOPMENT, UNINCORPORATED, UNION COUNTY

Dear Ms. Lee:

In response to your request, received on Thursday, March 14, 2002, we have reviewed the documents you submitted regarding your proposed undertaking. Our review of and comment on your proposed undertaking are among the requirements of Section 106 of the National Historic Preservation Act. This Act requires federal agencies or applicant for federal assistance to consult with the appropriate State Historic Preservation Office before they carry out their proposed undertakings. The Advisory Council on Historic Preservation has codified procedures for carrying out Section 106 review in 36 CFR 800. You may wish to familiarize yourself with these procedures (Federal Register, December 12, 2000, pages 77698-77739) if you are unsure about the Section 106 process. You may also find additional information concerning the Section 106 process and the Tennessee SHPO's documentation requirements at www.state.tn.us/environment/hist/sect106.htm.

To complete our review of this undertaking, this office will need to receive from you a USGS topographic 7.5 minute series map indicating the location of each specific project activity and a detailed project narrative. You may obtain the appropriate USGS maps through the Office of Map Sales, Tennessee Department of Environment and Conservation: telephone (615) 532-1516. In addition we will need the following information: 1) Numbered photographs of general area. 2) Numbered photographs of the project site. 3) Dates of construction, if known, of buildings on the site or within view of the project. 4) A key map indicating the location of each photograph.

Upon receipt of the additional information, we will complete our review of this undertaking as expeditiously as possible. Until 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 not funded or canceled by the federal agency. Your cooperation is appreciated. You may find additional information concerning the Section 106 process and the Tennessee SHPO's documentation requirements at www.state.tn.us/environment/hist/sect106.htm. Questions and comments may be directed to Joe Garrison (615) 532-1559.

Your cooperation is appreciated.

Sincerely,

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

Sunset Bay Residential Development

July 24, 2002

Mr. James Bird
Tribal Historic Preservation Officer
Cultural Resources Office
Eastern Band of Cherokee Nation
Post Office Box 455
Cherokee, North Carolina 28719

Archaeological Assessment, Sunset Bay Development, 65 Acres, Unincorporated, Union County, Tennessee

Dear Mr. Bird:

The Tennessee Valley Authority (TVA) has received an application from TN Emmons, LLC, for a deed modification affecting approximately 15 acres of privately-owned land and for permit to construct a community dock and depositing fill material on Norris Reservoir, Union County, Tennessee. These activities are located on the Lost Creek embayment of Norris Reservoir at Clinch River Mile 103R on the White Hollow and Maynardville, Tennessee, 7.5' Quadrangles (TVA-145SW and 145SE). TVA has flowage easement rights between the 1044-foot and 1020-foot mean sea level (msl); below 1020-foot msl is TVA fee land. In the flowage easement, TVA reserves the right to prevent structures, excavation, or the placement of fill below the 1044-foot msl elevation. The TVA approvals are requested in connection with TN Emmons' proposed 1000-acre Sunset Bay residential subdivision. Material for the proposed fill would be obtained from a source outside the subdivision. These areas are described and depicted in the enclosed portion of the survey report.

It is TVA's determination that because of the limited federal involvement in the development proposed by TN Emmons, the area of potential effect (APE) of the federal undertaking are limited to the approval of a deed modification for 15 acres of the project area and the issuance of a Section 26a permit for the placement of fill below the 1044 msl elevation.

The APE delineated by TVA, covers approximately 65 acres excluding the submerged area within the proposed harbor limits of the community dock area. A survey of these 65 acres was conducted by BHE Environmental, Inc. (BHE) in April and May 2002. The survey identified eight archaeological sites ranging in age from the prehistoric to historic periods. Based on the lack of intact cultural deposits and the absence of potential to yield additional information important in prehistory or history, all of these sites were recommended as ineligible for listing in the National Register of Historic Places. TVA Cultural Resources has reviewed the investigations conducted by BHE and concurs with the recommendations and findings set forth in the enclosed survey report. Accordingly, it is TVA's finding that the proposed federal undertaking will have no effect on historic properties listed in or eligible for listing in the National Register of Historic Places within the APE.

The only portion of the APE yet to be investigated for historic properties is the shoreline from approximately the 1015.6-foot contour down to the 985-foot contour within proposed harbor limits of the community dock area. Due to elevations of the reservoir pool at that time, this portion of the APE could not be investigated at the time of the surveys in April and May.

Mr. James Bird
Page 2
July 24, 2002

Consistent with 36 C.F.R. Part 800.4(b)(2) and 800.5(a)(3), TVA will use the approach of phased identification to comply with the Section 106 requirements for the portion of the APE that is currently submerged. TVA will include restrictions in the proposed Section 26a permit for the harbor and community dock prohibiting ground-disturbing activities in the area within the APE yet to be surveyed until the effects of these activities on historic properties have been assessed.

Per agreements discussed in the Native American Consultation Workshop this spring, TVA is developing Memorandum of Understandings (MOU) to be executed between the nations, tribes, bands, and towns that participated. These MOUs would detail the consultation procedures, which would include your areas and activities of interest, regarding section 106 of the National Historic Preservation Act. Until such time as the MOUs are executed, TVA Cultural Resources is conducting these consultations as prescribed pursuant to 36 C.F.R. Part 800.3(f)(2) of the Advisory Council's regulations. Please review your records and documentation within the project area regarding historic properties or areas that you have attached religious, cultural or traditional significance. Should such sites or areas of interest be present within the APE, TVA Cultural Resources is inviting your office to be a consulting party to the project. Please respond within thirty (30) calendar days after receipt of this letter.

The same letter has been forwarded to the following tribes: The Cherokee Nation; The United Keetoowah Band; Muscogee (Creek) Nation of Oklahoma; Poarch Band of Creek Indians; Alabama-Coushatta Tribe; Alabama-Quassarte Tribal Town; Kialegee Tribal Town; and Thlopthlocco Tribal Town.

If you have any questions or comments, please contact Eric Howard at (865) 632-1403 or email (aehowar5@tva.gov).

Sincerely,

J. Bennett Graham
Senior Archaeologist

Enclosures

cc: Ms. Jennifer Barnett
Federal Projects Archaeologist
Tennessee Division of Archaeology
5103 Edmondson Pike
Nashville, Tennessee 37211

Ms. Helen Hennon
Environmental Systems Corporation
200 Tech Center Drive
Knoxville, Tennessee 37912

Identical letters were forwarded to these other tribal representatives on the same date:

Mr. Steven "Archie" Mouse
United Keetoowah Band
1701 South Muscogee
Tahlequah, Oklahoma 74338

Dr. Richard Allen
History and Culture Office
Cherokee Nation of Oklahoma
P.O. Box 948
124 East Choctaw
Tahlequah, Oklahoma 74465

Ms. Joyce Bear
Muscogee (Creek) Nation of Oklahoma
P.O. Box 580
10008 E. Eufaula Street
Okmulgee, Oklahoma 74447

Mr. Bill Day
Tribal Historic Preservation Officer
Poarch Band of Creek Indians
128 Olive Street
Pineville, Louisiana 71360

Mr. Walter Celestine
Program Director
Alabama-Coushatta Tribe
Route 3, Box 640
Livingston, Texas 77351

Mr. Mekko Tarpie Yargee
Alabama-Quassarte Tribal Town
P.O. Box 187
117 North Main Street
Wetumka, Oklahoma 74883

Mr. Tryg Jorgensen
Kialegee Tribal Town
Tribal Administrator
108 N. Main Street
P.O. Box 332
Wetumka, Oklahoma 74883

Mr. Allen Harjo
Tribal Administrator
Thlopthlocco Tribal Town
I-40 and Clear View Road, Exit 27
P.O. Box 188
Okemah, Oklahoma 74859



DEPARTMENT OF THE ARMY
 NASHVILLE DISTRICT, CORPS OF ENGINEERS
 Regulatory Branch
 3701 Bell RD
 Nashville, TN 37214
 April 10, 2002

IN REPLY REFER TO

Regulatory Branch

SUBJECT: File No. 200200333; Proposed Sunset Bay Development
 Between Miles 0.1 and 6.0, Left Bank, Lost Creek (Norris Lake),
 in Union County, Tennessee

Ms. Lehla Lee
 Regulatory Compliance Analyst
 Environmental Systems Corporation
 200 Tech Center Drive
 Knoxville, Tennessee 37912

Dear Ms. Lee:

This refers to your March 12, 2002, letter inquiring about the subject proposal's potential effects on areas of interest or programs administered by the Corps of Engineers (Corps). Please reference File No. 200200333 when writing or calling us about this action.

The regulatory authorities and responsibilities of the Corps are based on Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344). Section 10 prohibits the obstruction or alteration of navigable waters of the United States without a Corps permit. Section 404 requires a Corps permit for any discharge of dredged or fill material into waters of the U.S. Lost Creek (Norris Lake) is a water of the U.S. that is also considered navigable. Your proposed construction of a boat launching ramp, boat docks, and other amenities would result in discharges and/or structures in or over waters of the U.S. Therefore, you would need to obtain Section 10 and 404 Corps authorization for these activities.

Since your proposal includes a large community dock, the form of authorization will be through a standard individual permit. We will issue a public notice to notify federal, state, and local agencies, adjacent property owners, and the general public of the proposal to allow an opportunity for review and comment or to request a public hearing. The need and expected benefits would be balanced against the probable impacts of the work, taking into consideration all comments received and other relevant factors. This process is called the "public interest review". In our evaluation, we typically consider factors such as conservation, economics, aesthetics, wetlands, cultural values, flood hazards,

floodplain values, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, safety, and considerations of private ownership, among others. In addition, the following general criteria is applied in the evaluation of every application: 1) the relative extent of the public and private need for the proposal; 2) the practicability of using reasonable alternative locations and methods to accomplish the proposal's objectives; and 3) the extent and permanence of the beneficial and/or detrimental effects which the proposal is likely to have on the public and private uses to which the area is suited. Other laws may also affect the processing of applications for Corps permits. Among these are the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Federal Power Act, and the Wild and Scenic Rivers Act. Useful regulatory program information for permit applicants is available at www.lrn.usace.army.mil/cof.

Since your project involves discharges of dredged or fill material in waters of the U.S., we will evaluate the discharges under the Section 404(b)(1) guidelines prepared by the Environmental Protection Agency. The guidelines restrict discharges into aquatic areas where less environmentally damaging, practicable alternatives exist. Therefore, your proposed discharges should incorporate, to the extent possible, avoidance, minimization, and, if necessary, mitigation measures to reduce aquatic impacts.

A desk review conducted using U.S. Geological Survey topographic maps and other information available to us indicates that substantial amounts of wetlands would not likely be impacted by the proposal. However, since our office has not performed a site reconnaissance, we suggest that the project footprint be properly surveyed to identify the extent of impacts on wetlands.

Our permit database shows that Lost Creek Campground (LCC) is located at Lost Creek Mile 6.6, on the left descending bank. LCC received authorization to construct several boat docks at their facility. The LCC facility is very close to your proposed development. In our evaluation, we will take a close look at the potential navigation conflicts that could result from allowing additional docks in this area of Lost Creek.

Thank you for including us in your scoping process. We are available to discuss our permit requirements in greater detail as

well as efforts to avoid or minimize the project's aquatic resource impacts. I may be reached at telephone (615) 369-7519, or by email at jose.r.hernandez@lrn02.usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Ruben Hernandez". The signature is written in a cursive style with a large, sweeping flourish at the end.

J. Ruben Hernandez
Project Manager
Operations Division

March 6, 2002

Regulatory Branch

SUBJECT: File No. 200200333; Proposed Community Dock at Mile 3.3, Left Bank, Lost Creek (Clinch River Mile 102.4R), Norris Lake, in Union County, Tennessee

Mr. David Beverly
Environmental Systems Corporation
200 Tech Center Drive
Knoxville, Tennessee 37912

Dear Mr. Beverly:

This concerns your recent application on behalf of Tennessee Emmons, LLC, for a Department of the Army (DA) permit for the subject work.

We have reviewed the submitted materials and determined that additional information is needed before we can continue processing your application. Enclosed is a summary of the information needed at this time. Upon receipt of the requested information, we plan to issue a 30-day public notice to advertise your proposal.

If you have any questions, please contact me at the above address or by phone at 615/369-7519.

Sincerely,

J. Ruben Hernandez
Project Manager
Operations Division

Enclosure

Copy Furnished:

Ms. Linda J. Fowler
Clinch-Powell Watershed Team
Tennessee Valley Authority
P.O. Box 1589
Norris, Tennessee 37828

RECEIVED

ADDITIONAL INFORMATION NEEDED TO PROCESS
DA PERMIT APPLICATION NO. 200200333

1. **General Information:** Please furnish the names and addresses of all adjacent property owners to the entire development.

2. **Drawings:** 8-1/2" x 11" drawings are needed to depict activities in any public notice that is issued. Please include the name of the waterbody, scale, and north arrow in each sheet. Use heavy dark lines for proposed facilities.
 - a. Vicinity Map. You may use an existing road map or USGS topographic map (scale 1:24,000). Please include sufficient details to simplify locating the site from both land and the waterbody. Show the entire property and locate the boat dock and road crossing. Provide the latitude and longitude, if known, for the boat dock site.

 - b. Boat Dock Plan View(s). Please show the overall dimensions of the docks as well as slip and walkway dimensions. We would like to know what construction materials and type of flotation would be used. Please show and/or describe the dock's summer and winter pool configurations, i.e., dimensions and distances to the normal summer and winter pool lines. Also show areas where excavation below Elev. 1020 would occur.

 - c. Elevation and/or Cross Section View(s). Please show the normal summer and winter pool elevations (as shown in the plan view), dock length, and distances from the lakeward face of the dock to the summer and winter pool contours. Bottom elevations and any excavation below Elev. 1020 must be shown.

 - d. Other Issues. If a boat ramp is planned, please provide details. We would like to know if the entrance road could be slightly shifted to the southeast to entirely avoid filling below the 1020 contour. Would any bank stabilization be necessary? Information on factors such as cultural resources, floods/floodplain, economics, traffic, etc., may become necessary during the public interest review process. We will contact you about this need at the appropriate time.