



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

June 15, 2009

Mr. Rick Bernhardt  
Metro Planning Department  
800 Second Avenue South  
Nashville, TN 37210

Dear Mr. Bernhardt:

I was out of the office on Friday (June 12) and missed your call of that afternoon. Aaron did pass along your request for information on the archaeological resources on Bells Bend, as well as an explanation of the regulations and procedures regarding the May Town development's potential impact to such resources. He also stated you needed the information by Monday morning (June 15).

What I can provide you at this time is an overview of the Bells Bend area and important issues that will come into play. This office has never received a map location showing the exact footprint of the proposed May Town development and bridge crossing, or a project proposal. A complete discussion of the project impact on known or potential archaeological and architectural resources is, therefore, not possible at this time without this documentation. Also, the information you have requested takes a great deal of time to assemble, something that cannot be accomplished with such short notice. We can discuss at a later date whether or not a more comprehensive document beyond this overview is necessary.

There are over sixty recorded archaeological sites on Bell's Bend to date. This total does not include historic cemeteries or above ground historic properties older than 50 years. As you are probably aware, 50 years is the federal threshold for eligibility to the National Register of Historic Places, and becomes important during review of any federal project's possible impact upon National Register eligible historic properties.

The recorded archaeological sites span the entire prehistoric Native American sequence (roughly 10,000 BCE to AD 1500) as well as the historic period. A number of the prehistoric Native American sites do contain intact human burials. There was recent mention of one such site in a news article that discussed human remains along the shoreline at Clee's Ferry.

Mr. Rick Bernhardt  
June 15, 2009  
Page Two

Over the years, there have been several archaeological investigations within Bells Bend. A few of these were generated as a result of Metro's search for a new landfill during the late 1980s. However, I must point out that Bells Bend has not been comprehensively examined, either for archaeological or above ground cultural resources. One of the most recent surveys is an archaeological inventory report for Bell's Bend that was prepared by archaeological consultant Zada Law in September 2005 for Bells Landing LLC and Hawkins Partners, Inc. A copy of this report is in the files of the Tennessee Division of Archaeology, and you may wish to request to see a copy at the Division.

To my knowledge, there is no state law that specifically requires privately funded projects on private property to assess the impact of those projects upon archaeological or architectural sites prior to construction. One exception has to do with the discovery and removal of human burials. State law does require the property owner to obtain a court order before human burials are removed. If human burials are present or discovered during earth moving activity, then state law requires all activity to cease, and for local law enforcement, the county medical examiner, and the State Archaeologist to be notified. When it has come to our attention that private property projects threaten significant archaeological resources, including those containing human remains and/or funerary objects, our office often joins with the Tennessee State Archaeologist in an attempt to discuss the archaeological issues with the developer/landowner and craft some type of agreement that avoids or minimizes impact. At times such discussions are fruitful, other times less so.

There are legal means to remove human remains in those cases where avoidance is not possible. The landowner can use the "Termination of Land Use as Cemetery" statute to acquire a court order to legally remove human burials. The law applies to ancient Native American as well as modern period graves. The Tennessee Division of Archaeology often provides technical advice in such cases, but the landowner is responsible for all burial identification and removal costs.

Federal statutes (principally the National Historic Preservation Act (NHPA)) apply to those projects that involve a federal undertaking that might affect historic properties (funding, licensing, permitting, or approval). Any such Federal undertaking in this state must be reviewed and commented upon by the Tennessee State Historic Preservation Office. This federal review is conducted under Section 106 of the NHPA that requires a federal agency and/or an applicant for Federal assistance to consult with this office to identify and to evaluate National Register eligible properties located within an undertaking's Area of Potential Effects and to assess the project's potential effects upon historic properties (prehistoric as well as historic) (archaeological as well as above ground). This process is not meant to stop proposed projects, only to ensure that appropriate steps are taken to discover, evaluate, avoid if possible, but (if necessary)

Mr. Rick Bernhardt  
June 15, 2009  
Page Three

remove archaeological resources within a proposed project footprint prior to project initiation and to avoid, minimize, or mitigate adverse effects to above ground historic properties. As State Historic Preservation Office, the Tennessee Historical Commission will be a party to this federal review.

The proposed bridge associated with the May Town development will almost assuredly require a federal permit from the U. S. Army Corps of Engineers (USACE) and will therefore come under our review (Section 106 of NHPA), regardless of its crossing location. I understand that the developer of May Town has made unambiguous statements that the development is not feasible without construction of the Cumberland River bridge. Given such statements, it will be the position of this office that the area of potential effects (APE) for the Corps permit should include the entire proposed May Town development footprint as well. Ultimately, the USACE will determine whether it agrees or disagrees with our position.

Should any other project element associated with the proposed May Town development require Federal funding, licensing, permitting, or approval, that project element will also come under Section 106 review by this office. Federal agencies that we expect to become involved with permitting bridge construction across the Cumberland River include the U. S. Army Corps of Engineers and the U. S. Coast Guard. Road construction activities associated with May Town may also be slated for some type of federal funding from the Federal Highway Administration. Brownfield reclamation that might be associated with the May Town development may require funding or permitting from the Environmental Protection Agency. Economic development portions of the development may be slated for funding from the Economic Development Administration of the U. S. Department of Housing and Urban Development.

This office joins the Tennessee Division of Archaeology in its concern that any earthmoving activity along the Cumberland River bank will most likely uncover and threaten intact archaeological resources. Again, using the recent events at Clee's Ferry as an example, the likelihood of finding intact archaeological resources (including human burials) for any bridge crossing will be high.

To conclude, this office would strongly recommend that a comprehensive archaeological and architectural resources survey of the proposed footprint of the May Town development and all of its potential bridge crossings be conducted prior to any earthmoving or construction related activity by persons who meet or exceed the professional qualifications for cultural resources consultants that are codified at 36 CFR Part 61. This survey should be performed as early as possible in the May Town planning process to allow for consideration of the project's possible impact upon significant archaeological and architectural resources.

Mr. Rick Bernhardt  
June 15, 2009  
Page Four

I would also suggest strongly that the developer advise this office of any current or proposed Federal involvement in this project so that we can begin a timely Section 106 review.

I trust this overview will assist you. Please feel free to contact me if the Planning Commission would like to further discuss this issue. I also suggest that you contact Mr. Michael C. Moore, Tennessee State Archaeologist and Director, Tennessee Division of Archaeology, 1216 Foster Avenue, Cole Building #3, Nashville, Tennessee 37243, [Mike.C.Moore@tn.gov](mailto:Mike.C.Moore@tn.gov), 615-741-1588, ext. 109. Thank you for your continued cooperation with the Tennessee Historical Commission.

Sincerely,

A handwritten signature in black ink that reads "E. Patrick McIntyre, Jr." in a cursive style.

E. Patrick McIntyre, Jr.  
Executive Director, and  
State Historic Preservation Officer

EPM:bb

cc: Tim Walker