

Appendix C

**Memorandum of Agreement (MOA) pursuant to 36 CFR Part 800 between
TVA, the Tennessee SHPO, and Dr. James M. Lee**

MEMORANDUM OF AGREEMENT
PURSUANT TO 36 CFR § 800.4(b)(2) and 800.6(b)(1)(iv)

WHEREAS, the Tennessee Valley Authority (TVA) has proposed to issue a permanent easement to Dr. James M. Lee (Dr. Lee) for a private road right-of-way across TVA Tract GIR-7666 on Kentucky Reservoir, Decatur County, Tennessee, near Tennessee River Mile 157.9L; and has proposed to approve installation of underground utilities and shoreline stabilization on adjacent property owned by Dr. Lee under authority of Section 26a of the TVA Act; and

WHEREAS, the stated easement and approval are essential to the development of Dr. Lee's property (development); and

WHEREAS, the TVA has determined that the development will have an effect upon a historic properties eligible for listing or listed in the National Register of Historic Places (NRHP), as well as other historic properties that are potentially eligible for inclusion in the NRHP; and

WHEREAS, TVA has consulted with the Tennessee State Historic Preservation Officer (SHPO), Chickasaw Nation, Muscogee (Creek) Nation, Cherokee Nation, Eastern Band of Cherokee Indians, United Keetoowah Band, Kialegee Tribal Town, Thlopthlocco Tribal Town, Alabama-Quassarte Tribal Town, and Alabama-Coushatta Tribe pursuant to 36 CFR Part 800, the regulations of the Advisory Council on Historic Preservation (Council) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the Chickasaw Nation has requested to be a concurring party to this agreement; and

WHEREAS, the historic property eligible for inclusion in the National Register of Historic Places (NRHP) affected by this undertaking is archaeological site 40DR226, and the listed NRHP property affected by this undertaking is the Water Street Historic District of the town of Clifton; and

WHEREAS, additional archaeological sites which are potentially eligible for the NRHP will also be affected; and

WHEREAS, Dr. Lee participated in the consultation and has been invited to be a signatory in this MOA; and

WHEREAS, the map "Forrest Crossing Development Area of Potential Effect (APE)", the report *Cultural Resources Survey, Archaeological Testing and Geomorphic/Geoarchaeological Field Assessment Forrest Crossing Real Estate Development Kentucky Lake, Decatur County, Tennessee* and the document

“Archaeological Phase Compliance Status” are made a part of this MOA by reference as Appendices A, B, and C, respectively.

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

Stipulations

TVA, in consultation with the SHPO, Dr. Lee and other signatories will ensure that the identification, evaluation, and treatment of historic properties are carried out by Dr. Lee relative to all development within the above-referenced APE prior to the commencement of any ground-disturbing activities within the APE. If development of the APE is to be completed in phases, this agreement allows phased identification, evaluation, and treatment of the historic properties located within the APE.

1. IDENTIFICATION:

TVA, in consultation with the SHPO, and Dr. Lee shall cause to be conducted a survey to identify all previously unrecorded historic properties within the APE as defined in Appendix A and consistent with phased development. Dr. Lee shall bear all costs of conducting these archaeological investigations within the APE. TVA and the SHPO will review, comment, and approve the scope of work (SOW) prior to the implementation of the survey. The survey shall be carried out in a manner consistent with the Secretary of the Interior’s Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Archaeological Resource Management Studies. This survey shall be conducted in consultation with TVA and the Tennessee SHPO. A written report of the survey shall be submitted to TVA for review and approval. TVA will submit the approved written report to all signatories for review, allowing 30 days for comments. Existing information such as previous survey data, photographs, maps, drawings, building plans, descriptions, sketches, etc. shall be used along with new data.

2. EVALUATION:

TVA, in consultation with the SHPO, Dr. Lee, and other signatories, shall cause to be conducted investigations to evaluate the significance of historic properties identified through the survey in accordance with 36 CFR § 800.4(c). For sites that have been determined to be potentially eligible for the NRHP, Dr. Lee shall have a Phase II site evaluation conducted, bearing all costs, in a manner consistent with the Secretary of the Interior’s Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Archaeological Resource Management Studies. TVA and the SHPO will review, comment, and approve the scope of work (SOW) prior to the implementation of the survey. A written report of the survey shall be

Properties which have been evaluated and have been found to meet National Register criteria shall be considered historic properties. Should a dispute arise on the eligibility of a historic property, TVA will consult with the SHPO to resolve the objection. If TVA and the SHPO do not agree, or if the Council or the Secretary of the Interior (Secretary) so request, TVA shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR Part 63. If an Indian tribe that consulted in the development of this MOA and that attaches religious and/or cultural significance to a property off tribal land does not agree with the determination of eligibility, it may ask the Council to request the TVA Federal Preservation Officer to obtain a determination of eligibility from the Secretary.

3. TREATMENT PLAN:

a. AVOIDANCE:

TVA, in consultation with the SHPO, Dr. Lee and other consulting parties shall ensure that all sites determined eligible for listing in the NRHP shall be avoided, whenever reasonable, by any activities that could affect the characteristics of a site that qualify it for listing in the NRHP. In the design of the development, every consideration to avoid adversely affecting archaeological sites eligible for the NRHP will be exhausted. All archaeological sites, subsequently discovered or identified and determined eligible for the NRHP by the evaluation process under Stipulation 2, that are avoided will be protected by a buffer zone determined by TVA, in consultation with the SHPO, Dr. Lee and other consulting parties.

b. DATA RECOVERY:

When historic properties will be adversely affected by unavoidable physical destruction or damage and all avenues of avoidance have been exhausted, data recovery will be implemented. Any such determination of unavoidable adverse effect shall be determined by TVA in consultation with the SHPO, Dr. Lee and other consulting parties. In such an instance, a treatment plan shall be developed in consultation with TVA and all signatories for the recovery of historic and archaeological data from sites that are determined to be eligible for inclusion in the NRHP. Because of the unique nature of each archaeological site, requirements for mitigation at any particular site will be determined by TVA in consultation with the SHPO, Dr. Lee and other consulting parties. TVA shall ensure that a data recovery plan is developed in consultation with all signatories to resolve adverse effects through recovery of significant information from historic or archaeological sites.

The data recovery plan (a site specific research design and implementing SOW) shall be determined by TVA in consultation with the SHPO, Dr. Lee and other consulting parties, in accordance with 36 CFR §§ 800.5 and 800.6, and will be consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23). A written report of the data recovery shall be submitted to all signatories for review and comments. The data recovery plan shall specify, at a minimum:

1. the property, properties, or portions of properties where data recovery is to be carried out;

2. any property, properties, or portions of properties that will be destroyed without data recovery;
3. the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;
4. the field and laboratory methods to be used, with an explanation of their relevance to the research questions;
5. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
6. the proposed disposition of recovered materials and records;
7. proposed methods for involving the interested public in the data recovery;
8. proposed methods for disseminating results of the work to the interested public;
9. a proposed schedule for the submission of progress reports to TVA and the SHPO;
10. a plan delineating the manner in which historic properties, human remains, and associated funerary objects discovered subsequent to the ratification of this agreement document would be treated;
11. TVA shall provide all signatories an opportunity to monitor the implementation of the data recovery plan; and

c. VISUAL EFFECTS:

The proposed development would have an adverse visual effect on the Water Street Historic District and other portions of the town of Clifton that are potentially eligible for listing in the NRHP. In order to mitigate this adverse effect, Dr. Lee shall establish a vegetative buffer along the shoreline to screen the proposed development from the view of these historic properties. A vegetative buffer plan shall be submitted to TVA and the SHPO for review and approval prior to implementation of the development.

Dr. Lee shall bear all costs for the conduct of data recovery.

4. POST REVIEW DISCOVERIES:

Previously unidentified historic properties discovered during the implementation of the Forrest Crossing Development will be subject to the evaluation process under Stipulation 2 and treated according to the process under Stipulation 3.

5. REPORTS:

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

6. TREATMENT OF HUMAN REMAINS:

TVA, in consultation with the SHPO, Dr. Lee and other consulting parties and other signatories shall ensure that the treatment of any human remains discovered within the project area complies with all state and federal laws, including the Native American Graves Protection and Repatriation Act (NAGPRA) for human remains identified on TVA fee-owned property, concerning archaeological sites and treatment of human remains. Should human remains be encountered during historic properties investigations or post-review discovery, all ground disturbing activities will be ceased immediately.

Dr. Lee shall immediately notify the Decatur County Coroner, the State Archaeologist, TVA and the SHPO, should any human remains and/or grave associated artifacts be encountered in connection with an undertaking covered by this agreement. TVA will notify signatories within forty-eight (48) hours of being notified of the presence of these remains and artifacts, and invite signatories to comment on any plans developed to treat these remains and artifacts. Dr. Lee, in consultation with TVA, the SHPO, and other consulting parties shall ensure that those remains and artifacts are treated in a manner consistent with the Advisory Council on Historic Preservation's "Policy Statement Regarding the Treatment of Human Remains and Grave Goods" (1988), and in accordance with Tennessee Code Annotated (T.C.A.) 46-4-101 et seq. "Termination of Use of Land as a Cemetery," T.C.A. 11-6-116, "Excavation of Areas Containing Native American Indian Remains," and T.C.A. 11-6-119 "Reburial of Human Remains or Native American Burial Objects following Discovery or Confiscation" with implementing Tennessee Rules and Regulations Chapter 0400-9-1 "Native American Indian Cemetery Removal and Reburial." Dr. Lee shall bear all costs for treatment of human remains.

7. TIMETABLES FOR COMPLIANCE:

- a. TVA and Dr. Lee shall ensure that the stipulations of this agreement are met prior to commencement of any ground-disturbing activities. If development of the APE (Appendix A) is to be completed in a phased construction, the stipulations of this agreement may be satisfied independently for each phase.

- b. Throughout this agreement, unless otherwise stated, the SHPO and other signatories shall have thirty (30) days to review and comment on all reports concerning investigations of historic properties and proposed data recovery plans provided by TVA. Comments received from the signatories shall be taken into consideration in preparing final plans. A copy of the final reports and data recovery plans shall be provided to the signatories.

8. PHASED COMPLIANCE:

Consistent with 36 CFR § 800.4(b)(2), this agreement allows phased identification, evaluation, and treatment of archaeological sites in order to meet the requirements of section 106 of the National Historic Preservation Act (NHPA).

9. LAND TRANSFER OF PROPERTY RIGHTS:

The instrument of conveyance for the transfer, lease or sale, of any parcel containing or that may contain a historic property from Dr. Lee to a third party will include provisions to ensure that the requirements of Section 106 of the NHPA and its implementing regulations (36 CFR Part 800), as incorporated in this MOA, are met. The instrument of conveyance shall contain, when necessary to protect historic properties, a legally binding preservation covenant for the protection of such properties prepared in consultation with the SHPO and signatories. TVA may release the grantee from the preservation covenant in whole or in part, as appropriate, pursuant to the terms of the covenant and after consultation with the SHPO and other signatories. The covenant may be enforced by TVA or the United States of America.

10. ADMINISTRATIVE CONDITIONS:

If Stipulations 1 - 8 have not been implemented within ten (10) years from the date of this agreement's execution, this agreement shall be considered null and void, unless the signatories have agreed in writing as provided in Paragraph 10.b. below to an extension for carrying out its terms. Upon the agreement's null and void, TVA, the SHPO and Dr. Lee will resume consultation pursuant to 36 CFR § 800.

- b. If Stipulations 1 - 8 have not been implemented within 4 (four) years from the date of this agreement's execution TVA, the SHPO and Dr. Lee shall review the agreement to determine whether the agreement should be extended. If an extension is deemed necessary, TVA, the SHPO and Dr. Lee will consult in accordance with 36 CFR § 800.6(c) to make appropriate revisions to the agreement.
- c. The signatories to this agreement may agree to amend the terms of the agreement. Such amendment shall be effective upon the signatures of all signatories to this agreement, and the amendment shall be appended to the agreement as an attachment.

- d. Should any signatory object within thirty (30) days after receipt to any plans, specifications, contracts, or other documents provided for review pursuant to this agreement, TVA shall consult with the objecting party to resolve the objection.
- e. If any signatory to this agreement determines that the terms of the agreement cannot be or are not being carried out, the signatories shall consult to seek an amendment to the agreement. If the agreement is not amended, any signatory may terminate the agreement. TVA shall either execute a new agreement with the signatories under 36 CFR § 800.6(c)(1) or request the comments of the Advisory Council pursuant to 36 CFR § 800.7(a). If a new agreement is not executed within 60 days of voidance of this agreement then the permit of permanent easement shall be revoked.

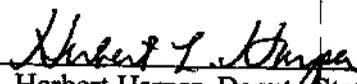
Execution and implementation of this Memorandum of Agreement by TVA, the Tennessee SHPO, and Dr. Lee, and implementation of its terms, evidence that TVA has taken into account the effects of the undertaking on historic properties, and TVA has complied with its obligations under section 106 of NHPA.

SIGNATORIES:

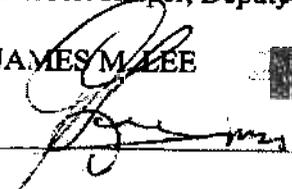
TENNESSEE VALLEY AUTHORITY

By:  Date: 4.16.03
[Kathryn J. Jackson, Executive Vice President, RSO&E]

THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By:  Date: 4/29/03
[Mr. Herbert Harper, Deputy State Historic Preservation Officer]

DR. JAMES M. LEE 

By:  Date: 4/30/03

CONCURRING PARTIES:

By: _____
[Chickasaw Nation]

Date: _____

Appendix A

Documentation of the Area of Potential Effect

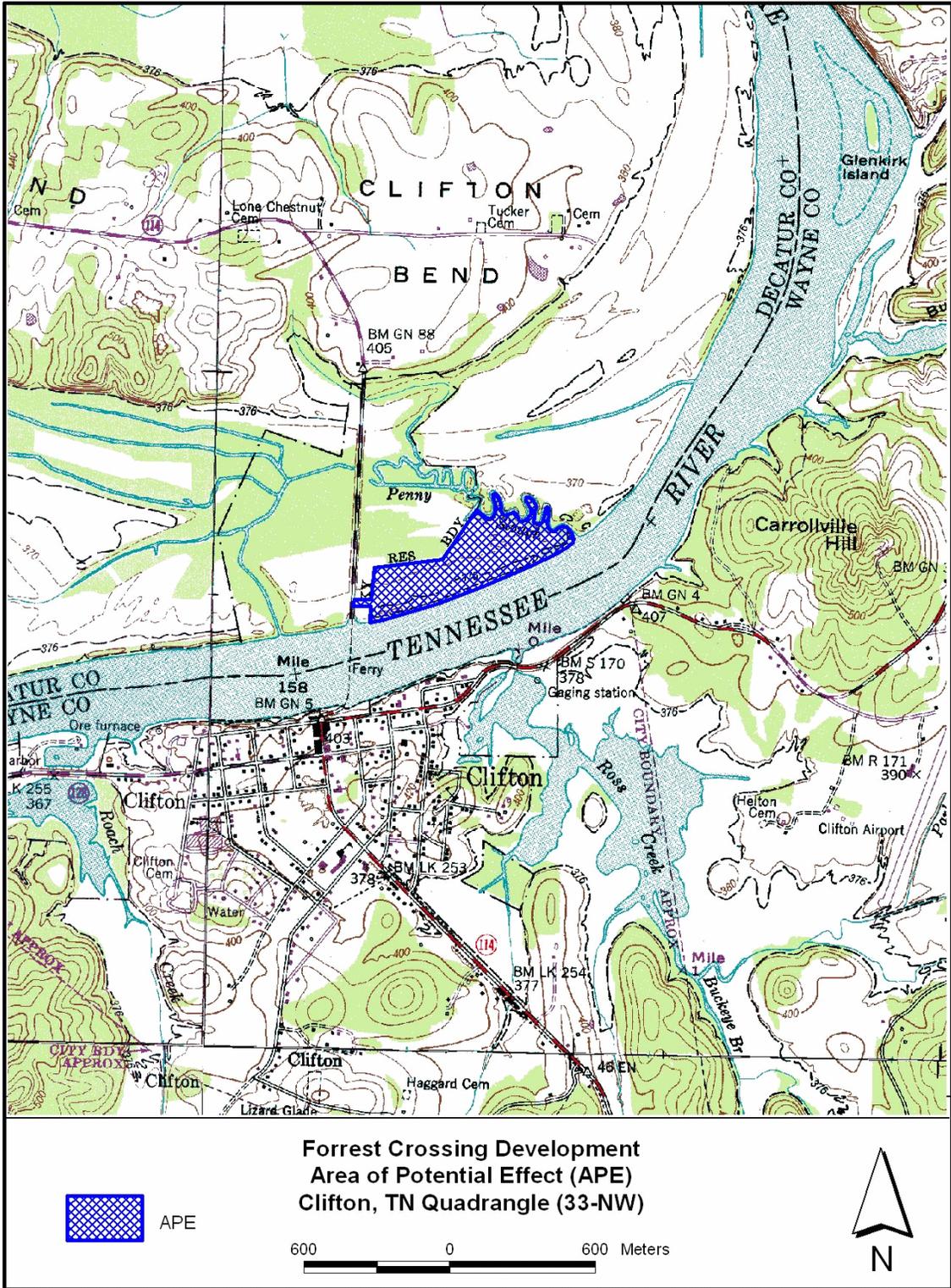


Figure 1

Appendix B

Report:

*Cultural Resources Survey, Archaeological Testing and Geomorphic/Geoarchaeological
Field Assessment Forrest Crossing Real Estate Development Kentucky Lake, Decatur
County, Tennessee*

Appendix C

Archaeological Phased Compliance Status

Appendix C

Archaeological Phased Compliance Status

Under the phased identification, evaluation and treatment of eligible archaeological sites specified in this MOA, the following investigations have been conducted and/or will be required in:

Work Conducted:

- A surface and near surface archaeological survey (ground surface to a depth of 35 inches);
- An assessment for buried site potential by a geomorphologist; and

Figure 2 indicates those locations where additional work is required (Area 1) and where no additional work is required (Area 2). These determinations were made by TVA in consultation with the SHPO and are based on the findings of the draft report *Cultural Resources Survey, Archaeological Testing and Geomorphic/Geoarchaeological Field Assessment Forrest Crossing Real Estate Development Kentucky Lake, Decatur County, Tennessee* (December 2002).

Work to be required:

- Deep testing via backhoe trenching or similar method to identify all buried deposits within Area 1;
- Testing via a combination of augering, backhoe trenching, and controlled test units to further delineate the vertical and horizontal extent of significant deposits associated with archaeological site 40DR226;
- Testing via a combination of backhoe trenching and controlled test units to evaluate the significance (both vertical and horizontal) of archaeological site 40DR102 for those portions of the site within Area 1;
- Evaluation of any additional potentially eligible archaeological sites identified within Area 1;
- Development of treatment plans (i.e. avoidance and/or mitigation) for 40DR226 and any other eligible archaeological sites; and
- Development of a preservation plan for eligible archaeological sites that are to be avoided.

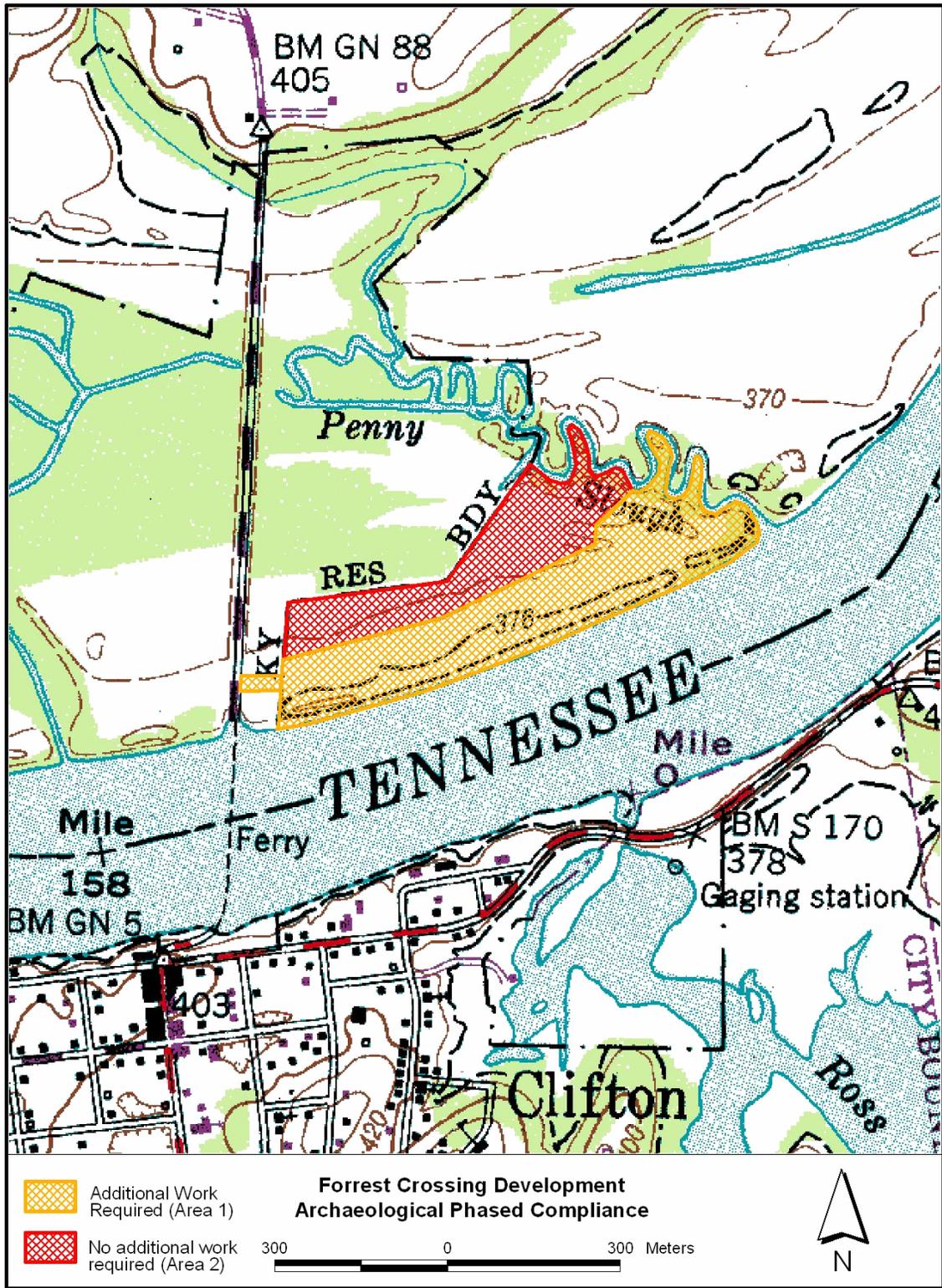


Figure 2