

annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (“the annual period”). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) must first pay \$61 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) must first pay \$30 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–20817 Filed 8–30–16; 8:45 am]

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TENNESSEE VALLEY AUTHORITY

18 CFR Part 1304

When Obstructions on Certain Tributaries of the Tennessee River Do Not Require a Section 26a Permit from the Tennessee Valley Authority

AGENCY: Tennessee Valley Authority.

ACTION: Interpretive Rule.

SUMMARY: The Tennessee Valley Authority (TVA) is issuing guidance stating that certain structures, while obstructions across, along, or in certain tributaries of the Tennessee River, do not need a Section 26a permit from TVA, because they have an indiscernible effect on navigation, flood control or public lands or reservations.

DATES: Effective August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Rebecca C. Tolene, Vice President, Natural Resources, Tennessee Valley Authority, Knoxville, Tennessee (865–632–4433).

SUPPLEMENTARY INFORMATION:

I. Legal Authority

This interpretive rule is promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831–831ee.

II. Background

Section 26a of the TVA Act requires that TVA’s approval be obtained prior to the construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. 16 U.S.C. 831y–1 (2012). TVA’s rules governing such approval are codified at 18 CFR part 1304. The rules include a permitting process whereby applicants may request from TVA a permit for various structures such as boat docks, piers, shoreline stabilization projects, dams, and bridges, all of which qualify as “obstructions” under TVA’s regulations. An obstruction is generally any man-made physical condition that during its continuance after completion impounds, checks, hinders, restricts, retards, diverts, or otherwise interferes with the movement of water or of objects on or in the water. Over the years, TVA has found that certain obstructions because of their location, the nature of their construction, or both have not discernibly interfered with the operation or management of the TVA reservoir system. In particular, this has occurred at locations across, along, or in certain tributary reaches that are upstream of the control or influence of TVA’s reservoir system operations. For the purpose of this rule, these are called upstream tributary reaches. At these locations, certain obstructions have an indiscernible impact on water surface elevations in the reservoir system or the flow or volume of water entering the reservoir system and thereby do not materially interfere with TVA’s flood control or navigation responsibilities. Furthermore, at these locations, TVA does not typically own property and therefore construction does not affect or interfere with the management of TVA’s property. These obstructions include, but are not limited to, stream bank stabilization, bridges and culverts, stream crossings, fences, launching ramps, boat docks, piers, and certain fills and intakes. For these reasons, TVA has determined that certain obstructions do not require approval pursuant to Section 26a of the TVA Act when located across, along, or in an upstream tributary reach of the Tennessee River.

Conversely, based on years of permitting experience, TVA has found that other obstructions across, along, or in upstream tributary reaches do potentially interfere with the management of TVA’s reservoir system. These include, but are not limited to, structures such as dams,

impoundments, interbasin transfers and certain water intakes. TVA will continue to require approval of these and other obstructions not set forth in Section III of this Interpretive Rule, when located across, along, or in an upstream tributary reach.

The Tennessee River has a 41,000-square-mile drainage basin. Thousands of miles of upstream tributary reaches ultimately flow into the Tennessee River, making it impractical to identify each upstream tributary reach in this rule. For the purpose of this rule, upstream tributary reaches do *not* include the following:

- (1) The Tennessee River;
- (2) TVA reservoirs, (TVA reservoirs are listed in Table 1);
- (3) stream reaches within a TVA reservoir, the 500-year floodplain of the Tennessee River, or both;
- (4) stream reaches downstream of a TVA dam (these reaches are listed in Table 2); and
- (5) stream reaches where TVA owns property (whether fee-owned property or other property right, such as a right to flood) in or adjacent to the reach (including property adjacent to a TVA reservoir or downstream of a TVA dam).

TVA *will* continue to review the proposed construction of obstructions located across, along, or in the above-listed five categories of reservoirs and reaches. These reservoirs and stream reaches are controlled or influenced by the operation of TVA’s reservoir system. As discussed in more detail below, individual members of the public are encouraged to contact a TVA representative for help in determining whether their location is across, along, or in a reservoir or stream reach in the above-listed five categories or across, along, or in an upstream tributary reach.

III. Scope of Interpretive Rule

TVA hereby clarifies that, going forward, the construction of the following obstructions across, along, or in an upstream tributary reach of the Tennessee River, does not require a Section 26a permit from TVA:

(a) Stream bank, bed, or channel stabilization structures—Natural or man-made obstructions to stabilize and protect banks, beds, or channels of streams or excavated channels (*e.g.*, vegetation, riprap, gabions, fiber rolls, stacked rock, retaining walls, etc.);

(b) Stream restoration, enhancement, relocation, or treatment structures—Natural or man-made obstructions for relocating a stream or for restoring or improving the stream’s function (*e.g.*, weirs or sills, boulders, wing deflectors, log, brush, rock, trees, fill, etc.);

(c) Bridges and culverts including riprap or other stabilization necessary for their construction;

(d) Stream crossings—A stabilized area or a structure (culvert, bridge, or fill) constructed across a stream to provide a travel-way for people, livestock, equipment, or vehicles, including riprap or other stabilization necessary for their construction;

(e) Fences, playgrounds, picnic tables, benches, grills, and other recreational structures;

(f) Launching ramps and marine railways;

(g) Buoys;

(h) Docks, piers, and other water-use facilities;

(i) Decks, gazebos, patios, and other open structures;

(j) Enclosed land-based structures;

(k) Water intakes with a combined peak withdrawal of less than 50,000 gallons per day (0.08 cubic feet per second) and having a pipe diameter less than 6 inches;

(l) Towers, poles, electrical panels, satellite antennas, service lights, signs, and their anchors and foundations;

(m) Outfall structures;

(n) Underground, submarine, or aerial utility pipes and lines and their support structures, anchors or foundations;

(o) Causeways, roads, driveways, and parking lots;

(p) Grading and fill not involving the construction of a dam or impoundment.

Those considering construction of one or more of the above-listed obstructions across, along, or in an upstream tributary reach as defined in this rule are not required to submit an application or design drawings to TVA for approval of a Section 26a permit.

Members of the public are responsible for knowing whether their proposed construction project is located across, along, or in an upstream tributary reach or on TVA property. If your proposed obstruction is located on TVA property, in addition to a Section 26a permit for the obstruction, approval from TVA to use the property may be required. TVA encourages members of the public to seek TVA's help in identifying whether a Section 26a permit or TVA approval to use its property is necessary. For more information or assistance in determining whether your project requires a Section 26a permit, contact TVA at 1-800-882-5263 or visit TVA's Web site at tva.com.

Except as it applies to TVA's regulations implementing Section 26a, this interpretive rule is not a substitute for the requirements of any federal, state, or local statute, regulation, ordinance, or code, including, but not limited to, applicable building codes, now in effect or hereafter enacted.

This guidance reflects TVA's current judgment on the types of obstructions that either individually or cumulatively do not affect navigation, flood control, or public lands or reservations across, along, or in an upstream tributary reach of the Tennessee River. TVA may refine this guidance, if circumstances warrant, in a future **Federal Register** notice. This guidance has no effect on whether a permit is required by other federal or state agencies.

IV. Definitions

Fee-owned property—Real property owned in fee by the United States of America in the custody and control of TVA.

Property—Fee-owned property or other property right, such as a right to flood.

Property right—Any legal right acquired or reserved by TVA that concerns property, such as a right to flood private property.

Reach—A segment of stream between two locations.

Tennessee River—The river reach from its mouth at the Ohio River to its beginning at mile 652, at the confluence of the Holston and French Broad Rivers.

Tributary—Any watercourse the contents of which, if not obstructed, diverted or consumed, will ultimately flow into the Tennessee River.

TVA reservoir—The impoundment created by a TVA dam constructed across the Tennessee River or one of its tributaries (including all streams reaches impounded by the dam). One dam may impound reaches of more than one stream. The impounded stream reaches together form the body of water (*i.e.*, the reservoir) created by the construction of the dam. For example, the construction of Douglas Dam impounded a portion of the French Broad River as well as many other stream reaches, including, but not limited to, portions of Pigeon River, Nolichucky River, Flat Creek, Muddy Creek, and Seahorn Creek. All of the stream reaches impounded by Douglas Dam comprise Douglas Reservoir.

TVA reservoir system—The series of interconnected dams and reservoirs, with associated facilities, on the Tennessee River and its tributaries, that, with the adjacent TVA property, are managed by TVA for purposes of navigation, flood control, and power production; and consistent with those purposes, for a wide range of other public benefits.

Upstream tributary reach—Stream reaches located upstream of the control or influence of the operation of the TVA reservoir system.

Dated: August 17, 2016.

Rebecca C. Tolene,

Deputy General Counsel and Vice President, Natural Resources.

TABLE 1—TVA RESERVOIRS

Tennessee River Reservoirs	
Kentucky. Pickwick. Wilson. Wheeler. Guntersville. Nickajack. Chickamauga. Watts Bar. Fort Loudoun.	
Tributary Reservoirs	
Apalachia. Beaver Creek (tributary to South Fork Holston River). Blue Ridge. Boone. Chatuge. Cherokee. Clear Creek (tributary to Beaver Creek, tributary to South Fork Holston River). Doakes Creek (Norris Reservoir).	<i>Bear Creek Projects (Alabama):</i> Bear Creek. Cedar Creek. Little Bear Creek. Upper Bear Creek. <i>Beech River Projects (West Tennessee):</i> Beech. Cedar. Dogwood. Lost Creek.

TABLE 1—TVA RESERVOIRS—Continued

Douglas. Fontana. Fort Patrick Henry. Hiwassee. John Sevier Detention Dam (just upstream of Cherokee Reservoir). Melton Hill. Nolichucky. Normandy. Norris. Nottely. Ocoee No. 1. Ocoee No. 2. Ocoee No. 3. South Holston. Tellico. Tims Ford. Watauga. Wilbur.	Pine. Pin Oak. Redbud. Sycamore.
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TABLE 2—STREAM REACHES DOWNSTREAM OF TVA DAMS

River or stream	Reach (mile)	Description
Tennessee River	0 to 652	Mouth to confluence of the Holston and French Broad Rivers.
Beaver Creek (tributary to South Fork Holston River)	0 to 22.5	Mouth to Beaver Creek Dam.
Clear Creek (tributary to Beaver Creek tributary to South Fork Holston River)	0 to 2.8	Mouth to Clear Creek Dam.
Clinch River	0 to 79.8	Mouth to Norris Dam.
Duck River	0 to 248.6	Mouth to Normandy Dam.
Elk River (tributary to Tennessee River)	0 to 133.3	Mouth to Tims Ford Dam.
French Broad River	0 to 32.3	Mouth to Douglas Dam.
Hiwassee River	0 to 121.0	Mouth to Chatuge Dam.
Holston River	0 to 142.2	Mouth to confluence of the North and South Fork Holston Rivers.
Little Tennessee River ¹	0 to 61.0	Mouth to Fontana Dam.
Nolichucky River	0 to 45.6	Mouth to Nolichucky Dam.
Nottely River	0 to 21.0	Mouth to Nottely Dam.
Ocoee River	0 to 37.8	Mouth to the Georgia/Tennessee State Line.
South Fork Holston River	0 to 49.8	Mouth to South Holston Dam.
Toccoa River	0 to 53.0	The Georgia/Tennessee State Line to Blue Ridge Dam.
Watauga River	0 to 36.7	Mouth to Watauga Dam.
Bear Creek Projects (Alabama):		
Bear Creek	0 to 114.7	Mouth to Upper Bear Creek Dam.
Cedar Creek	0 to 23.1	Mouth to Cedar Creek Dam.
Little Bear Creek	0 to 11.6	Mouth to Little Bear Creek Dam.
Beech River Projects (West Tennessee):		
Beech River	0 to 35.0	Mouth to Beech Dam.
Big Creek	0 to 6.7	Mouth to Dogwood Dam.
Browns Creek	0 to 5.1	Mouth to Pin Oak Dam.
Dry Branch	0 to 1.1	Mouth to Sycamore Dam.
Dry Creek	0 to 1.0	Mouth to Redbud Dam.
Haley Creek	0 to 4.0	Mouth to Cedar Dam.
Lost Creek	0 to 1.3	Mouth to Lost Creek Dam.
Piney Creek	0 to 4.8	Mouth to Pine Dam.

¹ Brookfield Smoky Mountain Hydro manages Little Tennessee River Miles 33.6 to 59.1.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9784]

RIN 1545-BM05

Definition of Real Estate Investment Trust Real Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that clarify the definition of real property for purposes of the real estate investment trust provisions of the Internal Revenue Code (Code). These final regulations provide guidance to real estate investment trusts and their shareholders.

DATES: *Effective date:* These regulations are effective on August 31, 2016.

Applicability date: For dates of applicability, see § 1.856-10(h).

FOR FURTHER INFORMATION CONTACT:

Julanne Allen of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 317-6945 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to real estate investment trusts (REITs). Section 856 of the Code defines a REIT by setting forth various requirements. One of the requirements for a taxpayer to qualify as a REIT is that at the close of each quarter of the taxable year at least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities. See section 856(c)(4). Section 856(c)(5)(B) defines *real estate assets* to include real property (including interests in real property and interests in mortgages on real property). Section 856(c)(5)(C) defines *interests in real property* to include fee ownership and co-ownership of “land or improvements thereon.” Prior to these final regulations, § 1.856-3(d) of the Income Tax Regulations, promulgated in 1962 in TD 6598 (the 1962 Regulations), defined real property for purposes of the regulations under sections 856 through 859. Under § 1.856-3(d) of the 1962

Regulations, the term *real property means* land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). In addition, the term “real property” includes interests in real property. Local law definitions will not be controlling for purposes of determining the meaning of the term “real property” as used in section 856 and the regulations thereunder. The term includes, for example, the wiring in a building, plumbing systems, central heating, or central air-conditioning machinery, pipes or ducts, elevators or escalators installed in the building, or other items which are structural components of a building or other permanent structure. The term does not include assets accessory to the operation of a business, such as machinery, printing press, transportation equipment which is not a structural component of the building, office equipment, refrigerators, individual air-conditioning units, grocery counters, furnishings of a motel, hotel, or office building, etc., even though such items may be termed fixtures under local law.

The IRS issued revenue rulings between 1969 and 1975 addressing whether certain assets qualify as real property for purposes of section 856. Specifically, the published rulings address whether assets such as railroad properties,¹ mobile home units permanently installed in a planned community,² air rights over real property,³ interests in mortgage loans secured by total energy systems,⁴ and mortgage loans secured by microwave transmission property⁵ qualify as either real property or interests in real property under section 856. After these published rulings were issued, REITs invested in various types of assets that are not directly addressed by the regulations or the published rulings, and some of these REITs received letter rulings from the IRS concluding that certain of these various assets qualified as real property. A letter ruling, however, may not be relied upon by taxpayers other than the taxpayer that received the letter ruling⁶ and is limited to its particular facts. The Treasury Department and the IRS recognized the need to provide updated published guidance on the definition of real

property under sections 856 through 859. On May 14, 2014, the Treasury Department and the IRS published in the **Federal Register** a notice of proposed rulemaking (REG-150760-13 at 79 FR 27508) (NPRM) to define “real property” solely for purposes of sections 856 through 859 and provisions that reference the definition of real property in section 856 and the regulations thereunder.

Written and electronic comments responding to the NPRM were received. The written comments are available for public inspection at <http://www.regulations.gov> or upon request. A public hearing was held on September 18, 2014.

After consideration of all the comments, these final regulations adopt the proposed regulations as revised by this Treasury decision.⁷ The comments and revisions are discussed in this preamble.

Summary of Comments and Explanation of Revisions

I. The Definition of Land

The proposed regulations defined the term “land” to include water and air space superjacent to land and natural products and deposits that are unsevered from the land. A commenter requested clarification that land includes water space and air space above ground that the taxpayer does not own. For example, a taxpayer may own a building and purchase air rights superjacent to one or more neighboring buildings to enhance the value of the building the taxpayer owns, or a taxpayer may purchase air rights in anticipation of using those rights to facilitate the future acquisition or development of property. The Treasury Department and the IRS agree that air space or water space superjacent to land each qualify as land even if the taxpayer owns only the air space or water space and does not own an interest in the underlying land. The proposed regulations stated that superjacent water and air space qualify as land, and these final regulations retain the language of the proposed regulations.

⁷ Under section 856(c)(2) and (3), in order for an entity to qualify as a REIT, certain prescribed percentages of that entity’s gross income must be derived from certain types of income (which include “rents from real property” and “interest on obligations secured by mortgages on real property or on interests in real property”). The definition of real property in these final regulations applies for purposes of section 856(c)(2) and (3), but these final regulations provide neither explicit nor implicit guidance regarding whether various types of income are described in section 856(c)(2) and (3).

¹ Rev. Rul. 69-94 (1969-1 CB 189).

² Rev. Rul. 71-220 (1971-1 CB 210).

³ Rev. Rul. 71-286 (1971-2 CB 263).

⁴ Rev. Rul. 73-425 (1973-2 CB 222).

⁵ Rev. Rul. 75-424 (1975-2 CB 269).

⁶ Rev. Proc. 2016-1 (2016-1 IRB 1), section 11.02; see section 6110(k)(3) of the Code.